

HM COURTS & TRIBUNAL SERVICE**RESIDENTIAL PROPERTY TRIBUNAL SERVICE****NORTHERN RENT ASSESSMENT PANEL****LANDLORD AND TENANT ACT 1985 – SECTION 20ZA****DECISION ON AN APPLICATION UNDER SECTION 20ZA of the LANDLORD
AND TENANT ACT 1985**

Property	Apartments 1 – 18 Central Exchange Buildings, 93a Grey Street, Newcastle upon Tyne NE1 6EG
Applicant	Trinity (Estates) Property Management Limited
Respondents	Leaseholders of the Apartments at the Property (see Appendix 1)
Date of Application	22 November 2012
Date of Determination	16 January 2013
The Tribunal	Mr W.L. Brown LL.B Mr I.R. Harris FRICS

Determination

The consultation requirements specified in Section 20 of the Act and by Part 2 of Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2001 (SI 2003/1987) are dispensed with in respect of window works as referred to in paragraph 1.

Background

1. An application was made by the Applicant for dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (“the Act”) with regard to repair and redecoration of the external windows of the residential units at the Property (“window works”).
2. The Applicant is the managing agent on behalf of the landlord of the residential units, Central Exchange Building Newcastle Management Limited (the “Landlord”).

3. Directions dated 3rd December 2012 were sent to the parties indicating that the Leasehold Valuation Tribunal (“the Tribunal”) considered that the matter could be resolved without an oral hearing unless such hearing was requested by a party. No such request was made and the Tribunal met on 16th January 2013 to determine the Application.
4. The Property is located in a building within the retail and commercial area of central Newcastle upon Tyne. The building comprises a development of mixed use – residential, retail and office. The residential areas occupy the second and third floors. The building is Grade II listed. There are 17 residential units (but no apartment numbered 13).
5. An external and internal inspection of the Property had been undertaken by the Tribunal on the morning of 20 November 2012 in respect of previous proceedings (MAN/00CJ/LDC/2012/0015). The Tribunal had viewed one of the residential apartments and had seen for itself that there were defective timbers to window sills and casements. Scaffolding was erected on the building and contractors were on site.

Evidence and Submissions

6. The Applicant explained that the second, third and fourth floors of the building is affected by head leases between Cooperative Insurance Society Ltd and Miller Group Limited and between Miller City Centre Ltd and Central Exchange Newcastle Management Limited.
7. The window works were to be undertaken at the same time as a larger project being undertaken by the superior Landlord, Co-Operative Insurance Society Limited, including redecoration of common stairwells and upgrading of lighting, in addition to works to the roof and masonry (the “major works”). It was proposed that the window works be undertaken using access equipment (scaffolding) in place for the major works, thereby minimising cost and disruption to residents.
8. Consultation Notices had been served on the residents on behalf of the superior landlord for the major works. Those Notices dated 30 November and 2 December 2011. The Application relates only to the window works, which were not included within the project specification notes for the major works. It was noted that specialist contractors had been approached to provide quotation because of the specialist work required and the listed status of the building. A specification for the window works dated 4 July 2011 had been provided to the Applicant.
9. A copy of a sample lease of an apartment in the Property was submitted. The obligation upon the Landlord to repair is stated in the 5th Schedule.

10. There were no representations from any Respondent all of whom had been sent copies of the Application by the Tribunal and invited to comment.

The Law

11. Section 20 of the Acts states:

“Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either— .

(a) complied with in relation to the works or agreement, or .

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

The relevant contribution is limited to £250.00.

Section 20ZA states:

“Consultation requirements: supplementary

(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements. .

(2) In section 20 and this section— .

“qualifying works” means works on a building or any other premises

.....”

Tribunal’s Decision

12. From its overall external and internal inspection of the Property on 20 November 2012 the Tribunal found that the defective condition of the windows observed in the one apartment it had been able to enter was indicative of the general state of repair of the window frames in the other 16 flats. The Tribunal was satisfied that repair works were required to be undertaken accordingly in accordance with the lease 5th Schedule obligation.

13. No evidence had been presented to the Tribunal of the anticipated cost of the window works, but the Tribunal was satisfied that the cost for each apartment of the window repairs to a quality to conform to the requirements for a listed building would exceed the sum of £250.00 per flat.
14. The Tribunal accepted that there was a need for compliance with consultation requirements set out in Section 20 of the Act. The Tribunal was satisfied that the consultation exercise undertaken by the superior Landlord did not include the window works. Although there was a specification and quotation for those repairs available to the Applicant in May 2012 it seems that no consequential consultation had been undertaken.
15. The Tribunal is persuaded by the Applicant's case that there is a need to progress the window works while scaffolding is in situ at the building and the absence of representations from the Respondents indicates that there is no significant opposition to the Application.
16. The absence of costing information for the window works concerned the Tribunal. It accepted that the Applicant was acting with good intentions and that the costs of the window works would likely be significantly less using in situ scaffolding than if undertaken using scaffolding to be erected specifically for those works on another occasion. The costs saving persuaded the Tribunal that no prejudice is likely to be suffered by the Respondents by the lack of compliance with formal requirements for consultation.
17. Having considered the submissions, the Tribunal is satisfied, in accordance with Section 20ZA of the Act, that it is reasonable to dispense with the consultation requirements specified in Section 20 of the Act and by Part 2 of Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2001 (SI 2003/1987).
18. The Tribunal so determines.
19. This decision does not concern the issue of whether any service charge costs resulting from any such works will be reasonable or indeed payable. It will be open to the lessees to challenge any such cost charged by the Applicant.

W.L. Brown

Date: 16 January 2013

Chairman of the Leasehold Valuation Tribunal

Annex 1

NAME

APARTMENT NUMBER

Mr J. Gibson	1
Mr & Mrs P Wright & Mr A. Wright	2
Miss S. Wright	3
Miss M. Nelson	4 & 6
Mr J. Thompson	5
Mrs F. Richardson	7, 16 & 17
Mr & Mrs L. Calvert	8
Mr S. Asprey	9
Mr & Mrs Stobbs	10
Dr P. Nichols	11
Mr & Mrs K. Thompson	12
Mrs S. Waters	14
Mr B. Donaghey & Mr P. Williams	15
Mr & Mrs D. Shorthouse	18