



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

Case Reference : **MAN/36UD/LDC/2021/0029**

Property : **Grosvenor Buildings
Crescent Road
Harrogate
HG1 2RT**

Applicant : **Grosvenor Buildings
Management Limited**

Representative : **Watson**

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

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

Tribunal : **Judge J Holbrook**

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

Date of Decision : **24 August 2021**

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 remove and replace the balcony covering to apartment 8.

REASONS

Background

1. On 19 May 2021, 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 in respect of Grosvenor Buildings, Crescent Road, Harrogate HG1 2RT (“the Property”). It was made by the management company which is a party to the residential long leases of parts of the Property.
3. The Respondents to the application are listed in the Annex to this decision. They are the leaseholders of the 34 residential apartments which comprise the Property.
4. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
5. The works in respect of which a dispensation is sought concern urgent works to rectify defects to the balcony covering to apartment 8. The anticipated cost of those works is £15,216.
6. Each of the Respondents has been given notice of the application and has been sent a copy of the Applicant’s supporting evidence. None of the Respondents has submitted a response to the application and I have determined this matter following a consideration of the Applicant’s case, but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the Applicant has given its consent and the Respondents have not objected. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing: although the Respondents are not legally represented, the application is unopposed and the issues to be decided are readily apparent.

7. I did not inspect the Property, but I understand it to comprise an 18th Century stone-built building in Harrogate town centre which has been converted into 34 residential apartments and commercial units on the ground floor.

Grounds for the application

8. The Applicant's case is that, following investigations into water ingress within one of the apartments, it became apparent that the water ingress was being caused by the balcony roof which is above the apartment, the covering had come to the end of its life and water was penetrating into the below apartment. Remedial works are considered urgent because the resulting leak saturates the timber deck below the fibreglass finish before dripping onto the timber floor structure and then into the apartment below. This detail also prevents evaporation causing the timber to dry out very slowly when the weather is dry. Due to the moisture content of the timber and the inability to dry there is a real risk of fungal decay to the balcony and floor structure and so it is important that works are delayed no longer in order to prevent additional structural works to the Property.

Law

9. 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.

10. 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.*

11. "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).

12. 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.

13. 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

14. 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.
15. 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.

16. I am satisfied 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 water ingress to the Property and also to avoid the possibility of further damage and additional costly repairs. I 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.
17. The fact that I have granted dispensation from the consultation requirements should not be taken as an indication that I consider that the amount of any anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. I make no findings in that regard.

Signed: J W Holbrook
Judge of the First-tier Tribunal
Date: 24 August 2021

ANNEX

LIST OF RESPONDENTS

Ms E J Parkinson
Mr W J D Morrison
Mr D V & Mrs E M Dockray
Ms S L Pugh
Mr C G & Mrs S M Leman
Mr S A & Mrs P R Robertson
Ms P M Simpson
Mr & Mrs Woods
Mr S & Mrs D E Stocks
Ms A E Wall & Mrs S L Dalglish
Mrs E E Vere-Stevens
Mr N J & Mrs S E A Farnell
Mr N J Moody
Mr A R & Mrs D A Parker
Dr A E Middlemass
Ms A K Bowles
Mr D & Mrs L Huckerby
Miss L K Williams
GC Acquisitions Limited
Mr C B Wall & Mrs S E Wall
Mr S & Mrs V Braithwaite
Mr & Mrs A Bradwell
Miss D E Gibson
Mr K Farooq
Mr J M Smith
Mr A & Mrs E H Whitfield
Mr & Mrs N Brown
Mrs C E Wray
Mr J A Radcliffe & Ms N G N Carey