



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/00BY/LDC/2014/0012**

Property : **10B & 10E Moss Street
Liverpool
L6 1HF**

Applicant : **E & J Ground Rents No. 4 LLP**

Representative : **Matthews & Goodman**

Respondents : **The leaseholders of the Property**

Representative : **N/A**

Type of Application : **Landlord and Tenant Act 1985
- section 20ZA**

Tribunal Members : **Judge J Holbrook (Chairman)
Judge L Bennett**

Date and venue of Hearing : **Determined without a hearing**

Date of Decision : **23 September 2014**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to remedial works to the balcony to apartment 14 at the Property and associated repairs to apartment 9.

REASONS

Background

1. On 20 August 2014 an application was made to the First-tier Tribunal (Property Chamber) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The application was made on behalf of E & J Ground Rents No.4 LLP, the freeholder of 10B and 10E Moss Street, Liverpool L6 1HF (“the Property”). The Respondents to the application are listed in the Annex to this decision. They are the leaseholders of the 36 apartments in the Property.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern urgent remedial works to the balcony to apartment 14, together with consequential repairs to apartment 9. Those works have already commenced but are not yet complete.
5. On 20 August 2014 Judge Bennett issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received, and the Tribunal accordingly convened in the absence of the parties on 23 September 2014 to determine the application. Written submissions and documentary evidence in support of the application were provided by the Applicant. No submissions were received from any of the Respondents.
6. The Tribunal did not inspect the Property.

Grounds for the application

7. The Property is understood to be a purpose-built residential development of 36 apartments, some or all of which have an external balcony.
8. Following a complaint from the occupiers of apartment 9 that brown water was seeping through their ceiling, investigatory works by the Applicant's agents revealed serious problems with the balcony to the apartment above (apartment 14). Specialist advice was obtained to the effect that the timbers and joists to this balcony were rotting and needed to be replaced. Wet rot preservation works were also recommended to eradicate fungi, together with replacement of the balcony decking. The Applicant accordingly implemented a process of consultation in respect of these works.
9. It was initially thought that the presence of rot was limited to a small area of the balcony. However, once the works had started and the balcony floor had been stripped back, it was discovered that the rot was more widespread, and that it also affects the parapet wall and external wall of apartment 14. The amount of remedial works required, and the associated costs, are therefore expected to exceed those detailed in the consultation exercise.
10. Nevertheless, the Applicant considers that the works should be completed without delay because the balcony has been stripped back and is presently open to the elements. This gives rise to health and safety concerns and it also risks causing further water ingress to apartment 9.

Law

11. Section 18 of the Act defines what is meant by "service charge". It also defines the expression "relevant costs" as:

the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

12. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either—

- (a) *complied with in relation to the works ... or*
- (b) *dispensed with in relation to the works ... by the appropriate tribunal.*

13. "Qualifying works" for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (section 20(3) of the Act and regulation 6 of the Regulations).

14. Section 20ZA(1) of the Act provides:

Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

15. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to:

- give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;
- obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;
- make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
- give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

Conclusions

16. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken. It is reasonable that the consultation requirements should be

complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.

17. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed until the requirements have been complied with. The Tribunal must weigh the balance of prejudice between, on the one hand, the need for swift remedial action to ensure that the condition of the Property does not deteriorate further and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before major works begin. It must consider whether this balance favours allowing the works to be undertaken immediately (without consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in carrying out the works which that will require). The balance is likely to be tipped in favour of dispensation in a case in which there is an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.
18. In the present case, it is clear that there is indeed an urgent need for swift remedial action to complete the remedial works in order to make the balcony safe and to prevent further water ingress to the apartment below. We have no hesitation in finding that the balance of prejudice favours permitting the works to proceed without delay.
19. We also note that consultation with the Respondents had taken place prior to the discovery of the true extent of the necessary works. Additional information has also been provided to the Respondents in the course of these proceedings and none of them have objected to the application. At the time of the original consultation, it was anticipated that the cost of the works would be in the region of £12,500. It is now envisaged that the cost is likely to increase by approximately £6,000 plus VAT.
20. The fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that we consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard.

ANNEX

List of Respondents

Leaseholders of 10B Moss Street

Leaseholders	Unit
Ms L. Northridge	Apartment 1, 10B Moss Street
Mr. H. Bedi	Apartment 2, 10B Moss Street
Mr Q. Nunes	Apartment 3, 10B Moss Street
Mr S. Sing & Mr G. Bhavra	Apartment 4, 10B Moss Street
Mr & Mrs M. Ashfaq	Apartment 5, 10B Moss Street
Mr D. Beeharry	Apartment 6, 10B Moss Street
Ms A. Harvey & Mr P. Hussey	Apartment 7, 10B Moss Street
Mr M. Patti	Apartment 8, 10B Moss Street
Ms L. Ellis	Apartment 9, 10B Moss Street
Mr R. Susan & Mr J. Raju	Apartment 10, 10B Moss Street
Mr M. Shi & Mr E. Dunn	Apartment 11, 10B Moss Street
Mr M Sayal	Apartment 12, 10B Moss Street
Mr S Marshall & Ms A. Webster	Apartment 14, 10B Moss Street
Mr & Mrs Bendall	Apartment 15, 10B Moss Street
LSF Estates Limited	Apartment 16, 10B Moss Street
Mr F. Jmor & Mr E. Abbas	Apartment 18, 10B Moss Street
Mr R. Jackson	Apartment 19, 10B Moss Street
Ms J Jiang	Apartment 17, 10B Moss Street

Leaseholders of 10E Moss Street

Leaseholders	Unit
Mr B. McKeever	Apartment 3, 10E Moss Street
Mr A. Boon-itt	Apartment 4, 10E Moss Street
Mr I. Mohammed	Apartment 5, 10E Moss Street
Mrs M. Byrne	Apartment 8, 10E Moss Street
Mr A. Chafik & Mr S. Gayed	Apartment 9, 10E Moss Street
Mr P. Cooper	Apartment 11, 10E Moss Street
Mrs M. Ezzeldin	Apartment 12, 10E Moss Street
Mr J. Parfitt	Apartment 15, 10E Moss Street
Mr H. Bingley	Apartment 16, 10E Moss Street
Ms L. Ma	Apartment 18, 10E Moss Street
Carter Gem Properties Limited	Apartments 7 & 17, 10E Moss Street
Mrs E. Burch	Apartments 6 & 10, 10E Moss Street
Mr A. Isted	Apartment 19, 10E Moss Street
Ms L. Hearity	Apartments 1, 2 & 14, 10E Moss Street