



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

Case Reference : **MAN/16UG/LDC/2014/0015**

Property : **Sand Aire House, Stramongate, Kendal LA9 4UA**

Applicant : **Pemberstone Reversions (Kendal) Limited**
Represented by : **Braemar Estates (Residential) Limited**

Respondents : **Leaseholders of Flats at the Property**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Members : **Laurence Bennett (Tribunal Judge)**
Jonathan Holbrook (Tribunal Judge)

Date of determination : **23 December 2014**

Date of Decision : **06 January 2015**

DECISION

Application

1. Braemar Estates (Residential) Limited applies to the Tribunal on behalf of Pemberstone Reversions (Kendal) Limited under Section 20ZA of Landlord and Tenant Act 1985 (the Act) for dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987) in respect of works to the roof of the Property.
2. The Respondents are Leaseholders of the flats at the Property.

Grounds and Submissions

3. The application was received by the Tribunal on 20 October 2014.
4. On 31 October 2014, Judge Bennett made directions which provided that in the absence of a request for a hearing the application would be determined solely upon the parties' written submissions.
5. The Property is a converted former office building comprising 82 flats with commercial premises.
6. The Applicant sent within the application form a report, photographs, specifications, quotations and a completion inspection showing the work that was carried out to remedy the roof defects.
7. Further information provided gave the history of the cause of the defects, negotiations with parties responsible and that a confidential settlement was reached. This has been paid into the Reserve Fund forming part of the Service Charge Assets. The work was completed in October 2014 and the cost of £48,000 is to be disbursed from the Reserve.
8. The Tribunal did not receive submissions from a Respondent. Neither the Applicant nor a Respondent requested a hearing.
9. The Tribunal convened without the parties to make its determination on 23 December 2014.

Law

10. Section 18 of the Act defines "service charge" and "relevant costs".
11. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
12. Section 20 of the Act states:-
"Limitation of service charges: consultation requirements
Where this Section applies to any qualifying works..... the relevant contributions of tenants are limited..... Unless the consultation requirements have either:-
 - a. complied with in relation to the works or
 - b. dispensed with in relation to the works by a tribunal.This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount".

13. "The appropriate amount" is defined by regulation 6 of The Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) as "..... an amount which results in the relevant contribution of any tenant being more than £250.00."
14. Section 20ZA(1) of the Act states:-
"Where an application is made to a 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."

Tribunal's Conclusions with Reasons

15. We considered the written evidence accompanying the application.

Our conclusions are:-
16. It is not necessary for us to consider at this stage the extent of the service charges that would result from the works payable under the terms of the Respondent's leases. If and when such is demanded and if disputed, it may properly be the subject of a future application to the Tribunal.
17. We accept from the nature of the work that it is necessary for it to commence without delay because of the obvious risk which has potential to impact on the health, safety, utility and comfort of occupiers, visitors to the flats at the Property and members of the public passing by. It was rendered more urgent because of the onset of winter.
18. The circumstances are unusual in that the cost of works has been defrayed by a confidential transfer of funds from a third party to the Service Charge Reserve. We do not have details of the sum but the indication is that it was a significant proportion, if not the total cost of the works.
19. We accept that the works should have been completed when it was because of the time of year and the currency of the quotations which were no doubt taken into account in the negotiations with the third party.
20. For the above reasons we conclude it reasonable in accordance with Section 20ZA(1) of the Act to dispense with the consultation requirements, specified in Section 20 and contained in Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987).
21. Nothing in this determination or order shall preclude consideration of whether the Applicant may recover by way of service charge from the Respondents any or all of the cost of the work undertaken or the costs of this application should a reference be received under Section 27A of the Landlord and Tenant Act 1985.

Order

22. The Applicant is dispensed from complying with the consultation requirements in respect of the work specified in the application.