

10487



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

Case Reference : **CHI/29UH/LDC/2014/0049**

Property : **1-230 Scotney Gardens, St Peters
Street, Maidstone, Kent, ME16 0GT**

Applicant : **Scotney Gardens RTM
Company Limited**

Representative : **Nilloosha Ponnuthurai
Solicitor of Freshlaw Solicitors**

Respondent : **All Lessees of 1-230 Scotney Gardens**

Representative : **No attendance**

Type of Application : **s20ZA LTA85**

Tribunal Members : **Judge D Dovar
Mr N. Maloney FRICS FIRPM MEWI**

**Date and venue of
Hearing** : **5th November 2014, Medway**

Date of Decision : **5th November 2014**

DECISION

Introduction

1. This is an application under s20ZA of Landlord and Tenant Act 1985 ('the Act') for the dispensation of the consultation requirements of s20 of the Act and Schedule 3 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) ('the Regs'). The qualifying works are a programme of repair and replacement works to the windows frames and glass panes of the Property, both those serving the flats and the common parts ('the Qualifying Works').
2. At the hearing the Applicant confirmed that the application was for dispensation of the requirements of consultation in their entirety for the qualifying works and that a preliminary consultation in respect of a qualifying long term agreement was due to finish in a few days on 8th November 2014. That consultation process was also in respect of the works, but was in respect of the agreement to be entered into for those works as it was anticipated that the agreement itself would last for a period in excess of one year and the Applicant therefore considered that it was a qualifying long term agreement ('QLTA'), notwithstanding the fact that it related solely to the qualifying works.

Inspection

3. The Tribunal inspected the Property on the morning of the hearing. It is an estate of 230 residential flats which was constructed around 10 years ago. The Tribunal gained access to four flats, numbers 122, 160, 164 and 203. In all bar the last flat, the Tribunal noted the difficulty with shutting windows and gaps that appeared even when they were shut. The last property, 203, had had its windows replaced and no issues arose from those windows. The Tribunal also noted similar defects on the common part windows.

Background

4. The Tribunal received a witness statement from the property manager, Mr Beirne and received further evidence from him at the hearing. Issues

with the windows had been raised for a number of years and initially it was considered that this was a matter for each individual leaseholder to deal with. On instructing solicitors in around May 2013, it became apparent that in fact it was the freeholders' responsibility. On enquiry it became apparent that the works would take a number of years to complete.

5. On 17th April 2014, an initial notice was served on the leaseholders in respect of the proposed QLTA. That described an agreement to cover the Qualifying Works. It also set out the reasons why it was necessary to enter into the agreement, inviting observations and nominations of contractors. No responses were received in relation to that notice.
6. Quotes were obtained from two contractors, SupaGlazing Limited and Kent Trade Frames Limited. On 3rd October 2014, the second stage notice was served on the leaseholders setting out the two quotes and inviting observations by 8th November 2014. To date, no observations have been received.
7. This application was made on 10th October 2014 and directions were given on 14th October 2014, which amongst other matters required the Applicants to send out notices to each leaseholder of the application with a standard form in which they were to state whether they opposed or supported the application. To date 18 responses (out of 230) have been received, all in support of the application.

Legislation

8. Section 20 of the Act applies a limitation on service charges unless prescribed consultation requirements have first been carried out or dispensation has been granted in respect of any qualifying works or qualifying long term agreements.
9. Section 20ZA empowers the Tribunal to dispense with all or part of the consultation requirements. It provides:

(1) 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.

(2) In section 20 and this section—

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

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

...

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

10. The Regulations set out those requirements. In respect of qualifying works which fall within the scope of a qualifying long term agreement, the requirements are less than those where a qualifying long term agreement is not in place. The process is shortened as there is no requirement for the nomination of any contractor or for the obtaining of estimates from more than one contractor, as that contractor has already been identified and engaged under the qualifying long term agreement. The relevant consultation requirements in this case are those at schedule 3 to the Regs (as provided for by regulation 7(1)). They stipulate that:

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;

(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;

(e) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

2.(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.

Dispensation

11. The Tribunal has a wide discretion as to whether to grant dispensation. However, a relevant consideration is what parts of the consultation have been complied with, what parts have not and why not, and whether there would be any prejudice to the leaseholders.
12. The Applicant seeks dispensation from all the requirements of Schedule 3.
13. By reason of the fact that the QLTA relates solely to the Qualifying Works, many of the matters set out in Schedule 3 have already been dealt with by the consultation process undergone in respect of the QLTA, to which there have to date been no observations.
14. The only matters that were not provided in the notice of intention were the provision of an estimate of cost and the ability to make observations on that estimate. However, those costs were provided in the second stage notice. Therefore in substance all of the issues that would be raised in the consultation for the Qualifying Works have in effect been raised in the consultation for the QLTA.
15. The Applicant further relied on the fact that there is a desire to commence the works sooner rather than later and that if further consultation were necessary that would mean not only the delay caused by the consultation itself, but that works would most probably not be able to be commenced until Spring in the 2015 when the weather

improved. This would cause further inconvenience to the leaseholders given that the current poor condition of the windows allows rain to penetrate and drafts.

Decision

16. The Tribunal considers that this is a case where dispensation for the whole of compliance with Schedule 3 of the Regulations can be granted, for the following reasons:
 - a. The matters have already been canvassed in the QLTA consultation;
 - b. There have been no observations made in that process;
 - c. There have been no objections to this Application;
 - d. 18 leaseholders have supported the Application;
 - e. There is some need for the works to commence sooner rather than later given the inconvenience that is being caused to the leaseholders.

17. Dispensation will be granted on the following conditions:
 - a. If, by 8th November 2014, the Applicant receives any observations in relation to the QLTA consultation, they will have regard to those observations and notify all the leaseholders of those observations;
 - b. The Applicant will inform all the leaseholders of this decision and in particular that although dispensation has been given in relation to having to consult on the Qualifying Works this does not detract from the leaseholders rights to challenge the works on other grounds in particular, under section 19 of the Act on the basis that the costs incurred have not been reasonably incurred and/or the work is not to a reasonable standard.

A handwritten signature in black ink, appearing to read "J. Dovar". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Judge D Dovar

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.