



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

Case Reference : **MAN/00BR/LDC/2015/0014**

Property : **Various apartments at
Bevill Square and Nathan Drive
Salford
M3 6BB**

Applicant : **Bevill Square and Nathan Drive
RTM Company Limited**

Representative : **Scanlans Property Management**

Respondents : **The leaseholders of the Property
(see Annex A)**

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

Tribunal Members : **Judge J Holbrook
Judge M Davey**

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

Date of Decision : **6 July 2015**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works comprising the lining of parapet walkways in order to make them watertight, together with repairs necessitated by previous water ingress (as those works are more particularly described in paragraph 4 below).

REASONS

Background

1. On 15 June 2015 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 Bevill Square and Nathan Drive RTM Company Limited, which has the right to manage the properties known as Apartments 2 – 60 Bevill Square; Apartments 2 – 24 Nathan Drive; and Apartments 19 – 41 Bevill Square, Salford M3 6BB (“the Property”). The Respondents to the application are listed in the Annex to this decision. They are the leaseholders of the 54 apartments comprising the Property.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The Property comprises four separate purpose-built blocks of flats, three of which were constructed with a parapet walkway at roof level. The works in respect of which a dispensation is sought concern the lining of the parapet walkways in order to make them watertight, together with repairs necessitated by previous water ingress.
5. On 16 June 2015 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 on the date of this decision to determine the application. Documentary evidence in support of the application was provided by the Applicant’s representative. No submissions were received from any of the Respondents.
6. The Tribunal did not inspect the Property.

Grounds for the application

7. The Applicant asserts that, following previous ineffective repairs to the parapet walkways, a number of apartments within the Property are experiencing high levels of water ingress. Some rooms within apartments are currently unusable because of the resulting damage, and the ceiling in one apartment has collapsed. There is a risk that similar damage could occur in other apartments.
8. A surveyor's report has been obtained and this recommends that the parapet walkways should be lined in order to make them watertight. The surveyor's preliminary assessment is that the likely cost of the necessary works in respect of each block is likely to be in the region of £5,000 to £7,000 plus VAT.
9. The Applicant wishes to appoint a contractor to carry out the works as soon as possible, in order to minimise the risk of further damage and to enable the works to be carried out during the summer months.

Law

10. 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.

11. 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.*

12. "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).

13. 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.

14. 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.

Conclusions

15. The Tribunal must decide whether it was reasonable for the works to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works 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.
16. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works 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 swift remedial action to ensure that the condition of the Property does not deteriorate further and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before major works begin. It must consider whether this balance favours allowing the works to be undertaken immediately (without

consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in carrying out the works which that will require). The balance is likely to be tipped in favour of dispensation in a case in which there is an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.

17. We note that in the particular circumstances of the present case, there is a clear need for urgent action to be taken in order to prevent further water ingress and to repair damage already caused. We also note that the Respondents have previously been informed of the intention to carry out the works. The balance of prejudice therefore favours dispensing with the consultation requirements.
18. 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 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.

Annex A

Leaseholders	Flats – Bevill Square (BS) and Nathan Drive (ND)
D W Whitfield	Flat 2 BS
G Whalley	Flat 4 BS
P Kirkpatrick	Flat 6 BS
P Yeoman	Flat 8 BS
F J & J V Renowden	Flat 10 BS
A Gray	Flat 12 BS
A Pike	Flat 14 BS
S Barry	Flat 16 BS
C E Halliday & S Gregson	Flat 18 BS
K Schofield	Flat 19 BS
L McNabb	Flat 20 BS
S J Lamb & K Holmes	Flat 21 BS
S Fishwick	Flat 22 BS
M Alibhi	Flat 23 BS
W Connolly	Flat 24 BS
S Gray	Flat 25 BS
B Royds	Flat 26 BS
S Gray	Flat 27 BS
G Kinnaid	Flat 28 BS
D Hurst	Flat 29 BS
K Wilson	Flat 30 BS
A Short	Flat 31 BS
A Moez	Flat 32 BS
Y L Cheung	Flat 33 BS
L Sleigh	Flat 34 BS
P Callaghan	Flat 35 BS
C M L Li & D C Y Li	Flat 36 BS
K Williams	Flat 37 BS
J Galloway	Flat 38 BS
C and T Alton	Flat 39 BS
Mr O'Brien	Flat 40 BS
S Fishwick	Flat 41 BS
S P C Frisby	Flat 42 BS
N Shafi	Flat 44 BS
W Parkinson	Flat 46 BS
R M Muscat & K R Howley	Flat 48 BS

G Jones	Flat 50 BS
S J Glynn & D J Mackie	Flat 52 BS
C Bryan	Flat 54 BS
J Tattersall	Flat 56 BS
S Moran	Flat 58 BS
N S Harvey	Flat 60 BS
R Fitzgerald	Flat 2 ND
R Fitzgerald	Flat 4 ND
R L Rimmer	Flat 6 ND
K Small	Flat 8 ND
K Greaves	Flat 10 ND
C Lowe	Flat 12 ND
K Johnson	Flat 14 ND
O Odeniran	Flat 16 ND
S P Baker	Flat 18 ND
C Littler	Flat 20 ND
G F Davies	Flat 22 ND
L Briggs	Flat 24 ND