



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

Case Reference : **MAN/00CJ/LDC/2021/0016**

Property : **27-51 Mariners Wharf, Quayside, Newcastle upon Tyne NE1 2BJ**

Applicant : **Quayside (Newcastle upon Tyne) Management Co No.2 Limited**

Representative : **Brannen & Partners**

Respondents : **Various Residential Leaseholders**

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

Tribunal Member : **Judge L Bennett**

Date of determination : **16 December 2022**

Date of Decision : **16 December 2022**

DECISION

Application

1. Quayside (Newcastle upon Tyne) Management Co No.2 Limited applies to The Tribunal under Section 20ZA of Landlord and Tenant Act 1985 (the Act) for 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 roof works (the Works) carried out at 27-51 Mariners Wharf, Quayside, Newcastle upon Tyne NE1 2BJ(the Property).
2. The Respondents are Leaseholders of Flats at the Property.

Grounds and Submissions

3. The application was received by the Tribunal on 8 March 2021.
4. The Applicant is the resident management company with responsibility for the building.
5. The Tribunal did not carry out an inspection but understands that the Property is a 4 block building situated on Newcastle Quayside. The highest point being 5 stories. Each block has its own separate entrance.
6. On 31 March 2021, a Tribunal Judge 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 explaining why the application was made to the Tribunal together with supporting documents.
8. On 21 January 2021, The Managing Agents received a phone call from a resident Director regarding a significant flood coming in from the roof. Video and photographic evidence was provided, and an emergency call out instructed. HEP Services attended with a cherry picker on 22nd January 2021 to investigate and quote.

Carry out curved roofing repairs to upper level on block including apartment number 44

- * Replace box profile sheets (approximately x8)
- * Supply and use all appropriate roof flashings/eve drips
- * Replace damaged insulation boards
- * Use all appropriate waterproof sealings
- * Rigid scaffolding to be used
- * As requested whilst on site – install pigeon deterrents

9. Discussions were then held with the Directors of Quayside (Newcastle upon Tyne) Management Co. No.2 Limited and with HEP building services, once final prices had been confirmed, instructions were received from the Directors of the Management Company to proceed with these works immediately. HEP carried out the roof repairs W/C 8th February 2021 and completed on 24th February 2021. This included scaffolding which was erected to carry out the repairs. HEP advised

that at the time it was icy weather conditions and the roof needed de-icing prior to work commencement.

10. This work was deemed an emergency and was agreed with the full co-operation of the Directors of the Management Company. The invoice of £9,000.00 (including VAT) has been paid to HEP Building Services. If Quayside (Newcastle upon Tyne) Management Co No.2 Limited had applied a Section 20 in this matter, then the consultation process would have lasted a minimum of three months BEFORE any works could have been organised. Therefore, the necessary steps were taken.
11. The Tribunal did not receive any submissions from a Respondent Leaseholder. Neither the Applicant nor a Respondent requested a hearing.
12. The Tribunal convened without the parties to make its determination on 16 December 2022.

Law

13. Section 18 of the Act defines “service charge” and “relevant costs”.
14. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
15. 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”.
16. “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.”
17. 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

18. 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.

19. It is not necessary to consider at this stage the extent of any service charges that may result from the works payable under the terms of the Respondents' leases. If and when such is demanded, and if disputed, it may properly be the subject of a future application to the Tribunal.
20. Having considered the submission made by the Applicant I accept the urgent nature of the works. Carrying out a Section 20 exercise would be time consuming and add to delays to the works.
32. In **Daejan Investments Ltd v Benson [2013] UKSC 14** it was determined that a Tribunal, when considering whether to grant dispensation, should consider whether the tenants would be prejudiced by any failure to comply with the Consultation Requirements. Balancing the need for urgent action against dispensing with statutory requirements devised to protect service charge paying Leaseholders, I conclude that the urgency outweighs any identified prejudice. Dispensation from consultation requirements does not imply that any resulting service charge is reasonable.

Order

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

Laurence J Bennett
Tribunal Judge
16 December 2022

