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

Case Reference : **MAN/00BN/LDC/2016/0006**

Property : **Oxford Place
7 Oxford Road
Manchester
M1 6EY**

Applicant : **Oxplace Management Company Limited**

Representative : **Revolution Property Management Limited**

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

Representative : **N/A**

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

Tribunal Members : **Regional Judge S Duffy**

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

Date of Decision : **17 March 2016**

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 replacement of the Property's sole lift.

REASONS

Background

1. On 22 February 2016 the First-tier Tribunal (Property Chamber) ("the Tribunal") received an application ("the application") made 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 is made in respect of Oxford Place, 7 Oxford Road Manchester M1 6EY ("the Property") and was made on behalf of the management company Oxplace Property Management Limited by its agent Revolution Property Management Limited.
3. The Respondents to the application (listed in the Annex hereto) are the long leaseholders of the 39 residential flats within the Property.
4. The sole issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements of section 20 of the Act.
5. On 23 February 2016 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.
6. Written submissions and documentary evidence in support of the application were provided by Mr Anand. No submissions were received from the other Respondents.
7. The Tribunal did not inspect the Property.

Grounds for the application

8. The works for which a dispensation is sought concern the urgent replacement of the single lift to the Property. In a brief statement dated 1 March 2016, lodged with the Tribunal on 3 March 2016 and copied to the Respondents, Mr Anand of Revolution Property Management Limited describes those works in the following terms:

“Lift engineers have advised that the DC generator is arcing on the current lift installation. The purpose of the equipment is to convert the AC current from the power supply into DC in order to drive the lift motor which in turn move the lift up and down the building on all the floors

This part is an original part of the lift which, due to the age of the equipment became obsolete many years ago. As a result, the parts are no longer available for this lift. Also the communicator which is a copper cylinder inside the generator is damaged. Photos of the equipment are attached.

Due to the combined age of the lifts and its components, as this is the original lift when the building was converted into apartments 25+ years ago, it is no longer viable to repair the lift and the only option we have is that a replacement is required. We have received quotes from differing contractors, Orona being the cheapest at £5,000 + VAT.”

9. Mr Anand asserts that dispensation from the consultation requirements is sought as:

“...the building is not compliant with the Disability Discrimination Act and residents and visitors have to climb up numerous sets of stairs to access their apartments.

As a full section 20 consultation process usually takes three months, if we were to follow this procedure, it would mean that we could not place an order for the new lift until 01.06.2016, there is a current lead time of around 3 months for the lift to be manufactured and installed, this would mean that the lift would not be operational until around early September 2016. We have applied for special dispensation as we believe that we need to reduce the downtime of not having a lift as much as we can in order for the residents to be able to use it again and we have obtained two detailed quotes and wish to proceed with the cheaper of the two”

Law

10. The relevant law relating to this application is to be found in sections 18-20 of the Act and the Regulations.
11. The term “Service charge” is defined by Section 18 of the Act and that section also defines “relevant costs” as being:
- 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 provides a limitation on the amount of any relevant costs which may be included in a service charge and limits the relevant costs to those which are reasonably incurred.
13. Section 20(1) of the Act states:

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.*

“Qualifying works” are defined by section 20ZA(2) of the Act as being works on a building or any other premises and section 20 applies to qualifying works if relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (see 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. However, in summary the Regulations require a landlord (or management company, as is appropriate in this case) to:

- (i) 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;
- (ii) 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;
- (iii) Make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
- (iv) 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

16. The issue before this Tribunal is whether it is reasonable for the lift replacement works to commence without the Applicant first complying with the consultation requirements.
17. The consultation requirements were introduced in order to provide a degree of transparency and accountability when a landlord (or manager) decides to undertake qualifying works – the idea of the requirements was to provide a statutory mechanism that ensures that all leaseholders are given notice of, and are given the chance to comment upon, possible decisions on major works prior those decisions and subsequent works being implemented. In all cases the consultation requirements should be complied with unless, that is, there are good reasons for dispensing with all or any of them.
18. In order to dispense with the consultation requirements, there must to be a good reason why the works cannot be delayed to allow for compliance with the requirements. It is for the Tribunal to weigh the balance of prejudice considering, on the one hand, the need for swift remedial action to ensure that the Property is able to function properly whilst also considering the legitimate interests of the leaseholders in being properly consulted before major works begin. The Tribunal must consider whether this balance favours permitting the works to be undertaken immediately (without consultation in accordance with statute), or whether it favours compliance with statute and consultation in the usual way (with the inevitable delays to the works which the consultation process will cause). However, the balance is likely to be swayed in favour of dispensation where there is an urgent need for remedial action, or where all the leaseholders consent to the grant of a dispensation.
19. In this case the lift is the single lift to the property, compliance with the consultation requirements will, as Mr Anan suggests, cause a delay which will mean that leaseholders and visitors would need to use the stairs to reach their flats. It is obvious from what Mr Anand says that delay would either impede or possibly restrict disabled access.
20. By the time the Tribunal sat to consider this application there had been extensive consultation about what needed to be done. It appears that some (if not all) the stages of the consultation process listed in paragraph 15(i)-(iv) above were complied with. Two potential contractors had been identified and quotations had been obtained for the replacement of the lift and no representations have been received by the Tribunal from the leaseholders.
21. In the circumstances, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements. However, this should not be taken as an indication that the Tribunal considers 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. The Tribunal makes no findings in that regard.

ANNEX

List of Respondents

Leaseholder	Apartment
Mr M Benjamin	Commercial Unit
Mr P Allen & Mr P Goves	Apartment 1
Mr P Allen	Apartment 2
Mr J Carr	Apartment 3
Mr E Isikdogan	Apartment 4
Mr & Mrs P George	Apartment 5
Mr J Daou	Apartment 6
Mr M Rosenbaum	Apartment 7
Mr & Mrs M Turkozu	Apartment 8
Mr J Turner	Apartment 9
Ms A Caramitsos	Apartment 10
Mr N Neal	Apartment 11
Mr N Garrity	Apartment 12
Mr R Moyle & Ms J Scott-Russell	Apartment 13
Mr S Li & Mr Q Shi	Apartment 14
Mr & Mrs Christie	Apartment 15
Mr R Moyle & Ms J Scott-Russell	Apartment 16
Dr J Barnard	Apartment 17
Mr S Kayali	Apartment 18
Mr Sardar	Apartment 19
Ms A Salter	Apartment 20
Mr & Mrs P Keeler	Apartment 21
Mr S Mather	Apartment 22
Ms S Ali	Apartment 23
Mr & Mrs M Chappell	Apartment 24
Mr J Swinden	Apartment 25
Dr D Musitelli	Apartment 26
Mr D Jones	Apartment 27
Mr R Hosseini	Apartment 28
Dr Mohammed & Messrs Hosseini & Ghazanfari	Apartment 29
Mr & Mrs P Millican	Apartment 30
Mr & Mrs M Turkozu	Apartment 31
Ms N Gupta	Apartment 32
Mr S Redden	Apartment 33
Mr L Morris & Mr R Ngoc	Apartment 34
Mr B Papazoglakis	Apartment 35
Mr R Jones	Apartment 36
Mr A Hopcroft	Apartment 37
Ms S Kreitzman	Apartment 38
Mr J Riddell	Apartment 39
Mr D Purser	Apartment 40