



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

Case Reference : **MAN/OOCJ/LDC/2019/0039**

Property : **Montagu Court, Montague Avenue, Gosforth,
Newcastle upon Tyne NE3 4JL.**

Applicant : **Moorside Maintenance Limited**

Representative : **Brannen & Partners**

Respondents : **Leaseholders of residential flats at the Property**

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

Tribunal Members : **Niall Walsh (Deputy Regional Valuer)
Laurence Bennett (Deputy Regional Judge)**

Date of determination : **27 November 2019**

Date of Decision : **2 December 2019**

DECISION

Application

1. Moorside Maintenance Limited applies to the Tribunal 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 work to correct a spontaneous failure in one of the brick skin elevations (Face G) to the tower block at Montagu Court, Montague Avenue, Gosforth, Newcastle upon Tyne NE3 4JL. (the Property).
2. The Respondents are Leaseholders of flats at the Property. The Leaseholders are also members of the Applicant company with each member having a right to vote on the usual company matters, such as the election of directors at the annual general meeting.

Grounds and Submissions

3. The application was received by the Tribunal on 23 September 2019.
4. The Applicant is the Lessor named in the Respondents' Leases.
5. On 14 October 2019 Deputy Regional Judge Holbrook made directions which provided that in the absence of a request for a hearing the application would be determined upon the parties' written submissions.
6. The Property is a 1960s 17 storey reinforced concrete tower block with an attached 7 storey wing, comprising 86 2 and 3-bedroom apartments. The block has brick skin elevations, which do not provide structural support to the building and instead the weight of the brickwork is carried by a concrete nib which projects from each reinforced concrete floor slab. Each concrete nib is designed to carry the weight of one floor's brickwork.
7. The Applicant stated in the application form that it was previously aware of an inherent defect in the building's construction which allows the weight of the brickwork to be transmitted to the floors below, thereby overloading the lower concrete nib. Following compliance with Section 20 consultation requirements a programme of remedial works was already underway when "on 5 July 2019 it was noticed that a spontaneous failure of the brick skin had occurred at level 6 of Face G".
8. "In consultation with a structural engineer, a building surveyor, Fire and Rescue services, Police and the local authority Building Control officer", an exclusion zone was established. This zone encompasses the main entrance to the tower and residents can now only access the building via a tradesman's entrance in the basement and there is no longer an entry phone system accessible to accommodate deliveries or visitors.
9. The Applicant contends that: "Further spontaneous failure of brickwork could occur at any time and could involve a collapse. For safety reasons it is important to repair the whole of Face G as soon as possible. We have an engineer's solution. We have specialist brickwork contractors on site" and "scaffolding halfway up the tower". The

Applicant is particularly concerned that with the onset of winter, bad weather and high winds will place additional stress on the brickwork and so it would be irresponsible to delay the works being carried out to allow for further consultation and the competitive tendering of the works.

10. The estimated cost of the emergency repairs to Face G is £53,000. The estimated additional cost of the remaining work to stabilise the whole of Face G is £102,000.
11. In accordance with directions the Applicant has provided a sample Lease and a statement of case which included copies of relevant correspondence with Leaseholders, structural engineers and various contractors. The application has been made because of the urgent need to avoid any further brickwork collapses and out of concern for the convenience of residents, which requires action before a consultation process can be completed.
12. The Tribunal did not receive submissions from a Leaseholder in accordance with directions.
13. The Tribunal convened without the parties to make its determination on 27 November 2019.

Law

14. Section 18 of the Act defines “service charge” and “relevant costs”.
15. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
16. 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 leasehold valuation tribunal.This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.
17. “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.”
18. 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

