



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

Case Reference : **MAN/00CG/LDC/2019/0031**

Property : **Little Kelham, Sheffield, S3 8DF**

Applicant : **Little Kelham CIC**

Applicant representative : **Louise Rinder (Wastons)**

Respondents : **Mr Woon & Ms Shutt
Mr Harrison
Mr Halliwell
Ms Hindmarsh
Me Booth & Ms Wells
Ms Whitson**

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

Tribunal Members : **Deputy Regional Judge Bennett
Regional Judge Duffy**

Date of Decision : **02 August 2019**

DECISION

Application

1. Little Kelham CIC 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 works to the power supply and cables at the property.
2. The Respondents are the individual Residential Leaseholders of apartments at the Property.

Grounds and Submissions

3. The application was received by the Tribunal on 11 July 2019.
4. The Applicant is the Management Company a party to the lease of the apartments at the Property.
5. On 16 July 2019 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.
6. The Property is stated to be a a purpose built block comprising 6, 2 bedroom apartments.
7. The Applicant stated in the application form that the work relates a "supply and installation of 95mm 4 core SWA cable 135 meters in length". Further details are given of the works involved.
8. Further information states that because of urgency consultation has not taken place although lease holders are aware of the urgency.
9. The Applicant states that the work is urgent as currently all 6 apartments are without electricity save for the hire a generator at a weekly cost in excess of £1400 and inconvenience of noise and pollution.
10. In accordance with directions the Applicant has provided copy standard Lease, contemporaneous emails, quotation by contractor and a case statement.
11. Responses have been received from Mr Booth and Ms Wells of Apartment 22 and Mr Halliwell of Apartment 18. Both consent to the application but raise queries whether it should be chargeable to leaseholders.
12. Neither the Applicant nor a Respondent requested a hearing.
13. The Tribunal convened without the parties to determine the application on 02 August 2019.

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 has resulted from the work. If disputed when demanded an application may be made to the Tribunal under Section 27 Landlord and Tenant Act 1985.
21. We note that both respondent’s submissions question leaseholders liability for costs of the works, however this is not relevant at this stage as set out above. Further whether they have some other avenue of claim in respect of defective construction is not a matter to be taken into account in this determination.
22. We find from the evidence provided on behalf of both parties that circumstances have arisen in which it is necessary to restore the electricity supply as soon as possible as the alternative temporary generation arrangements involve significant expense and inconvenience.
23. It is clear that the circumstances have the potential to severely impact on the health, safety, utility and comfort of occupiers and visitors to the flats and common parts at the Property.

24. Although formal consultation has not taken place, we are satisfied it is impracticable as it would incur unacceptable delay. The Leaseholders have been informed of the position and we have not identified a specific prejudice to Leaseholders in the circumstances. Comments made are properly the matter for consideration when a service charge is demanded and may be the subject of a determination under Section 27A of the Act.
25. 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.
26. 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

27. The Applicant is dispensed from complying with the consultation requirements in respect of the work specified in the application.

Judge L J Bennett
02 August 2019