



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

**Case Reference** : **MAN/00CZ/LDC/2016/0004**

**Property** : **Flats 82 – 122 Mill House  
Textile Street  
Dewsbury  
West Yorkshire  
WF13 2EY**

**Applicant** : **Freehold Reversions  
Partnership**

**Representative** : **Remus Management Limited**

**Respondents** : **The leaseholders 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** : **15 March 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 17 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 was made on behalf of Freehold Reversions Partnership, the landlord of Flats 82 – 122 Mill House, Textile Street, Dewsbury, West Yorkshire WF13 2EY (“the Property”). The Respondents to the application (who are listed in the Annex hereto) are the long leaseholders of the 41 flats within 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 works in respect of which a dispensation is sought concern urgent repairs to/refurbishment of the lift in the east block of the Property.
5. On 22 February 2016 Judge Bennett 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 on behalf of the Applicant. No submissions were received from any of the Respondents.
6. The Tribunal did not inspect the Property.

### Grounds for the application

7. The Applicant’s case is that the lift in the Property is continually breaking down and that this is having an adverse impact on residents. Major works are now required to improve the reliability of the lift. This will involve the replacement of multiple parts. The current problems have been investigated by Kone (the lift service contractor) which has proposed a solution. The Applicant says that Kone is the only contractor which is able to undertake the necessary works (as the

replacement parts would not otherwise be covered under the service contract). Other contractors have been approached but have been unwilling to undertake the works unless a service contract was entered into with them.

## 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 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.
14. 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.
15. 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 repair/refurbishment works to proceed without delay.
16. 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.

17. We also note that the cost of the proposed works will be £20,563.85 (excluding 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

### LEASEHOLDERS – MILL HOUSE

<b>Leaseholder</b>	<b>Apartment</b>
Ms J Balkwill & Mr J Smith	Apt 82 Mill House
Mr B Thomas	Apt 83 Mill House
Mr A H Laher	Apt 84 Mill House
Mr S Mitchell	Apt 85 Mill House
Mr A H Laher	Apt 86 Mill House
Mr & Mrs Reid	Apt 87 Mill House
Mr & Mrs Ford	Apt 88 Mill House
Mr R Gleeson	Apt 89 Mill House
Mr W Robertson	Apt 90 Mill House
Mr J White & Ms A Savage	Apt 91 Mill House
Mr C Gray	Apt 92 Mill House
Mr J S Read & Mrs C H Gillett	Apt 93 Mill House
Mr M Christian	Apt 94 Mill House
Mr R Gleeson	Apt 95 Mill House
Mr S Thakrar	Apt 96 Mill House
Mr W Crawley	Apt 97 Mill House
Mr A U Akhigbe	Apt 98 Mill House
Miss R S Walker	Apt 99 Mill House
Mr A Thaker	Apt 100 Mill House
Mr M P Hoggett & Mrs K E Hoggett	Apt 101 Mill House
Mr & Mrs Jordan	Apt 102 Mill House
Mr L Humphries	Apt 103 Mill House
Ms G N Cracknell	Apt 104 Mill House
Mr Rees & Ms Leeke	Apt 105 Mill House
Mr & Mrs Patel	Apt 106 Mill House
Mr & Mrs Ashworth	Apt 107 Mill House
Mr & Mrs Sharpe	Apt 108 Mill House
Ms J Smith	Apt 109 Mill House
Mr & Mrs Jordan	Apt 110 Mill House
Mr G McDowell & Mr C Williams	Apt 111 Mill House
Mr G McDowell & Mr C Williams	Apt 112 Mill House
Mr E Lynch	Apt 113 Mill House
Mr M Stokes	Apt 114 Mill House
Ms L Lee	Apt 115 Mill House
Ms R J Mostyn	Apt 116 Mill House
Mr C Pote	Apt 117 Mill House
Mr & Mrs Patel	Apt 118 Mill House
Mr & Mrs Sen-Gupta	Apt 119 Mill House
Mr L Humphries	Apt 120 Mill House
Mr T J Beckett	Apt 121 Mill House
Mr B Granley	Apt 122 Mill House