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

Case Reference : **MAN/36UG/LDC/2016/0026**

Property : **1 Princess Royal Terrace, Scarborough,
North Yorkshire YO11 2RP**

Applicant : **Fairhold Limited**
Applicant's Representative : **Watson Property Management**

Respondents : **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 : **6 February 2017**

DECISION

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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 replacement of windows in the Property.

REASONS

Background

1. On 17 November 2016 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 Fairhold Limited, the landlord of 1 Princess Royal Terrace, Scarborough, North Yorkshire YO11 2RP (“the Property”). The Respondents to the application are the long leaseholders of the 11 residential apartments within the Property. A list of the Respondents is set out in the Annex to this decision.
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 windows in the Property. It is understood that the works have already been carried out, having been commenced at the end of October 2016.
5. On 21 December 2016 Judge Bennett 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 on behalf of the Applicant. Submissions were also received from one of the Respondents, Mr Brian Brookfield, objecting to the application.
6. The Tribunal did not inspect the Property.

Grounds for the application

7. The Applicant's case is that, having carried out a section 20 consultation exercise in early 2016, and having then embarked upon a scheme of works to replace five defective timber windows with modern double-glazed units and to repair or redecorate the remaining windows, the Applicant was advised by its contractor and surveyor that an additional thirteen windows were in need of replacement (rather than mere repair and redecoration). This became apparent once scaffolding had been erected, facilitating closer inspection. A decision was then taken to proceed with these additional works, without further statutory consultation, because costs savings would ultimately result from a single use of the scaffolding already in place.

Law

8. 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.

9. 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.*

10. "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).

11. 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.

12. 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

13. The consultation 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.
14. In deciding whether to dispense with the consultation requirements in a case where qualifying works have been commenced or completed before the Tribunal makes its determination, the Tribunal must focus on whether the leaseholders were prejudiced by the failure to comply with the consultation requirements. If there is no such prejudice, dispensation should be granted.
15. In the present case, the Applicant argues that no prejudice to the Respondents has resulted from its decision to extend the scope of the works beyond those which were the subject of the statutory consultation. It contends that, whilst the overall cost of the works increased from £40,185 to £50,281, the additional works were necessary and, by having the works carried out as one project rather than two, the leaseholders will ultimately benefit from costs savings.

16. In his submissions opposing the application, however, Mr Brookfield makes the point (which is not disputed) that the consultation requirements were not fully complied with in relation to the additional works. He says that the Applicant (and its managing agent) have always had an agenda to replace all the timber windows within the Property regardless of their condition, and that the works carried out constitute improvements rather than repair. Mr Brookfield also challenges the independence of the surveyor engaged by the Applicant, as well as the Applicant's assertion that no responses had been made to the initial consultation notice (in respect of the original works).
17. It seems to us that the central points which Mr Brookfield has put forward are that the additional works did not need to be carried out and that, to the extent (if any) that they amounted to improvements, the costs concerned are not recoverable under the service charge provisions of the apartment leases. However, it also seems to us that – whilst they might be very relevant to a determination as to whether service charges are payable and/or reasonable – these arguments are not relevant to the issue of dispensation of the consultation requirements. That issue turns on a consideration of whether the leaseholders have suffered any prejudice as a result of the non-compliance with the consultation requirements. Mr Brookfield has not identified any such prejudice (he has not, for example, suggested that full consultation might have resulted in the works being completed at lesser cost). Nor are we able to discern any such prejudice from the facts presented to us. We note that the contractor appointed to carry out the works is said to have submitted the most competitive quotation in response to the original tendering exercise, and we have no doubt that an efficient use of the scaffolding erected at the Property would indeed have resulted in overall costs savings.
18. We therefore conclude that dispensation should be granted. 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. If Mr Brookfield (or any other Respondent) considers that there are grounds for challenging whether service charges are payable and/or reasonable, then he/they may make a separate application to the Tribunal in that regard under section 27A of the Act.

ANNEX

Leaseholder

Mr & Mrs Gray

Ms Mayes

Mrs Postle

Mr Brookfield

Mrs Garbutt

Rev & Mrs Humphries

Mrs Aconley

Mr Shorter

Mr Jeffrey and Ms T Rose

Mrs Lamberton

Mr McNicholas

First-tier Tribunal, Property Chamber Residential Property

GUIDANCE ON APPEAL

- 1) An appeal to the Upper Tribunal against a decision of a First-tier Tribunal (Property Chamber) can be pursued only if **permission to appeal** has been given. Permission must initially be sought from the First-tier Tribunal. If you are refused permission to appeal by the First-tier Tribunal then you may go on to ask for permission from the Upper Tribunal (Lands Chamber).
- 2) An application to the First-Tier Tribunal for permission to appeal must be made **so that it is received by the Tribunal within 28 days after the date on which the Tribunal sends its reasons for the decision.**
- 3) If made after the 28 days, the application for permission may include a request for an extension of time with the reason why it was not made within time. Unless the application is made in time or within granted extended time, the tribunal must reject the application and refuse permission.
- 4) You must apply for the permission **in writing**, and you must:
 - identify the case by giving the address of the property concerned and the Tribunal's reference number;
 - give the name and address of the applicant and any representative;
 - give the name and address of every respondent and any representative
 - identify the decision or the part of the decision that you want to appeal;
 - state the grounds of appeal and state the result that you are seeking;
 - sign and date the application
 - send a copy of the application to the other party/parties and in the application record that this has been done

The tribunal may give permission on limited grounds.

- 5) When the tribunal receives the application for permission, the tribunal will first consider whether to review the decision. In doing so, it will take into account the overriding objective of dealing with cases fairly and justly; but it cannot review the decision unless it is satisfied that a ground of appeal is likely to be successful.
- 6) On a review the tribunal can
 - correct accidental errors in the decision or in a record of the decision;
 - amend the reasons given for the decision;
 - set aside and re-decide the decision or refer the matter to the Upper Tribunal;
 - decide to take no action in relation to the decision.If it decides not to review the decision or, upon review, to take no action, the tribunal will then decide whether to give permission to appeal.

- 7) The Tribunal will give the parties written notification of its decision. **If permission to appeal to the Upper Tribunal (Lands Chamber) is granted**, the applicant's notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within **28 days** of the date on which notice of the grant of permission was sent to the parties.
- 8) **If the application to the Property Chamber for permission to appeal is refused**, an application for permission to appeal may be made to the Upper Tribunal. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which you were sent the refusal of permission by the First-tier Tribunal.
- 9) The tribunal can **suspend the effect of its own decision**. If you want to apply for a stay of the implementation of the whole or part of a decision pending the outcome of an appeal, you must make the application for the stay at the same time as applying for permission to appeal and must include reasons for the stay. You must give notice of the application to stay to the other parties.

These notes are for guidance only. Full details of the relevant procedural provisions are mainly in:

- the Tribunals, Courts and Enforcement Act 2007;
- the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
- The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010.

You can get these from the Property Chamber or Lands Chamber web pages or from the Government's official website for legislation or you can buy them from HMSO.

The Upper Tribunal (Lands Chamber) may be contacted at:

*5th Floor, Rolls Building, 7 Rolls Buildings
Fetter Lane, London WC4A 1NL*

Tel: 0207 612 9710

Goldfax: 0870 761 7751

Email: lands@hmcts.gsi.gov.uk

The Upper Tribunal (Lands Chamber) form (T601 or T602), Explanatory leaflet and information regarding fees can be found on www.justice.gov.uk/tribunals/lands.