



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

Case Reference : **MAN/00BN/LDC/2016/0007**

Property : **Wakefield House
9a New Wakefield Street
Manchester
M1 5NP**

Applicant : **Revolution Property
Management Limited**

Representative : **N/A**

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

Representative : **N/A**

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

Tribunal Members : **Judge J Holbrook (Chairman)
Judge L Bennett**

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

Date of Decision : **5 April 2016**

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 repairs to the lift in the Property.

REASONS

Background

1. On 24 February 2016 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 relates to Wakefield House, 9a New Wakefield Street, Manchester M1 5NP (“the Property”) and was made by Revolution Property Management Limited (“the Applicant”). By a decision dated 16 July 2012 a leasehold valuation tribunal appointed the Applicant as manager in respect of the Property for an indefinite period.
3. The Respondents to the application (who are listed in the Annex hereto) are the long leaseholders of the 16 residential flats within the Property. It is understood that other parts of the Property are subject to non-residential leases. However, the consultation requirements apply only to a lease of a dwelling.
4. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
5. The works in respect of which a dispensation is sought concern the urgent replacement of a broken component in the Property’s lift.
6. On 3 March 2016 the Tribunal 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. No submissions were received from any of the Respondents.
7. The Tribunal did not inspect the Property.

Grounds for the application

8. The Applicant's case is that the consultation requirements should be dispensed with in order to facilitate the urgent repair of the Property's only lift. The lift is currently out of order and, on inspection by the lift maintenance contractor, it was discovered that the hydraulic valve (which is 15 years old) has stopped working. The contractor has recommended that a new valve block should be fitted to the lift.

Law

9. 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.

10. 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.

11. "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).

12. 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.

13. 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

14. The Tribunal must decide whether it is 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.
15. 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 residents are not inconvenienced unduly 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.
16. In the present case, it is clear that there is an urgent need for the lift to be properly repaired so as to ensure its reliable operation for the benefit of residents of the Property. In view of this, we find that the

balance of prejudice favours permitting the repairs to proceed without delay.

17. We also note that, whilst the statutory consultation requirements have not been complied with, the Respondents have previously been informed about the proposed works. It appears that none of the Respondents have raised an objection to them.
18. We also note that the cost of the proposed works will be £5,340 (including VAT). However, 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

List of Respondents

GMS Parking Limited	9a & Apartment 1, 3, 4,8,12, 14 & 15
Matthew Swinden	Apartment 2
Thomas Harden	Apartment 5
Paul Davis	Apartment 6
Julian Blundell	Apartment 7
Philippe Bosc	Apartment 9
Margaret Bailey	Apartment 10
Fabrizo Casali	Apartment 11
James Froggatt	Apartment 13
Ian Hollins	Apartment 16