19. We considered the written evidence submitted in support of the application.

Our conclusions are:-

20. 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.
21. We accept from the details of the work proposed, the obvious health and safety consequences of failure to undertake both the emergency works and the wider works to stabilise all the brickwork at Face G. We therefore find that it is necessary for it to commence without delay. The lack of repair has the potential to significantly impact on the safety, utility and comfort of occupiers and visitors to the apartments at the Property.
22. Although formal consultation has not been completed in respect the emergency works, it is unclear to the Tribunal whether the broader stabilisation works to the brickwork of the whole of Face G have been the subject of the earlier consultation or not. Nevertheless, the Tribunal is assuming a dispensation is being sought in respect of all these works.
23. The Applicant has provided detailed information to the Leaseholders on the nature of the works, their costs and presented various options upon which the Leaseholders have voted upon to decide the preferred approach to undertaking these works, which the Applicant has had regard to. The Tribunal has had regard to the fact that the prices and design of the chosen special brickwork contractor "is in line with the original estimates provided by CSN Ltd". Further the Tribunal notes that it is the Applicant's intention to fully engage with Section 20 Consultation requirements in respect of the later phases of work. The Tribunal has not in the circumstances identified a specific prejudice to Respondent Leaseholders.
24. We therefore have no hesitation in concluding 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).
25. 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

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

Annex A MAN/ooCJ/LDC/2019/0039

Mrs O Rourke (deceased)
Mr D Emerson
Mr K Johnson
Mrs E Davies
Mr PD Landau
Mr T Barnes & Mr P Mogie
Mrs V Davison
Dr JC Appleby & Mr RI Davison
Mr JA Furey & Mrs MT Furey
Mr RL Dormer & Mrs SA Dormer
Mr KJ Graham & Mrs M Graham
Mr T Lee
Mrs A Barlow
Mrs MA Buchanan
Ms LR Backhurst
Mr NS Rawlinson & Mrs AS Rawlinson
Mrs MJ Roberts
Ms N Thompson
Mr GR Bond
Mrs J McAughtry
Prof MJ Whittaker & Ms HM Edwards
Mrs LG Harris
Dr H Carrick & Mrs JSC Carrick
Ms S Copley
Mrs RH Newton
Mr CAH Freedman & Mrs CM Freedman
Mrs NM Rogers
Miss SSafi
Mr GT Wilson & Mrs VA Wilson
Mr VP Hjärdeng
Mr MD Jacobson & Mrs AB Jacobson
Mrs AE Stafford
Mr DW Bewick & Mrs S Bewick
Mr DW Buckle & Mrs D Miller
Dr JM Hutchinson & Mrs JE Hutchinson
Mrs G Scott
Dr Y Wu & Mrs Qing Y Wu
Mr B Taylorson & Mrs H Taylorson
Ms R Rayner-Edwards
Mr HV Hjärdeng & Mrs H Hjärdeng
Mr J Marshall & Mrs A Marshall
Mr M Eden & Mrs SE Eden
Dr DK Dutta
Mr J Gilhespie & M Gilhespie
Mrs P Peterson
Mr GJ Codona
Dr A Al-Kaaki
Mr AP Lindsay & Mrs M Lindsay
Mrs VM Deines
Mrs J Moorin
Mr & Mrs B Bell

Mrs A Linter
Mr L Tao
Ms K Lovely
Ms C Wilson
Mr JS Richardson & Mrs SW Richardson
Miss CM Dodds
Mr D Brown
Mr B Olds
Mr K Sehat & Mrs JA Sehat
Mr M Fawcett
Mr JWR Graham & Mrs M Graham
Mr JN Wilkinson & Mrs C Wilkinson
Mr BG McGee & Mrs V McGee
Mr S Banks & Mrs J Banks
Mr JA Scrivener & Mrs J Scrivener
Mr B Crowder & Mrs I Crowder
Mrs MD Tait
Mr WJ Peacock & Mrs E Peacock
Mr BP Stoddart
Mrs A Thompson
Mr HD Van Asselt & Mrs Van Asselt
Mr AA Josephs & Mrs MA Josephs
Ms V Di Girolami
Mr E Steven & Mrs ME Steven
Mr JF Harrison & Mrs SI Hepburn-Harrison
Mr CJ Hilton & Mrs E Hilton
Mr DD Deines
Mr JR Lamb & Mrs B Lamb
Mr J Mann
Mr JS Charlton & Mrs JD Charlton
Dr JB MacPhail & Mrs MacPhail
Mr M Shoaib
Mr MO Evans