



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

- Case Reference** : CHI/00ML/LDC/2021/0073
- Property** : (1)Clarendon House, Clarendon Road, Hove BN3 3WW; (2)Conway Court, Clarendon Road, Hove BN3 3WR (3)Ellen House, Clarendon Road, Hove BN3 3WX; (4) Godstone House, Clarendon Road, Hove, BN3 3WY (5)Livingston House, Clarendon Road, Hove BN3 3WZ
- Applicant** : Brighton and Hove City Council
- Representative** : Irwin Mitchell LLP
- Respondent** : 103 Long Leaseholder including 25 Long Leaseholders represented by Justice For Tenants
- Representative** : David Croydon
Justice for Tenants
- Type of Application** : To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
- Tribunal Member(s)** : Judge Tildesley OBE
Mr Colin Davies FRICS
Ms Jayam Dalal
- Date and Venue of Hearing** : Havant Justice Centre
29 November 2021
- Date of Decision : 30 November 2021

DECISION

Background

1. This case concerned a demand for payment of service charges by Brighton and Hove City Council in September 2018 for major repairs to The Clarendon Ellen Estate. The total cost to the estate was £7,894,783.89.
2. Applications have been made to determine the service charges for the major works and they were listed for hearing on 29 November 2021 for 4 days.
3. The Applicant made an application for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in respect of the major works.
4. The Applicant explained that it did not consider that dispensation from consultation requirements was required in respect of the works or the underlying Qualifying LTA. However, given that the Respondents represented by “Justice for Tenants” (JFT) took issue with the consultation process, this application was made as a precautionary measure so that the Tribunal was invested with the jurisdiction to consider dispensation in the event that contrary to the Applicant’s case it was considered necessary to do so
5. On the 19 August 2021 the Tribunal directed that this Application would be heard at the same time as the substantive applications.
6. The Tribunal sent the directions to JFT in respect of the leaseholders they represent, and required the Applicant to serve the Application and directions on the other leaseholders.
7. The directions required the leaseholders to fill in a pro-forma asking whether they agreed or disagreed with the application, and if they disagreed to give their reasons why. The directions stated that the Tribunal would assume that those parties not returning the pro-forma consent to the Application.
8. There were four responses to the Application: Mr Croydon for JFT who agreed with the application on behalf of the leaseholders represented by JFT, Mr Steel who complained about the level of service charges, and Ms Wheatley and Mr Finlay who separately sought clarification of the application.

Decision

9. The Tribunal considered first whether the Applicant had contravened the consultation requirements.

10. Mr Simon Allison, Counsel for the Applicant informed the Tribunal that the qualifying works were the subject of a qualifying long term agreement. The requirements of schedule 3 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) applied to the circumstances of the case.
11. Mr Allison took the Tribunal to the evidence relied upon the Applicant to demonstrate compliance with the requirements of schedule 3. The Tribunal sets out its findings below against each requirement.
12. Paragraph 1 provides as follows:
 - (1) The landlord shall give notice in writing of his intention to carry out qualifying works–
 - (a) to each tenant; and
 - (b) where a recognised tenants’ association represents some or all of the tenants, to the association.
 - (2) The notice shall–
 - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
 - (b) state the landlord’s reasons for considering it necessary to carry out the proposed works;
 - (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;
 - (d) invite the making, in writing, of observations in relation to the proposed works or the landlord’s estimated expenditure;
 - (e) specify–
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
13. The Tribunal finds that the Applicant sent a Notice of Intention dated 16 January 2015 [1213-1215] consulting on major external refurbishment works. The Applicant identified the works to be carried out on the building and the reasons for those works. The Applicant set out the agreed maximum costs for these works which were itemised against each category of works. The Applicant invited the leaseholders to make observations on those works within 30 days.
14. Paragraph 2 of the Regulations was not applicable to the circumstances of this case.
15. Paragraph 3 provides: “Where, within the relevant period, observations are made in relation to the proposed works or the landlord’s estimated expenditure by any tenant or the recognised tenants’ association, the landlord shall have regard to those observations”.

16. Paragraph 4 provides: Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.
17. The Applicant produced a schedule summarising out the responses received and the issues raised to the Notice of Intention [1217-1225]. There were 23 responses. The Applicant also supplied a copy of its replies to each response received from a leaseholder. The Applicant's replies were detailed and answered each point raised by a leaseholder [1226-1288].
18. The Tribunal is satisfied on the above findings that the Applicant had complied with the consultation requirements in respect of the proposed major works to the property.
19. On 10 March 2016 the Applicant embarked upon another consultation exercise in connection with the major external refurbishment works. The Council (Planning) had refused planning permission for the proposed works of external wall cladding which meant that the Applicant had to put forward an amended programme of works the estimated costs of which were higher than the original proposal.
20. The Tribunal's findings on the second consultation exercise are as follows:
 - a) Paragraph 1 of Schedule 3: the Applicant sent a Notice of Intention dated 10 March 2016 [1713-1716] consulting on major external refurbishment works. The Applicant identified the works to be carried out on the building and the reasons for those works. The Applicant set out the agreed maximum costs for these works which were itemised against each category of works. The Applicant invited the leaseholders to make observations on those works within 30 days.
 - b) Paragraphs 3 & 4 of Schedule 3: The Applicant produced a schedule summarising out the responses received and the issues raised to the Notice of Intention [1718-1719]. There were 28 responses. The Applicant also supplied a copy of its replies to each response received from a leaseholder. The Applicant's replies were detailed and answered each point raised by a leaseholder [1720-1802].
21. The Tribunal is satisfied on the above findings that the Applicant had complied with the consultation requirements in respect of the proposed major works (revised programme) to the property.

22. The Tribunal decides that the Council complied with the consultation requirements in connection with the major refurbishment works. In those circumstances there are no grounds to make an order for dispensation from consultation requirements pursuant to section 20ZA of the Landlord and Tenant Act 1985.
23. The Tribunal has sent the decision to JFT representative, and to Mr Steel. The other leaseholders made no substantive responses to the Council. The Applicant will send a copy of the decision to the other leaseholders for information.

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 application by email to rpsouthern@justice.gov.uk.
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.