



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

Case Reference : **MAN/00EQ/LDC/2018/0010**

Property : **Woburn Court, Towers Road, Poynton,
Stockport, Cheshire SK12 1 DF**

Applicant : **Visa Properties Limited**

Representative : **Commerson Estates Management Limited**

Respondents : **Leaseholders of the Properties**

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

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

Date of determination : **17 May 2018**

Date of Decision : **18 May 2018**

DECISION

Application

1. The Visa Properties 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 qualifying works to repair and replace collapsed drains within the existing drainage system at the Property.
2. The Respondents are the individual residential leaseholders of the Property.

Grounds and Submissions

3. The application was received by the Tribunal on 12 March 2018.
4. The Applicant is the Landlord of the Property.
5. On 14 March 2018 Deputy Regional Valuer Walsh made directions in respect of the 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. No request was made.
6. The Property is stated to be a two-storey purpose built residential block comprising of 28 apartments. It was constructed by John Homes in the 1980s and is of standard construction and materials.
7. The Applicant stated in the application form that in "August 2017 collapsed drains [were] identified and reported in the underground drainage network to the front of the building. The cost to rectify this [was] valued at £4,032.00 incl VAT. In mid-December there were reports of sewerage backing up in one of the leaseholder's apartments. The cost of this additional work was quoted at £942.00 incl VAT,.... The blockage was cleared pending repairs. The work commenced on 22 January. However, on excavation, further issues were uncovered.....where the additional value of the works [was] £3,900 incl VAT."
8. While the Applicant undertook some limited initial consultation with leaseholders, this did not meet nor was intended to comply with the statutory consultation requirements. The reason being that the anticipated cost of the work, as initially proposed, was comfortably below the financial threshold limit of £7,000.00 (28 apartments x £250.00 = £7,000.00).
9. The Applicant also supplied minutes of a Residents' meeting on 1 February 2018 which was attended by 14 of the residents. At this meeting the residents agreed to proceed with the works and to apply to the Tribunal for retrospective dispensation, as all present considered this to be the most cost effective option.
10. The Applicant is therefore seeking a retrospective dispensation for the works undertaken and cites the following principal reasons in support of its application:
 - a. The additional works were given approval by the leaseholders.
 - b. It was impractical to comply with the consultation requirements, whilst open excavations restricted access to a large section of the car park, particularly for elderly residents.

- c. It was imperative that the collapsed drains were repaired urgently to avoid potential blockages and raw sewage backing up and emptying within elderly residents' apartments.
- d. It was not cost effective and it would have financially disadvantaged the leaseholders, if the initial works only were completed. It would have incurred unnecessary and additional costs, such as repeated equipment hire and extra labour costs, if following consultation the car park was re-excavated to carry out the necessary additional works.
- e. No prejudice was suffered by the lessees because of the consultation requirements not being complied with.

Law

11. 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".

12. 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.

13. "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).

14. 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".

15. 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.
16. The matter was examined in some detail by the Supreme Court in the case of Daejan Investments Ltd v Benson. In summary the Supreme Court noted the following:
- a. The main question for the Tribunal, when considering how to exercise its jurisdiction in accordance with section 20ZA (1), is real prejudice to the tenants flowing from the Landlord's breach of the consultation requirements.
 - b. The financial consequences to the Landlord of not granting dispensation is not a relevant factor. The nature of the Landlord is not a relevant factor.
 - c. Dispensation should not be refused solely because the Landlord seriously breached, or departed from, the consultation requirements.
 - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - e. The Tribunal has power to impose a condition that the Landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the Landlord's application under section 20ZA (1).
 - f. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
 - g. The more serious and/or deliberate the Landlord's failure, the more readily a tribunal would be likely to accept that the tenants had suffered prejudice.
 - h. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Tribunal's Conclusions with Reasons

17. We considered the Applicant's statement of case and the written evidence accompanying the application. We note submissions have not been received from a Respondent.

Our conclusions are:-

18. It is not necessary for us to consider at this stage the extent of the service charges that would result from these qualifying works and whether payable under the terms of the

Respondents' leases and tenancy agreements. If and when such is demanded, and if disputed, it may properly be the subject of a future application to the Tribunal.

19. In considering whether or not it is reasonable to dispense with the consultation requirements, the Tribunal must consider the prejudice that would be caused to tenants by not undertaking the consultation while balancing this against the risks posed to tenants by not taking swift remedial action. The balance is likely to be tipped in favour of dispensation in a case in which there is or was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation. The prescribed procedures are not intended to act as an impediment when urgent works are required.
20. In the present case, there can be no doubt as to the urgency and pressing nature of the proposed works. This is clearly evidenced by the reports provided by the Applicant detailing the collapsed drains found at the Property. The health and safety risks posed by blocked drains and raw sewage backing up are also detailed. We also note that, whilst the statutory consultation requirements have not been complied with, there has been some consultation with the Respondents having been informed about the proposed works before the work proceeded. The Tribunal therefore has absolutely no hesitation in making an order to dispense with the consultation requirements.
21. In deciding to grant dispensation, we have also had regard to the fact that 14 Respondent leaseholders supported these works being undertaken as a matter of priority, as evidenced by the minutes included within the Applicant's Statement of Case. No one has suggested that these works are not required. No leaseholder has suggested that they will be prejudiced if we grant dispensation. It is therefore not necessary to consider whether dispensation should be granted on terms.
22. We therefore 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).
23. Nothing in this determination or order shall preclude consideration of whether the Applicants may recover by way of service charge from the Respondents any or all of the cost of the qualifying works or the costs of this application, should a reference be received under Section 27A of the Landlord and Tenant Act 1985.

Order

24. The Applicant is dispensed retrospectively from complying with the consultation requirements in respect of the works undertaken as specified in the application.

Deputy Regional Valuer N Walsh
18 May 2018