



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

Case Reference : **MAN/00DA/LDC/2021/0018**

Property : **Cypress Point, Leylands Road
Leeds LS2 7LB**

Applicant : **Junestead (Cypress Point)
Limited**

Representative : **Square One Property
Consultants**

Respondents : **The residential leaseholders of the
Property (see Annex)**

Representative : **N/A**

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

Tribunal Members : **Judge J Holbrook**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **27 January 2022**

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 the removal and replacement of the timber balconies and associated timber supports at the Property to comply with building regulations and Government advice in the most cost effective way.

REASONS

Background

1. On 18 March 2021, 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 by Junestead (Cypress Point) Limited and relates to premises known as Cypress Point, Leylands Road, Leeds LS2 7LB (“the Property”). The Applicant is the landlord of the Property. The Respondents to the application are the long leaseholders of those apartments. A list of the Respondents is set out in the Annex hereto.
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 the replacement of timber balconies and associated timber supports at of the Property. The Applicant has taken the decision to complete this work following a report that has been conducted by a specialist, who recommended the replacement of the timber on the balconies to ensure compliance with building regulations and Government advice in respect of fire safety.
5. I gather that the Applicant has made the leaseholders aware of the work needed by issuing an external cladding defects report and through general discussions. The Applicant has also provided a written notice of intention to carry out works and has shared updated information when it became available. Each of the Respondents have been given notice of the application and afforded the opportunity to view the Applicant’s supporting evidence. They have also been provided with a copy of the case management directions issued by the Tribunal on 21 October 2021. The directions required any Respondent who opposed the application to notify the Tribunal of their objection by 25 November 2021. No such notification has been received and I have determined this matter

following a consideration of the Applicant's case, but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the Applicant has given its consent and the Respondents have not objected. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing: although the Respondents are not legally represented, the application is unopposed and the issues to be decided are readily apparent.

6. The Tribunal did not inspect the Property but I understand it to comprise an eight storey building for residential use.

Grounds for the application

7. The Applicant's case is that they have secured funding from the Building Safety Fund to carry out remedial work to replace combustible cladding on the Property. While undertaking this, the Applicant intends to replace the timber balconies and associated timber supports to comply with the building regulations and Government Advice Notes. This decision has been made based on a cladding report completed by a specialist. As the timber deck access walkways are not defined as "cladding", the cost to replace these balconies will not be covered under the funding that has been secured, and the Applicant therefore intends to seek to recover these costs from leaseholders by means of the Property's service charge. Work has already commenced to replace the combustible cladding. The Applicant states that they intend undertake this work at the same time to utilise the scaffolding and other access facilities while they are at the Property, saving costs overall which would be incurred if the full consultation was required and the work had to be completed on a separate occasion.
8. The Applicant submits that urgency of the works is in the interests of the Leaseholders by reducing the overall costs and it is practical for building insurance reasons so the work can be carried out by the same contractors at the same time.

Law

9. 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.

10. 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.*

11. “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).

12. 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.

13. 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

14. 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. They also ensure that leaseholders are protected from paying for inappropriate work, or from paying more than would be appropriate for necessary work. 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.

15. 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 occupiers of the Property are not placed at undue risk 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.
16. In the present case, works to ensure the safety of the Property and its occupiers should be undertaken as soon as possible. This is appropriate not only to minimise risk to the health and safety of the occupiers of the Property, but also to utilise the access scaffolding in place to provide the most cost-effective solution for leaseholders. I have no hesitation in finding that the balance of prejudice favours permitting such works to proceed without delay.
17. Nevertheless, the fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that I 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. I make no findings in that regard.

Signed: J W Holbrook
Judge of the First-tier Tribunal
Date: 27 January 2022

**ANNEX
(List of Respondents)**

Flat Number	Respondent
1	N/A
2	Mr Murray
3	Yorkshire Housing
4	Yorkshire Housing
5	Yorkshire Housing
6	Yorkshire Housing
7	Yorkshire Housing
8	Mr Yin Wah Ho & Mrs Yu Chun Won
9	Mr T Dow-Clark and Ms E Dow-Clark
10	Mr Sio Hing Mak
11	Mr Venkata Thumu and Ajantalaksmi Chintam
12	Mr B Thompson
13	N/A
14	Valani Properties Ltd
15	Mr T A Goodwin
16	C Hand
17	Yorksire Housing
18	Sam Norris
19	Ho Cheuk Kit (Mr Jacky Ho)
20	Penguino Properties Ltd
21	Mr & Mrs G Turrell
22	Mrs Jane Levine
23	Mr David Thomson
24	Mr Gordon Shaw
25	Mr Venkata Thumu and Ajantalakshmi Chintam

Flat Number	Respondent
26	Mr D Cant
27	Mrs Jane Levine
28	SK Sai Ltd: Subhash Valani
29	Mr N Avent
30	Bandana Gurung
31	Mr N Campbell
32	Mr S G Richardson
33	Mrs Jane Levine
34	Mr D M Roberts & Ms J Roberts
35	Mr Aaron Dobie
36	Mr Ben Murray
37	Mr Yin Wah Ho & Mrs Yu Chun Wong
38	Mr Ben Thompson
39	Mr A Barton
40	Mrs Jane Levine
41	Mr Alagan Sathianathan
42	Mrs Jane Levine
43	Ms Gibson
	AHK Properties Ltd
47	Ms Pepe