



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

Case Reference : **MAN/30UQ/LDC/2015/0022**

Property : **The Orchards
Little Poulton Gardens
Poulton le Fylde
Lancashire
FY6 7WG**

Applicant : **Orchard Apartments (LPG 2)
Limited**

Representative : **Lambert Smith Hampton**

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

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

Tribunal Members : **Judge J Holbrook
Judge L Bennett**

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

Date of Decision : **26 October 2015**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works to rectify defects in the construction of a balcony.

REASONS

Background

1. On 3 August 2015 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 on behalf of Orchard Apartments (LPG 2) Limited, the landlord/management company for The Orchards, Little Poulton Gardens, Poulton le Fylde, Lancashire FY6 7WG ("the Property"). The Respondents to the application are listed in the Annex to this decision. They are the leaseholders of the 12 residential apartments which comprise the Property.
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 urgent works to rectify defects in the construction of the balcony of Flat 37. It is understood that those defects are currently causing the ingress of water to other flats within the Property, and that they result from the fact that the balcony floor was constructed so as to fall back towards the building rather than away from it. The balcony outlets cannot cope with the resulting build-up of water following heavy rainfall and water penetration into the fabric of the building results.
5. On 19 August 2015 Judge Holbrook 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 accordingly convened in the absence of the parties on the date of this decision to determine the application. Documentary evidence in support of the application was provided by the Applicant. No submissions were received from any of the Respondents.
6. The Tribunal did not inspect the Property.

Grounds for the application

7. The Applicant's case is that dispensation from the consultation requirements should be granted to permit urgent works to investigate and remedy defects in the construction of a balcony which are causing continuing leakage of water into the flats below. As a result, a number of tenants have had to vacate. There is also a concern that the ingress of water may be causing damage to structural elements of the Property.
8. The works in respect of which dispensation is sought comprise:
 - Lifting paving slabs;
 - Inspecting waterproof covering;
 - Renewing waterproof covering;
 - Installing flashing below patio door;
 - Installing new rainwater outlets; and
 - Reinstating paving.
9. The Applicant proposes to instruct Trident Building Consultancy Limited to carry out these works and has obtained a quote of £7,613 plus VAT in this regard. In addition, it is anticipated that contract administration charges will be incurred in the sum of £850 plus VAT.

Law

10. 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.

11. 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.*

12. "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).

13. 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.

14. 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

15. 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. 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.
16. 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 the condition of the

Property does not deteriorate further 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.

17. We note that in the particular circumstances of the present case, there is a clear need for urgent action to be taken in order to prevent further ingress of water to the Property. We note that the Respondents have been informed of the proposal to carry out the works and that none of them have objected. There is no evidence that the Respondents have been prejudiced to date by the lack of opportunity to be consulted about the works. The balance of prejudice therefore favours dispensing with the consultation requirements.
18. The fact that the Tribunal has granted dispensation from the consultation requirements 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.

ANNEX

LIST OF RESPONDENTS

Property	Leaseholder
Flat 11	Orkney UKCO Limited
Flat 15	Orkney UKCO Limited
Flat 17	Orkney UKCO Limited
Flat 19	Orkney UKCO Limited
Flat 21	Orkney UKCO Limited
Flat 23	Orkney UKCO Limited
Flat 25	Orkney UKCO Limited
Flat 27	Orkney UKCO Limited
Flat 29	Orkney UKCO Limited
Flat 31	Orkney UKCO Limited
Flat 33	HG (TV Rentals) Limited
Flat 37	Orkney UKCO Limited