



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

Case number	MAN/00DA/LDC/2021/0080
Property	28/30 Park Row Leeds LS1 5RW
Applicants	Park Row Apartments Management Company Ltd
Respondents	See Annex A
Date of Application	18 November 2021
Type of Application	Landlord and Tenant Act 1985 – Section 20ZA
Tribunal Members	K M Southby (Judge) H Thomas (Valuer Member)
Date of Decision	21 March 2022

DECISION

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DECISION

The consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 and in Schedule 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) are dispensed with in respect of the proposed works to replace the cold water pump as set out in Document F of the Case Bundle provided by the Applicant

BACKGROUND

1. On 16 November 2021 Park Row Apartments Management Company Ltd (“the Applicant”) made an Application, to the Tribunal under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”), which sought dispensation from compliance with the consultation requirements provided for by section 20 of the Act. The requirements in question are those set out in Schedule 1 to the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the regulations”). The Application was in respect of proposed works to replace the cold water pump which provides water to the building as set out in Document F of the Applicant’s Case Bundle.
2. The properties which are the subject matter of the application are a converted block of 23 apartments over 5 floors with basement in Leeds City Centre.

INSPECTION

3. The Tribunal determined that an inspection of the property was unnecessary and with the consent of the parties the determination was conducted purely on the papers.

LAW

4. 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.

5. 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.

6. “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 on 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).

7. 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.

8. 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.

EVIDENCE

9. The Tribunal have received written representations from the Applicant that one of the invertors inside the cold water pump which provides water to the building has failed and requires replacement and the other is in a poor state of repair. The Applicant states that due to the age of the system spare parts are not available and therefore the full pump requires replacement to ensure the integrity of the water supply to the building. The Applicant states that the works are of an urgent nature. And hence dispensation is required, as if the remaining invertor fails the water pump will no longer work and the apartments will be without water.
10. The Applicant has provided a quotation for the work from the contractor who services the system which was originally £11,750 +VAT but which has been reduced following negotiation to £10,250+VAT
10. The tenants have been sent copies of the Tribunal correspondence and no response has been received from any of the Tenants.

CONCLUSIONS

11. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the Section 20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about 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.
12. 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.
13. It follows that for the Tribunal to decide to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed. In considering whether or not it is reasonable to do so, the Tribunal must consider the prejudice that would be caused to tenants by not undertaking the 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 is or was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation. The prescribed procedures are not intended to act as an impediment when urgent works are required.

14. Whilst the Tribunal has some concerns that given that there appears to have been annual servicing of the cold water pump, this issue could have been identified and anticipated in advance to allow a non-urgent consultation process, nevertheless the Tribunal agrees in the present case that the reasons advanced by the Applicant in support of the tribunal dispensing are reasonable and the works proposed are indeed urgent. Indeed, the Respondents have not opposed the Applicant's request. The Tribunal accepts the evidence of the Applicant that the spare parts for the water pump inverter are no longer available and therefore a replacement pump is required. We accept that in the context of the works being driven by a desire on the part of the Leaseholders to get the system repaired, to maintain the integrity of the water supply to tenants and the absence of their resistance to the application, the prejudice to the leaseholders in these circumstances is negligible. For this and the other reasons advanced by the Applicant the Tribunal agrees that it would be reasonable to grant dispensation.
15. In these circumstances therefore, the Tribunal agrees with the request and grants dispensation from compliance with all of the requirements set out in Schedule 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the replace the cold water pump which provides water to the building as set out in Document F of the Applicant's Case Bundle.
16. We have had regard to the correspondence which has been sent to leaseholders and the fact that no objections were raised by the respondent leaseholders. No one has suggested that these works were not urgently required. No leaseholder has suggested that they will be prejudiced were we to grant dispensation. We conclude on balance that it is reasonable for these works to proceed without the Applicant first complying with Section 20 consultation requirements. The balance of prejudice favours permitting such works to proceed without delay.
17. We would however emphasise the fact that the Tribunal has solely determined the matter of whether or not it is reasonable to grant dispensation from the consultation requirements. This decision should not be taken as an indication that we consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard.

Tribunal Judge K Southby
21 March 2022

Mr M Hassanally & Mr M H Asaria
Ms L Hains & Ms E M Wade
Mr J Telford & Mrs E Telford
Mr W H Lee
Mr P Summerscales & Mrs C Summerscales
Rinitun Limited
Mr S M Al - Quraishi
Yonder Investments Ltd
Mr S M Wu
Ms J L Smith
Mr M Khodadi
Ms H Knaggs
Mr I Siragher
Mr M Slorick
Bricklane Residential REIT plc
Mr T J Stafford