



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

**Case Reference** : **MAN/00BR/LDC/2018/0023**

**Property** : **Grey Friar Court  
Bridgewater Street  
Salford  
Manchester  
M3 7LB**

**Applicant** : **Salix Homes Limited**

**Representative** : **N/A**

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

**Representative** : **N/A**

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

**Tribunal Members** : **Judge J Holbrook  
Deputy Regional Valuer N Walsh**

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

**Date of Decision** : **6 November 2018**

**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 refurbishment of the Property's two lifts.**

## REASONS

### Background

1. On 6 July 2018 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 Salix Homes Limited, the landlord of Grey Friars Court, Bridgewater Street, Salford, Manchester M3 7LB ("the Property"). The Property comprises a purpose-built tower block of 88 flats, the majority of which are let on short-term tenancies. However, 11 of the flats are subject to long leases and the Respondents to this application are the respective long-leasehold owners of those 11 flats. 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/refurbishment of the two lifts serving the Property. It is understood that those works have already been carried out at an approximate cost of £315,000.
5. On 8 August 2018, the Tribunal 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. Written submissions and documentary evidence in support of the application were provided by the Applicant. Submissions were also received in opposition to the application from two of the Respondents: Ioannis Gavriel (leaseholder of flat 51); and Julian Roberts (leaseholder of flat 135).
6. The Tribunal did not inspect the Property.

## Law

7. 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.*

8. 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.*

9. “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).

10. 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.*

11. 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.

### **Grounds for the application**

12. The Applicant's case is that the Property's two lifts needed to be replaced/refurbished urgently, and that it was reasonable for this work to be done without first complying with the consultation requirements. The even-numbered floors of the Property are served by one of the lifts and the odd-numbered floors are served by the other. Both lifts date from the 1960s and had been scheduled for replacement between mid-2018 and 2020 anyway (as part of a programme of lift replacements across the Applicant's estate) following compliance with the consultation requirements. However, following the failure (and temporary repair) of the lift serving the even-numbered floors, the Applicant decided to bring forward the works in respect of both lifts, without first complying with the consultation requirements. Those works commenced in February 2018 and were completed in July. They were carried out by Rubax Lifts Limited, with whom the Applicant has subsequently entered into an agreement concerning the remainder of its planned programme of lift replacements. However, we understand that the works to the Property's lifts were the subject of a separate contract.
13. The Applicant asserts that its decision to proceed with the works in this fashion was reasonable given that it was in the interests of the health and safety of the occupiers of the Property. The Applicant relies on the fact that an independent lift survey had recommended that the lifts should be replaced without delay because further short-term repairs were no longer a viable option given the age of the lifts and the fact that critical parts had become obsolete.

### **Grounds for opposing the application**

14. Mr Gavriel's reasons for opposing the grant of dispensation in this case can be summarised as follows:
  - Although the independent lift survey recommended that the lifts should be replaced sooner than would have been possible if the consultation requirements had been complied with in full, it has not been shown that it was actually necessary to take such swift remedial action.

- If the Applicant's original intention had been to replace the lifts in "mid 2018", then it should have begun the consultation process around the beginning of 2018 anyway.
  - Given that one of the two lifts was still functioning, the need to replace it cannot have been so urgent that it was reasonable to proceed without complying with the consultation requirements.
15. Mr Roberts raises the following additional grounds of objection:
- Not only has the Applicant failed to comply with the consultation requirements, but it permitted the lifts to become unserviceable before their planned replacement date. The Applicant failed to take adequate steps to plan for the necessary replacement of the lifts, and this lack of foresight was the reason for the "belated urgency" upon which the current application is based.
  - Whilst the Applicant has advised the Respondents that the estimated costs of the works amount to £315,000, the quote which it previously obtained from Rubax Lifts Limited (on 17 November 2017) costed the works at a lower figure of £262,793. Moreover, as part of its own internal procurement processes, the Applicant had (in October 2017) estimated that the cost of the works would be £200,000. No explanation has been provided for the apparent increase in the cost of the works.
  - If there are rights of recourse against any contractors previously involved in the maintenance of the lifts, these rights should be pursued by the Applicant.
  - Granting dispensation in response to this application would set a worrying precedent for the future, given the Applicant's unsatisfactory management of the Property.

### **Discussion and conclusions**

16. As Mr Roberts points out in his submissions, it is likely that, if the Tribunal dispenses with the consultation requirements in this case, the Applicant will ultimately seek to recover a proportionate part of the costs of the works from the Respondents pursuant to the service charge provisions in their leases. However, it is important to note that it is not the purpose of these proceedings to determine what the ultimate service charge liability of the Respondents would then be. The actual purpose of the proceedings is merely to determine whether the consultation requirements should be dispensed with – and consequently whether the liability of each Respondent to contribute to the costs of the works must in any event be capped at £250 (see paragraphs 8 and 9 above). Thus, although we note the Applicant's request for the Tribunal to provide guidance as to "whether we are able to pass on a fair proportion of the costs to the leaseholders within the

block”, we must decline to do so in the context of the present application. If necessary, any party may make a separate application for a determination of that issue under section 27A of the Act.

17. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord 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.
18. 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.
19. Mr Gavriel and Mr Roberts have raised points which will doubtless merit close consideration in the event that the Tribunal is subsequently asked to quantify service charge liabilities in respect of the works to replace/refurbish the lifts. In particular, the apparent cost overruns referred to in paragraph 15 above would need to be explained by the Applicant. However, for present purposes, the material issue is not whether it was strictly necessary to proceed with the works without complying with the consultation requirements. Nor is it whether the costs incurred in carrying out the works were reasonable, or whether they may be recoverable from a third party. The material issue is, instead, whether the Respondents have been prejudiced by the Applicant’s failure to comply with the consultation requirements. Our conclusion is that no such prejudice has been demonstrated in this case: it has not been shown, for example, that the works would, or could, have been procured more cheaply had those requirements been complied with. Nor has it been argued that any of the Respondents would have nominated an alternative contractor from whom an estimate for the works could have been sought. We therefore conclude that the application must succeed and that dispensation must be granted.
20. Finally, (and by way of emphasis of a point already made), we observe that 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)**

**List of Leaseholders – Grey Friar Court**

- 112 - Mr G Jones
- 135 - Mr J Roberts
- 14 - Mr Metcalfe & Ms Baxter
- 144 - Mr Grebenik & Miss Floria
- 34 - Mr C Taylor
- 41 - Mr I Butterworth
- 43 - Mr Curley
- 51 - Mr I Gavriel
- 62 - Mr Mekonen
- 64 - Mr Sharif
- 95 - Mrs Spence