



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

Case Reference: MAN/00BY/LDC/2019/0038

Property: Mossley Hill Mansions,
36 Mossley Hill Road, Liverpool, L18 8BP

Applicant: Grey GR Limited Partnership

Representative: Inspired Property Management Ltd.

Respondents: Various – see annex

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

Tribunal Members: Judge P Forster
Mr W A Reynolds MRCIS

Date of Decision: 3 January 2020

Date of Determination: 6 January 2020

DECISION

Decision

Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to urgent works (particularised in paragraph 5 of this Decision) that are necessary to prevent the ingress of water to one of the flats forming part of the Property.

Reasons

Background

1. The First-tier Tribunal received an application on 18 September 2019 under s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a decision to dispense with the consultation requirements of s.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 Inspired Property Management Ltd. on behalf of Grey GR Limited Partnership (“the Applicant”), c/o Residents Quarter Limited, 7 Malton Way, Adwick Le Street, Doncaster, DN6 7FE in respect of Mossley Hill Mansions, 36 Mossley Hill Road, Liverpool, L18 8BP (“the Property”). The Respondents to the application are the long leaseholders of the flats within the building. A list of the Respondents is set out in the annex hereto.
3. The only issue for the Tribunal to determine is whether it is reasonable to dispense with the consultation requirements.
4. The application identifies that the subject Property was built in the mid 1850’s and is a conversion consisting of 11 apartments.
5. The works in respect of which a dispensation is sought are as follows:
 - use a MEWP to access the gutter level works
 - remove the downpipe and set aside to reuse
 - grind out mortar joints behind the downpipe
 - re-point the joints using a sand and cement mix
 - refit the existing downpipe back into position
 - bolt UPVC downpipe and cast-iron guttering together and seal
 - remove any debris
 - allow clear silicon paint to valley upstand and coping stones
 - apply liquid coating to bay roof using 2-layer cold applied liquid plastics with a 10 year guarantee

6. The works were urgently required to rectify significant water ingress into flat 38 each time it rains. The internal wall is saturated every time it rains and internal plaster in danger of coming loose. The Applicant's surveyor, Mr Rob Hindle, of White Hindle Partnership, attended the Property and found there to be issues with the gutter, downpipe, high-level pointing, valley upstand and the bay roof.
7. A consultation letter was issued to all leaseholders advising them of the need for the works. It complied with the prescribed regulations.
8. An initial quotation was received based on the Applicant's surveyor's recommendations in the sum of £2,628 inclusive of VAT, which is stated to exceed the s.20 threshold for the development. This prompted the application to the First-tier Tribunal. Since the application was made, a second quotation was obtained in the sum of £3,180 inclusive of VAT. Instructions were given for the works to proceed based on the first quotation and works commenced on 21 October 2019. The application is now for retrospective dispensation from the consultation process.
9. On 11 October 2019 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 therefore convened on the date of this decision to consider the application in the absence of the parties. In response to directions, the Applicant's representative provided written submissions and documentary evidence in support of the application. Copies of these were provided to each Respondent and no submissions or objections were received from the Respondents.
10. The Tribunal did not inspect the Property.

Grounds for the application

11. The Applicant's case is that, it was necessary to undertake these works quickly to adequately protect the occupants of flat 38 and to mitigate any insurable losses. By implication, the Applicant's case is that the works relate to common parts of the Property which the landlord is obliged to maintain under the terms of the leases, with the costs associated therewith being recoverable from the tenants via service charge provisions incorporated within the leases. The Tribunal were provided with a copy of a lease dated 24th October 2011 in respect of Unit 8, Mossley Mansions, 38 North Mossley Hill Road, Liverpool, L18 which incorporates provisions of this nature.

12. The Applicant has proceeded with the works based on the lower of the two quotations obtained. It asks the Tribunal to grant retrospective dispensation in respect of these works, which it considered to be so urgent as to warrant avoiding the additional delay that compliance with the consultation requirements would have entailed.

The Law

13. 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.

14. 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.*

15. “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 in 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).

16. 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.

17. 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

18. The Tribunal must decide whether it was reasonable for the works to have proceeded without the Applicant first complying in full with the s.20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about the works, the reason for the works being undertaken, and the estimated cost of those works. Importantly, it also provides tenants with the opportunity to provide general observations and nominations for possible contractors. The landlord must have regard to those observations and nominations.
19. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works. 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.
20. It follows that, for the Tribunal to decide whether it was reasonable to dispense with the consultation requirements, there needs to be a good reason why the works should and could not have been delayed. In considering this, the Tribunal must consider the prejudice that was caused to tenants by not undertaking the full consultation while balancing this against the risks posed to tenants by not taking swift remedial action. The balance is likely to be tipped in favour of dispensation in a case in which there was an urgent need for

remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.

21. In the present case, there was only limited compliance with the consultation requirements but there is no doubt that the works were necessary and pressing for the occupiers of flat 38 and to protect the overall integrity of the Property. We find that it was reasonable for these works to have proceeded without the Applicant first complying in full with the s.20 consultation requirements. The balance of prejudice favours permitting such works to have proceeded without delay.
22. In deciding to grant a dispensation, we have had regard to the fact that no objections were raised by the Respondent leaseholders in compliance with the Tribunals Directions of 11 October 2019. No evidence has been presented that the works were completed to an inferior standard or cost more as a result of non-compliance with the consultation requirements.
23. We would however emphasise the fact that the Tribunal has solely determined the matter of whether or not it is reasonable to grant a retrospective dispensation from the consultation requirements. This decision 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 and, should they desire to do so, the parties will retain the right to make an application to the Tribunal under s.27A of the Landlord & Tenant Act 1985 as to the recoverability of the costs incurred, as service charges.
24. We note that the application refers to 11 flats and the cost of the works is £2,628 inclusive of VAT. If divided equally between 11 flats, the costs equate to £238.91 which is just below the s.20 consultation limit. The lease that has been provided references the service charge percentage as being “*a fair and reasonable proportion as determined by the landlord*”. The Tribunal were presented with no evidence as to the service charge proportions that are assessed for each of the tenants. It is possible that the apportioned costs of the works is not based on a straightforward 11th share to each flat owner.

3 January 2020
Judge P Forster

Annex

1. Richard J Mann & Lisa C Mann
2. Peter P Hughes & Anthony P Finney
3. Paul W Heneghan
4. Benjamin J Ford & Matthew R Ford
5. Patricia Norcott
6. Michael T Murphy
7. Christopher A Ball & Elizabeth A Ball
8. Katarzyna M Redzisz
9. Shivani A Kasbekar & Anand V Kasbekar
10. Paula Hanlon
11. Francesca Mazzenga & Robert Laird