

12040



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

Case Reference : **MAN/00CM/LDC/2017/0001**

Property : **90 – 92 Springwell Road
Springwell
Sunderland
SR3 4EA**

Applicant : **Gentoo Group Limited**

Representative : **N/A**

Respondents : **Mr K R Goldsmith (1)
Ms L D Close (2)**

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 : **5 April 2017**

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 rebuilding of the Property's chimney stack.

REASONS

Background

1. On 20 January 2017 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 Gentoo Limited, the landlord of 90 – 92 Springwell Road, Springwell, Sunderland SR3 4EA ("the Property"). The Respondents to the application are the long leaseholders of two of the four residential flats within the Property: Mr K R Goldsmith (number 90) and Ms L D Close (number 92).
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern urgent remedial works to rebuild the Property's chimney stack. It is understood that the works in question have already been carried out at an approximate cost of £1,370.
5. On 25 January 2017 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. Written submissions and documentary evidence in support of the application were provided by the Applicant. No submissions were received from the Respondents.
6. The Tribunal did not inspect the Property.

Grounds for the application

7. The Applicant's case is that the Property's chimney stack needed to be rebuilt urgently, and that it was reasonable for this work to be done without first complying with the consultation requirements. The

Applicant says that its roofing manager inspected the Property on 10 January 2017 and noted that the chimney stack was in a poor state of repair. It was splitting at the centre, had loose brickwork and was at risk of collapse. As a consequence, scaffolding was erected on 16 January, and the chimney stack was rebuilt on 18 and 19 January.

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 ... 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.

10. “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).

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 ... 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. 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

13. The consultation 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.
14. In deciding whether to dispense with the consultation requirements in a case where qualifying works have been commenced or completed before the Tribunal makes its determination, the Tribunal must focus on whether the leaseholders were prejudiced by the failure to comply with the consultation requirements. If there is no such prejudice, dispensation should be granted.
15. In the present case, it is very clear that there was an urgent need for swift remedial action in order to avoid the risk of serious injury or damage in the event of a collapse of the chimney stack. We have no hesitation in finding that it was reasonable for the works to proceed without delay, and there is no evidence that the landlord's actions in doing so prejudiced the Respondents in any way. We are therefore satisfied that dispensation should be granted.
16. 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.