

12355



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

Case Reference : **MAN/00BN/LDC/2017/0014**

Properties : **14-16 Whitworth Street, Manchester M1 3BS**

Applicant : **Whitworth Street Management
Company Limited**

Representative : **Revolution Property Management Limited**

Respondents : **Residential Leaseholders and Tenants
of apartments at 14-16 Whitworth Street,
Manchester**

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

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

Date of determination : **25 August 2017**

Date of Decision : **30 August 2017**

DECISION

Application

1. Whitworth Street Management Company 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 roof work to rectify a leak at the Property.
2. The Respondents are the individual Residential Leaseholders of the Property.
3. The Applicant has listed commercial occupiers as Respondents, however, the Tribunal has no jurisdiction in respect of non-residential units and its order does not extend to the commercial occupiers.

Grounds and Submissions

4. The application was received by the Tribunal on 20 July 2017.
5. The Applicant is the Management Company a party to the Lease at the Property.
6. On 25 July 2017 the Tribunal made directions relating to service of the application and arrangements for a response. It was directed that in the absence of a request for an oral hearing the application would be determined upon the parties' written submissions without a hearing.
7. The Property is stated to be a purpose built block of 25 apartments with 2 ground floor commercial units. A copy of a sample residential lease was submitted.
8. The Applicant stated in the application form that a "water leak from the roof has resulted in the only lift to the building becoming water damaged so the works need to be done to repair the roof urgently."
9. Further information states that "the development has a single lift and the water has entered the building above the area of the lift and lift control panel which has been damaged. A quotation in respect of the roof works has been obtained.
10. The Applicant states that the works are urgent and there is insufficient time for consultation.
11. A response from Dr Keith Cornick of apartment 22 agrees that the application is determined without an oral hearing and accepts that the problems must be solved. He does not make objection but questions why dispensation does not extend to the damage to the lift control panel.
12. Neither the Applicant nor a Respondent requested a hearing.

13. The Tribunal convened without the parties to determine the application on 25 August 2017.

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 the First Tier TribunalThis 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 accompanying the application.

Our conclusions are:-
20. It is not necessary for us to consider the extent of the service charge payable by the Respondents that might result from the works. If disputed when demanded an application may be made to the Tribunal under Section 27 Landlord and Tenant Act 1985.
21. We find from the details of the work proposed that it is necessary for work to commence as quickly as possible to prevent further deterioration caused by water ingress. The lack of repair has potential to impact on the health, safety, utility and comfort of occupiers and visitors to the Apartments and common parts at the Property.
22. Although formal consultation has not taken place, we have not identified a specific prejudice to Leaseholders in the circumstances. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable.
23. Whilst there is some indication that the works may have been carried out in which case this application is for retrospective consent, we conclude 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) whether prospective or retrospective.

24. The works defined in the application as identified by Dr Cornick relate only to the roof. We cannot extend the application although Dr Cornick's logic is noted. It may be that the cost of the lift work falls below the consultation limit.
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.