



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

Case Reference : **MAN/00DA/LDC/2015/0017**

Property : **30 York Place
Leeds
LS1 2ED**

Applicant : **Mintoncrest Limited**

Representative : **Remus**

Respondents : **The leaseholders of the Property
(see Annex)**

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 : **4 September 2015**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works comprising replacement of the lift drive for the Property's lift.

REASONS

Background

1. On 15 July 2015 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 Mintoncrest Limited, the landlord of 30 York Place, Leeds LS1 2ED ("the Property"). The Respondents to the application (who are listed in the Annex hereto) are the long leaseholders of the 9 residential apartments within the Property who are, according to the Applicant, liable to contribute to the cost of maintaining the lift.
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 the urgent replacement of the lift drive for the Property's lift.
5. On 24 July 2015 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 the date of this decision to determine the application. Documentary evidence in support of the application was provided with the application. No submissions were received from any of the Respondents.
6. The Tribunal did not inspect the Property.

Grounds for the application

7. The Applicant's case is that, on 2 July 2015 following a scheduled maintenance inspection of the lift, the lift contractor (Schindler) reported that the lift drive needed to be replaced and that the lift had to be taken out of service until that had been done. The contractor

provided a quote for the cost of the necessary work in the sum of £4,245.85 plus VAT. The Applicant was concerned that the lift should be repaired as soon as possible in order to minimise inconvenience to residents of the Property and we understand that the work was in fact done on 13 July 2015.

Law

8. 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.

9. 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.

10. “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).

11. 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.

12. 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

13. The Tribunal must decide whether it was 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 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.
14. In deciding whether to dispense with the consultation requirements in a case where qualifying works have been commenced or completed before the Tribunal makes its determination, the Tribunal must focus on whether the leaseholders were prejudiced by the failure to comply with the consultation requirements. If there is no such prejudice, dispensation should be granted.
15. In the present case, there is no evidence that the Respondents have been prejudiced by the lack of compliance. It is clear that there was an urgent need for the lift to be brought back into safe operation and we therefore find that it was reasonable for the works to be carried out without compliance with the consultation requirements.
16. 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

Respondents	Flat – 30 York Place
The Lessee	Flat 5
Mr & Mrs N Edwards	Flat 6
Mr J M Davey	Flat 7
Mr J C Morelli	Flat 8
EGR Properties Limited	Flats 9 and 10
Mr R M Peter and Mr J A Elan	Flat 11
Mr G Rowshan	Flat 12
Mr & Mrs S Smith	Flat 14