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

Case Reference : **MAN/00BY/LDC/2016/0023**

Properties : **Various leasehold properties within the Applicant's housing portfolio**

Applicant : **Riverside Home Ownership**

Representative : **N/A**

Respondents : **The residential leaseholders of the Properties**

Representative : **N/A**

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

Tribunal Members : **Judge J Holbrook
Judge L Bennett**

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

Date of Decision : **6 December 2016**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to:

- a) a proposed qualifying long term agreement to be entered in to by the Applicant for the bulk purchasing and monitoring of alarm systems for use by the Respondents; and**
- b) proposed qualifying works comprising the replacement of “hard wired” alarm systems where necessary.**

REASONS

Background

1. On 10 October 2016 an application was made to the First-tier Tribunal (Property Chamber) (“the 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 by Riverside Home Ownership and relates to leasehold properties forming 29 separate developments within the Applicant’s rented housing portfolio. The application therefore concerns several hundred flats and houses (“the Properties”). The Respondents are the individual tenants of the Properties.
3. Dispensation from the consultation requirements is sought in relation to a qualifying long term agreement which the Applicant proposes to enter into for the bulk purchasing and monitoring of alarm systems for use by the occupiers of the Properties. Dispensation is also sought in relation to associated major works to replace the existing ‘hard-wired’ alarm systems at some of the developments concerned. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.

4. On 1 November 2016 Judge Holbrook 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 accordingly convened in the absence of the parties to determine the application. A copy of the application (together with the Tribunal's directions) had been sent to each Respondent by the Applicant. The Applicant had also published these documents on its website. However, no response was received (either by the Tribunal or the Applicant) from any of the Respondents.
5. The Tribunal did not inspect any of the Properties.

Grounds for the application

6. The Applicant states that some of the 'hard-wired' alarm systems currently installed across its developments are in need of replacement. Where possible, it is proposed to replace them with 'dispersed alarms' to facilitate the provision of a more cost effective alarm service. However, it will not be possible to utilise dispersed alarms in some developments because of the nature of the hard-wired systems and, in those cases, the existing alarm system will simply be replaced.
7. Currently, alarm services are being provided by a number of local authorities at a high cost. The Applicant wishes to bring the service in house to enable a uniform and cost-effective service. It wishes to enter into a long term agreement for the supply and monitoring of the necessary agreement with an organisation called Tunstalls – the Applicant says that this is the only contractor that will supply the equipment.

Law

8. 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.

9. 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 or qualifying long term agreement, the relevant contributions of tenants are limited ... 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 the appropriate tribunal.*

10. “Qualifying works” for this purpose are works on a building or any other premises, and a “qualifying long term agreement” is an agreement entered into by or on behalf of a landlord or a superior landlord for a term of more than twelve months (section 20ZA(2) of the Act). 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. It applies to a qualifying long term agreement if relevant costs incurred under the agreement in a twelve month period result in the relevant contribution of any tenant, in respect of that period, being more than £100.00 (section 20(3) and (4) of the Act and regulations 4 and 6 of the Regulations).

11. 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

12. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements.

Conclusions

13. The Tribunal must decide whether it is reasonable for the Applicant to enter into the agreement or carry out the works without first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord decides to carry out major works or enter into a qualifying long term agreement – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about such works or agreements before those decisions are taken. 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.

14. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why carrying out the works or entering into the agreement cannot be delayed until the requirements have been complied with. The Tribunal must weigh the balance of prejudice between, on the one hand, the need for the landlord to be able to act swiftly to carry out necessary works and conclude agreements which are commercially prudent and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before long term commitments are entered into which could have a significant impact upon them. The Tribunal must consider whether this balance favours allowing the landlord to carry out the works and enter into the commitments in question speedily (without consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in completing the works and securing the contractual agreement). The balance is likely to be tipped in favour of dispensation in a case in which there is a good reason why the landlord needs to be able to carry out the works and enter into the agreement speedily, or where all the leaseholders consent to the grant of a dispensation.
15. In the present case, we accept that the complexity and large-scale nature of the arrangements in question, together with the limited availability of contractors willing and able to provide the necessary services, is such that it is reasonable for the Applicant to be permitted to enter into the qualifying long term agreement and carry out the associated major works without complying with the consultation requirements in full.
16. We note that the Respondents have been informed about the proposed new arrangements for alarm services and that no objection has been made to the present application. In addition, we note the Applicant's assurance that it intends to undertake additional informal consultation with all Respondents by holding meetings across all its developments to present "a service that can be tailored to the individual".
17. For these reasons, we conclude that it is reasonable to dispense with the statutory consultation requirements. However, the fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that we consider that the amount of any anticipated service charge contributions resulting from the proposed agreement or works are likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard.