



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

Case Reference : CHI/00HN/LDC/2021/0036

Property : Viewpoint, 7-9 Sandbourne Road,
Bournemouth BH4 8JR

Applicant : Viewpoint Limited

Representative : Napier Management Services Limited

Respondents : Darren Hazell (11)
Susannah Groome (36)
Brian Hill (37)
Susan Butler (44)
Keith Brown (48)
Nicholas Brecker (50)
Nigel Hall (61)
Patrick Cauldwell (62)

Representative : Frank Groome

Type of Application : Application for an Order under S.20C of
the Landlord and Tenant Act 1985

Tribunal Member : D Banfield FRICS
Regional Surveyor

Date of Determination : 10 August 2021

DETERMINATION

The application for an Order under Section 20C of the Landlord and Tenant Act 1985 is refused.

Background

1. The Respondents seek an Order under Section 20C of the 1985 Act in respect of costs and was made following the Applicant landlord's application under S.20ZA of the Landlord and Tenant Act 1985 for dispensation from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The S.20ZA application was determined by this Tribunal on 21 July 2021 when directions were also made for written submissions in respect of the S.20C application
3. Submissions have now been received from both parties and it is on the basis of those submissions that this determination is made.
4. Mr Groome also informed the Tribunal that it had incorrectly named Mr and Mrs Hayes of Flat 55 as Respondents when in fact they had agreed to the application and, in accordance with the Tribunal's Directions, should have been removed as Respondents.
5. The Tribunal has reviewed the replies received from the Lessees and can confirm that Mr Groome is correct and therefore removes Mr and Mrs Hayes as Respondents.

The Law - Limitation of service charges: costs of proceedings.

6. "(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before... the First-tier Tribunal... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made-...
 (ba) in the case of proceedings before the First-tier Tribunal, to the tribunal..."

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."

The submissions

The Respondent Lessees

7. Mr Groome states that; *"There are two grounds for making this application. Firstly, the tenants would be prejudiced financially if the landlords were allowed to charge the tenants for the costs of making a S.20ZA application, since the application seeks dispensation for the landlord's failure to comply with the obligation to consult the tenants about major works.*

- a. *Secondly, there is no provision under the Viewpoint lease that permits the landlord to apply such a cost to the service charge account.”*

The Applicant Landlord

8. On behalf of the Applicant Ms Lacey-Payne points out that the applicant is a company formed of all 64 Leaseholders the Directors of which are elected from amongst their number. The S.20ZA application was successful and only carried out on the instructions of the Board following professional advice. The application was reasonable and part of the applicant’s repairing obligations.
9. Ms Lacey Payne then referred to sections of the lease which she said enabled the costs incurred to form part of the service charge. Finally she said that *“This application did not occur as a result of the applicant being at fault in any way therefore we oppose the S20C Order application as we believe the application was made in order to comply with the Landlords obligations under the lease to maintain the building and we believe the lease allows this.”*

Decision

10. At paragraph 24 of the decision in SCMLLA (Freehold) Ltd, Re Cleveland Mansions, and Southwold Mansions [2014] UKUT 58 (LC) the Deputy President stressed that as an order under section 20C interferes with the parties’ contractual rights and obligations, it ought not to be made lightly, or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances.
11. At paragraph 75 in Conway & Ors v Jam Factory Freehold Ltd [2013] UKUT 592 (LC) he said: “ In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make.”
12. This is a case where the Applicant has been wholly successful in their S.20ZA application. That application was made necessary on two counts, firstly, that the S.20 Consultation already carried out did not cover all of the works subsequently discovered to be necessary during the course of the works and secondly that a minority of lessees objected. In these circumstances I consider the only sensible course of action was to obtain the Tribunal’s dispensation.
13. In considering the effect of making an order I take into account that this is a lessee owned company where costs incurred by it are likely to be met by the same group of people either as lessees through the service charge or as members of the company.

14. If the order is granted then, if the lease allows, those lessees other than the eight Respondents will have to meet their share of the costs through the service charges any shortfall being met by Viewpoint. In circumstances where Viewpoint is owned by leaseholders, through their own company, where I have found that it was reasonable for it to have pursued the application, and where it has been the successful party, I do not consider this would be a just and equitable outcome. If, as Ms Lacey-Payne maintains, there is a contractual obligation on leaseholders to contribute towards the costs it has incurred, then it appears to me that that this liability should be met by the leaseholders as a whole.

15. The application for an Order under Section 20C of the Landlord and Tenant Act 1985 is therefore refused.

16. Given that the application has been refused on the first of Mr Groome's grounds there has been no need for me to determine whether or not the costs incurred are recoverable through the service charge.

D Banfield FRICS
10 August 2021

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.