



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

Case Reference : **MAN/00FF/LDC/2018/0019**

Property : **47-52, 52A, 52B Bishopfields
Drive, York, YO26 EWY**

Applicant : **St Peter's Quarter Residents
Association Limited**

Representative : **Residential Management Group
Ltd.**

Respondents : **Various Leaseholders
(see Annex A)**

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

Tribunal Members : **Judge P Forster
Mr W A Reynolds MRCIS**

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

Date of Decision : **21 July 2019**

DECISION

Decision

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to roof repair works to the property including removing roof tiles, replacing/repairing the under felt, re-fixing roof tiles ,repairs to the parapet gutters and ensuring cavity trays ,chute's and flashings are correctly positioned and detailed.

Reasons

Background

1. An application dated 18 April 2019 was received by the First-tier 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 St Peter’s Quarters Residents Association Limited (“the applicant”), of RMG House, Essex Road, Hoddesdon, England, EN11 0DR in respect of 47-52, 52A, 52B Bishopsfield Drive, York, YO26 EWY (“the property”) which is a block of 8 residential apartments. The block is of four storeys with two apartments on each floor. The Respondents to the application are the long leaseholders of those apartments. A list of the Respondents is set out in the Annex hereto.
3. The only issue for the Tribunal to determine is whether it is reasonable to dispense with the consultation requirements.
4. The subject block is a separate entity located at the centre of a wider crescent shaped block of town houses and three storey blocks of apartments. The block forms part of a wider development of around 250 units which was built in the mid-2000s.
5. This application is related to a similar application made in respect of another block on the same development, 1 – 11 Phoenix Boulevard, under case reference No. MAN/00FF/LDC/2018/0021.
6. The works in respect of which a dispensation is sought concern urgent works to arrest water penetration from the roof into the two top floor apartments. The owner of one of the top floor apartments 1st reported leaks from the roof in October 2015. Spot repairs were carried out in response but that did not resolve the problem. There was uncertainty about how to proceed and a surveyor was appointed to carry out an

independent inspection. The surveyor was unable to state the specific cause for the leaks and so identified a range of works.

7. The first set of works consisted of stripping back the lowest rows of tiles repairing the felt, plus repairs to the surrounding flat roof, parapet gutter and gully. The cost of those works was estimated at £3,250 plus VAT and there were additional costs of £1,500 plus VAT for scaffolding with an additional scaffolding cost of £360 plus VAT to allow for further reports/investigations.
8. Those works were not successful. In April 2018 further works were carried out to reposition the cavity tray in the parapet wall. That was done at a cost of £1,300 plus VAT.
9. A consultation letter was issued to all residents on 29 June 2017 advising them of the need to erect scaffolding, to carry out works, and providing a budget figure for the repairs. A form of notice of intention was issued on 26 August 2017. It complied with the prescribed regulations save that the consultation period was reduced from 30 days to 7 days. A quote was obtained from only one contractor, chosen because they had good knowledge of the roof and carried out previous repairs. A form of notice with a paragraph B statement was issued on 10 October 2017.
10. On 8 May 2019 the Tribunal 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 therefore convened on the date of this decision to consider the application in the absence of the parties. In response to directions, the Applicant's representative provided written submissions and documentary evidence in support of the application. Copies of these were provided to each Respondent and no submissions or objections were received from the Respondents.
11. The Tribunal did not inspect the Property.

Grounds for the application

12. The Applicant's case is that, it was necessary to undertake these works quickly to adequately protect the occupants of the Property, particularly those in the top floor apartments. The Applicant proceeded with the works as soon as possible to placate the long leaseholders of top floor apartments who were understandably pressing for a quick solution. It asks the Tribunal to grant retrospective dispensation in respect of these works, which it considered to be so urgent as to warrant avoiding the

additional delay that compliance with the consultation requirements would have entailed.

The Law

13. 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.

14. 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.

15. “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).

16. 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.

17. 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

18. The Tribunal must decide whether it was reasonable for the works to have proceeded without the Applicant first complying in full with the Section 20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about the works, the reason for the works being undertaken, and the estimated cost of those works. Importantly, it also provides tenants with the opportunity to provide general observations and nominations for possible contractors. The landlord must have regard to those observations and nominations.
19. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works. 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.
20. It follows that, for the Tribunal to decide whether it was reasonable to dispense with the consultation requirements, there needs to be a good reason why the works should and could not have been delayed. In considering this, the Tribunal must consider the prejudice that was caused to tenants by not undertaking the full consultation while balancing this against the risks posed to tenants by not taking swift remedial action. The balance is likely to be tipped in favour of dispensation in a case in which there was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.

21. In the present case, there was only limited and partial compliance with the consultation requirements but there is no doubt that the works were necessary and pressing for the occupiers of the top floor apartments and to protect the overall integrity of the Property. We find that it was reasonable for these works to have proceeded without the Applicant first complying with the Section 20 consultation requirements. The balance of prejudice favours permitting such works to have proceeded without delay.
22. In deciding to grant a dispensation, we have had regard to the fact that no objections were raised by the Respondent leaseholders in compliance with the Tribunals Directions of 8th May 2019. No evidence has been presented that the work was completed to an inferior standard or cost more as a result of non-compliance with the consultation requirements.
23. We would however emphasise the fact that the Tribunal has solely determined the matter of whether or not it is reasonable to grant a retrospective dispensation from the consultation requirements. This decision 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

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| 1. Mrs T Seager | 47 Bishopsfields Drive |
| 2. Dr E & Dr C Forbes | 48 Bishopsfields Drive |
| 3. Miss Drake | 49 Bishopsfields Drive |
| 4. Mr & Mrs Coulson | 50 Bishopsfields Drive |
| 5. Mr & Mrs Froud | 52 Bishopsfields Drive |
| 6. Mr & Mrs Heath | 52 Bishopsfields Drive |
| 7. Dr Birkinshaw & Mr Richards | 52a Bishopsfields Drive |
| 8. Ms L Thada | 52b Bishopsfields Drive |