



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

Case Reference : **MAN/00CG/LDC/2021/0023**

Property : **Parkside, Foxglove & Bluebell House, Riverdale Road Apartments, Riverdale Road, Sheffield**

Applicant : **Daisey Court Properties Estate Management Company Limited**

Representative : **JB Leitch Limited**

Respondents : **Leaseholders of apartments at the Property (See Annex A)**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Member : **Judge L Bennett**

Date of determination : **10 May 2022**

Date of Decision : **10 May 2022**

DECISION

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Application

1. Daisey Court Properties Estate Management Company Limited applies to the Tribunal under Section 20ZA of Landlord and Tenant Act 1985 (the Act) for retrospective dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987) in respect of an external wall system survey (EWS1)(the Works) carried out at Parkside, Foxglove and Bluebell House (the Property).
2. The Respondents are Leaseholders of apartments at the Property and listed at the Annex to this decision.

Grounds and Submissions

3. The application is dated 6 May 2021.
4. The Applicant is the Landlord and registered proprietor of the freehold title of the Property.
5. The Property comprises 3 individual 3 storey purpose built blocks, containing a total of 26 apartments and 12 townhouses. There is also an undercroft carpark with a raised deck.
6. On 27 July 2021 Deputy Regional Judge Bennett made directions requiring the service of documents by the Applicant on each of the Respondents. The directions provided that in the absence of a request for a hearing the application would be determined upon the parties' written submissions.
7. In response to directions the Applicant has provided a statement of case which also contains various Annexes.
8. The Applicant's statement of case sets out a chronology of events leading up to the application for retrospective dispensation.
9. The Applicant was made aware of issues relating to the construction of the external wall system following investigatory works where it was discovered that the construction was likely to comprise of combustible materials likely to pose a risk of fire spread.
10. On 28 February 2020, Mainstay Residential Limited (Mainstay), the Applicant's appointed Managing Agent, conducted an inspection of the Property to ascertain the potential cause of rainwater ingress. The report identified issues with the lack of weathering detailing and the thickness and position of the PIR insulation. A copy of the report can be found at Annex C of the Applicant's statement of case.
11. Mainstay then instructed MDL Group (MDL) to carry out a condition survey of the Property. MDL attended the Property on 26 August 2020. MDL provided the Applicant with a site survey report. The report highlighted issues with the window and door details, the fasteners and AOV controller. It concluded that the façade system was of a very poor standard and was not fit for purpose in its current state. Major remedial works were therefore required to ensure it was installed as per

current regulations and as per the manufacturer's instructions. A copy of the report can be found at Annex D of the Applicant's statement of case.

12. Mainstay next instructed Rheinzink UK, the developer of the original cladding, to complete a site inspection report. The inspection took place on 14 October 2020. The report concluded that the use of timber in a rainscreen system was not a solution they would recommend. A copy of the report can be found at Annex E of the Applicant's statement of case.
13. In and around October 2020, Mainstay conducted a second inspection, to identify any issues with the external wall construction. The Mainstay Cladding Report found that the existing rainscreen cladding panels did not provide adequate stability/protection in case of fire. A copy of the report can be found at Annex F of the Applicant's statement of case.
14. All 3 reports identified that there were potential fire safety issues with the Property which would have to be considered further by way of an EWS1 survey. To complete the EWS1 survey, various works were required at the property. Details of which are listed at paragraph 13 of the Applicant's statement of case. The Applicant relies on the entirety of the EWS1 survey which confirms the exact works undertaken as part of the inspection.
15. Mainstay approached 3 companies to tender for the works:
 - a. Ark Sustainability Limited (£46,875 plus VAT)
 - b. Ashton Fire Limited (£28,000 plus VAT)
 - c. Urban Change Group Limited (£14,465 plus VAT)

The proposal form for Ark Sustainability Limited can be found at Annex G of the Applicant's statement of case.

Ashton Fire Limited did not provide a formal quotation (only verbal) due to the fact that they were unavailable to complete the works.

Mainstay instructed Urban Change Group Limited to carry out the EWS1 survey at a final cost of £17,258 including VAT. A copy of the invoice can be found at Annex H of the Applicant's statement of case.

16. On 9 February 2021, Urban Change Group Limited attended the Property to complete the intrusive part of the survey. The report was subsequently prepared on 3 March 2021. The EWS1 survey can be found at Annex I of the Applicant's statement of case.
17. The Tribunal did not receive submissions from a Respondent Leaseholder. Neither the Applicant nor a Respondent requested a hearing.
18. The Tribunal convened without the parties to make its determination on 10 May 2022.

Law

19. Section 18 of the Act defines “service charge” and “relevant costs”.
20. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
21. Section 20 of the Act states:-
“Limitation of service charges: consultation requirements
Where this Section applies to any qualifying works..... the relevant contributions of tenants are limited..... Unless the consultation requirements have either:-
 - a. complied with in relation to the works or
 - b. dispensed with in relation to the works by a tribunal.This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.
22. “The appropriate amount” is defined by regulation 6 of The Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) as “..... an amount which results in the relevant contribution of any tenant being more than £250.00.”
23. Section 20ZA(1) of the Act states:-
"Where an application is made to a 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."

Tribunal’s Conclusions with Reasons

24. I have determined this matter following a consideration of the Applicant’s case but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the Applicant has given its consent and the Tribunal has not heard from a Respondent in response to the application. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing. Determining this matter does not require me to decide disputed questions of fact.
25. It is not necessary to consider at this stage the extent of the service charges that would result from the works payable under the terms of the Respondent’s leases. If and when such is demanded, and if disputed, it may properly be the subject of a future application to the Tribunal.
26. I accept from the details provided by the Applicant that the water ingress and damp issues at the Property were worsening. That the subsequent 3 reports identified fire and safety issues. That the potential risks to the occupiers of the apartments at the Property needed to be identified. That the works required to obtain the EWS1 survey report were therefore necessary and urgent and had to be carried out outside of the Section 20 consultation process.
27. Although formal consultation has not taken place, I note that the Applicant ensured that that the Leaseholders were continually updated through numerous letters,

minutes from Director meetings were circulated and information was placed on the communal tenant portal. Balancing the need for urgent action against dispensing with statutory requirements devised to protect service charge paying Leaseholders, I conclude the urgency outweighs any identified prejudice. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable.

28. I conclude it reasonable in accordance with Section 20ZA(1) of the Act to dispense with the consultation requirements, specified in Section 20 and contained in Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987).
29. Nothing in this determination or order shall preclude consideration of whether the Applicant may recover by way of service charge from the Respondents any or all of the cost of the work undertaken or the costs of this application should a reference be received under Section 27A of the Landlord and Tenant Act 1985.

Order

30. The Applicant is dispensed from complying with the consultation requirements in respect of the work specified in the application.

Laurence J Bennett
Tribunal Judge
10 May 2022

Annex A

Leaseholders

Mr & Mrs Smele
Mr & Mrs Jenny Smith
Mr & Mrs Peters
Mr Evans
Ms Dorothy Campbell
Mr & Mrs Wilson
Mr & Mrs Hamstead
Mr & Mrs Sutton
Ms Le Sage-Cridland
Mr & Mrs Middleton
Mr Keeble
Mr & Mrs Baygot
Mr & Mrs Bullen
Mr While
Mr Morton
Mr & Mrs Bamford
N Haywood-Alexander & The Estate of H Haywood
Mr & Mrs Fellows
Mr & Mrs Read
Mr Lofthouse
Ms Harland
Mr & Mrs Clegg
Mr & Mrs Evans
Mr Rees
Ms Partington
Ms Thompson
TMN Real Estate Limited