



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

Case Reference : **MAN/00BP/LDC/2022/0001**

Properties : **The Woodlands on Stamford**

Applicant : **The Woodlands No1 Management Co. Ltd.**

Representative : **Scanlans Property Management LLP**

Respondents : **Various – see annex**

Type of Application : **S.20ZA Landlord and Tenant Act 1985**

Tribunal Members : **Judge P Forster
Ms A Ramshaw FRICS**

Date of Decision : **16 May 2022**

DECISION

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Decision

Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to urgent works to replace the opening ventilation system and replacement of the windows.

Reasons

Background

1. The First-tier Tribunal received an application on 10 January 2022 under s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a decision to dispense with the consultation requirements of s.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 The Woodlands No.1 Management Company Ltd. (“the Applicant”), in respect of The Woodlands on Stamford, Stamford Street, Ashton Under Lyne, OL6 6QG (“the Property”). The Respondents to the application are the long leaseholders of the flats within the building. 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 application identifies the subject Property as a single five storey block of 35 apartments.
5. The works in respect of which a dispensation is sought is the replacement of the opening ventilation system (AOV) and replacement of the windows.
6. The works are urgently required because the Applicant has been issued with an enforcement notice by Greater Manchester Fire & Rescue Service dated 19 August 2021 which expired on 12 November 2021. An extension was granted to 28 January 2022 but because of a lack of maintenance and servicing on the existing AOV system it can no longer be used. The AOV system is to be replaced and the windows are to be replaced to meet current standards. Greater Manchester Fire & Rescue Service could prohibit the occupation of the block.
7. The proposed works are “qualifying works” within the meaning of section 20ZA(2) of the Act.

8. On 4 February 2022, 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 has been received, and the Tribunal therefore convened on the date of this decision to consider the application in the absence of the parties. The directions included at paragraph 5 a provision that required the Applicant to write to each of the Respondents informing them of the application and providing them with information about the application process. The Applicant's representative confirmed that this had been done.

Grounds for the application

9. The Applicant's case is that it is necessary to undertake these works quickly to adequately protect the occupants of the flats in the block. By implication, the Applicant's case is that the works relate to common parts of the Property which the landlord is obliged to maintain under the terms of the leases, with the costs associated therewith being recoverable from the tenants via service charge provisions incorporated within the leases. The Tribunal was provided with a specimen copy of the lease.
10. The Applicant asks the Tribunal to grant dispensation in respect of the 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

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 in 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 proceed without the Applicant first complying in full with the s.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.

17. 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.
18. 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 be delayed. In considering this, the Tribunal must consider the prejudice that is 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.
19. In the present case there is no doubt that the works are necessary and pressing for the occupiers of the apartments. The Tribunal finds that it is reasonable for these works to proceed without the Applicant first complying in full with the s.20 consultation requirements. The balance of prejudice favours permitting such works to have proceeded without delay.
20. In deciding to grant a dispensation, the Tribunal has had regard to the fact that no objections were raised by the Respondent leaseholders in compliance with the Tribunals Directions of 12 January 2022.
21. The Tribunal would emphasise the fact that it has solely determined the question 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 the Tribunal considers that the amount of the anticipated service charges resulting from the works is likely to be recoverable or reasonable; or, indeed, that such charges will be payable by the Respondents. The Tribunal makes no findings in that regard and, should they desire to do so, the parties will retain the right to make an application to the Tribunal under s.27A of the Landlord & Tenant Act 1985 as to the recoverability of the costs incurred, as service charges.

Judge P Forster
16 May 2022

Annex

Respondents

Mr Adanwala

Mr Ahmad

Mr & Mrs Callaghan

Mr & Mrs Carling

Mr Chadderton

Ms Cho

Mr & Mrs Das

Freecloud Properties Ltd

Mr & Mrs Higgins

Tameside Property Developments Ltd

Mr & Mrs Gibson

Dr & Mrs Kalra

Property Investment Gains Ltd

Mr Lavis

Mr Leckie

Mr McBride & Mrs Newman

Mr McKendrick

Mr Meadowcroft

Mr Morris

Mr Mugala

Mr Raine & Mr Meadowcroft

Mr Simmonds

Smith & Aplin Properties Ltd

Mr Stewart & Ms Thompson

Mr Tagore

TLB (NW) Ltd

Tomlinson & Co Accountants

Mr Kirk & Mrs Baljinder