



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

Case Reference(s) : **MAN/30UF/LDC/2021/0057**

Property : **The Mount Apartments, Mount Road, Fleetwood,
Lancashire FY7 6RA**

Applicant : **The Mount Executive Company Limited**

**Applicant's
Representative** : **Homestead CSL**

Respondents : **See Annex A**

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

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member N Swain**

Date of Decision : **28 March 2022**

DECISION

Order

1. The Tribunal determines that it is satisfied that it is reasonable in the circumstances to grant dispensation to the Applicant from the consultation requirements under s20 of the Landlord and Tenant Act 1985 in relation to the repairs carried out to the lifts at the Property.

Background

2. By an application dated 9 September 2021, (“the Application”), the Applicant, The Mount Executive Co. Limited, applied to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985, (“the 1985 Act”), for dispensation from the consultation requirements of Section 20 of the 1985 Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987), (“the Regulations”), in respect of repairs carried out to the two lifts at the Property.
3. The Respondents are the individual residential leaseholders of apartments at the Properties.
4. Directions dated 4 February 2022 were issued to the parties, in response to which the Applicant submitted evidence including, without limitation, the Application, a sample lease, (“the Lease”), and the quotes obtained by it for the cost of the repairs.
5. No submissions have been made by any of the Respondents.
6. The directions provided 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 for a hearing of the Application was received from any of the parties.
7. A paper determination of the Application was made on Thursday 24 March 2022.

Evidence

8. The Applicant has responsibility for the management of the Property in accordance with the Lease.
9. As described by the Applicant in the Application, the Property is a 1990 conversion of a building, originally constructed as an hotel in 1896, into 2 blocks comprising a total of 15 apartments over 5 storeys. The ground floor and basement remain in use as a public house.
10. Each of the blocks has a separate entrance and stairwell and its own lift.

11. The Applicant states in the Application that:
 - 11.1 both of the lifts failed within a couple of days of each other because of the same fault;
 - 11.2 within the residents of the apartments are elderly and/or disabled people who are unable to leave their apartments when the lift is not working;
 - 11.3 quotes for the repairs were sought by the Applicant from the same company that services and maintains the lifts;
 - 11.4 it was necessary to raise monies to pay for the lift repairs from the leaseholders by raising a surcharge; to undertake a consultation process would have further extended the period before which the repairs could be undertaken.
12. Copies of the 2 quotes dated 7 September 2022 of H Breakell & Co (Blackburn) Ltd each for £10,800 (excluding VAT) were submitted by the Applicant.
13. The Applicant states that the work was urgent because of the inability of certain residents to leave their apartments as long as the lifts remained out of use.

Law

14. Section 18 of the 1985 Act defines “service charge” and “relevant costs”.
15. Section 19 of the 1985 Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
16. Section 20 of the 1985 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 Tribunal

This 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 Regulations. As “...an amount which results in the relevant contribution of any tenant being more than £250”.

18. Section 20ZA(1) of the 1985 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."

Reasons

19. The Tribunal considered the written evidence together with the Application and concluded that it was reasonable, in the circumstances, for the Applicant to have sought to effect the repairs to the lifts at the earliest possible date. In particular, the Tribunal was persuaded that there was an urgency to effect repairs in circumstances where, as stated by the Applicant, the non-functioning of the lifts significantly impacted the lives of residents who were, in some cases, unable to leave their apartments.
20. Although formal consultation has not taken place, the Tribunal noted that, in the Application, the leaseholders were informed of the repairs needed and of the quotations obtained for those repairs.
21. The Tribunal did not identify a specific prejudice to the leaseholders by reason of the Applicant's failure to undertake a consultation in accordance with s20 of the 1985 Act.
22. For these reasons, the Tribunal concluded that, in accordance with Section 20ZA(1) of the 1985 Act, it is reasonable to dispense with the consultation requirements as set out in s20 of the 1985 Act and in the Regulations.
23. Nothing in this determination 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 an application be received under Section 27A of the 1985 Act. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable.

Tribunal Judge C Wood

28 March 2022

Mr & Mrs Riley
Greene King plc
Mr C Marcus-Cromwell & Mrs C Michaels
Mr L Anyon
Mr B B Tomlinson
Mr & Mrs Smith
Mr B Williams
Mr A Lowe
Mr & Mrs A Mizon
The Estate of Mrs PC Bee
Mrs B Tommons
Mrs H Burton
Mr & Mrs A Williams
Mr D Bonney