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

Case Reference : **MAN/OOCX/LDC/2016/0018**

Property : **Woodcote Fold and Watermill Court Whittle Woods, Oakworth Keighley BD22 0QG**

Applicant : **Mr. Andrew Egerton**

Respondent : **The Leaseholders of the Property (see annex attached)** 16 lessees responded to indicate that they consented to the application.

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

Tribunal Members : **Judge John Murray
Judge Jonathan Holbrook**

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

Date of Decision : **14 October 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 to repair the Property's sewage treatment plant.

REASONS

Background

1. On 12 September 2016 Mr. Andrew Egerton made an application to the Tribunal for dispensation under section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹. Those requirements ("the consultation requirements") are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations").
2. The application relates to Woodcote Fold and Watermill Court ("the Property") and was made by Mr. Egerton, who is the appointed Manager of the Property pursuant to a Tribunal Order dated 12 May 2016.
3. The Respondents to the application (listed in the Annex hereto) are the long leaseholders of the 49 dwellings which comprise the Property.
4. On 19 September 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 in the week commencing 10 October 2016. 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. The Tribunal did not inspect the Property.
5. Mr. Egerton filed a statement and documentation in support of the application. He provided evidence that he had attached copies of the directions to the communal entrances.
6. Mr. Neil Cullen, who is a lessee of ten properties objected to the application and provided written submissions. No submissions were received from the other Respondents.
7. 16 lessees responded to indicate that they consented to the application.

¹ See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987)

8. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements in relation to works proposed to the Sewage Treatment Plant, which serves the Property.

Grounds for the application

9. The Applicant's case is that substantial rebuild and repair works need to be carried out to the Sewage Treatment Plant urgently to prevent the risk of contamination of the river into which it discharges. Mr. Egerton said in his statement that a contractor, MSL Pumps Ltd had assessed the Treatment Plant and found it not fit for purpose for a number of reasons, and there was very real and immediate risks of contamination, health and safety issues, non compliance with the Environment Agency's permit, and a fine. A quote for the works considered necessary in the sum of £67430 plus VAT had been provided by MSL.
10. Mr. Egerton said that the Plant could not be put back together piece meal, as it had to be fully operational. The alternative to carrying out the work was to Tanker the waste away at a cost of £1100 plus VAT every four to five days.
11. Minutes of a consultation meeting held on 5 September 2016 were provided to the Tribunal -all lessees had had an opportunity to attend the meeting, and were sent a copy of the minutes in the week following. The discussion with those in attendance about the problems with the Sewage Treatment Plant was comprehensive, and outlined the health and safety risks.
12. Mr. Cullen submitted comments for the meeting, which he provided to the Tribunal as his submissions. In relation to the Sewage Treatment Plant he suggested it could be upgraded at a cost of £25,000. He said that the pumping station was operational and any upgrade could have waited.

Law

10. 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.

11. 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.*

12. “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).

13. 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.

14. 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

15. 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 manager) 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.

16. 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 (and, in this case, the wider environment) 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.
17. In the present case, it is clear that there is a genuine need for urgent action in order that the sewage treatment plant can be brought back into operation, ensuring that the environment adjacent to the Property remains uncontaminated by effluent from the Property. There is an ongoing major expense of emptying the treatment plant by tanker, and a major risk of a large fine by the Environment Agency if the treatment plant does not comply with the terms of their licence. There has been good communication with residents, and only one lessee objects to the application. We have no hesitation in finding that the balance of prejudice favours permitting the works to proceed without delay.
18. In reaching this conclusion we have taken full account of Mr. Cullen's representations.
19. Whilst Mr. Cullen may have valid concerns as to the costs/necessity of the works, which will need to be addressed as between the parties in due course, they are not considerations which should cause the Tribunal to refuse to grant dispensation in the present circumstances. This is because the fact that the Tribunal has granted dispensation from the consultation requirements does not prevent any of these matters being raised in subsequent proceedings. Indeed, the fact that we have granted a dispensation should not in any way be taken as an indication that we consider 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. We make no findings in that regard.

ANNEX

Respondents

Mr Cullen
Mr & Mrs Rothera
Mr Proietti-Tocca
Ms Nikacevic
Mr & Mrs Craven
Mesdames Watson
Mr & Mrs Adams
Ms Curley
Mrs Hey
Mr O'Keefe
Mr Anderson
Mr Walkenden
Mr Pluck
Mr Butterfield & Ms McQuaid
Mr Tilburn
Mr & Mrs Butcher
Mr & Mrs Cotton
Ms Winship
Mr Kew
Ms Blackburn
Ms Pearce
Mr Smith
Ms Smithies & Ms Webster
Mr Eddison & Ms Collins
Ms Cavalli
Mrs Swaine
Mr & Mrs Butcher
Mr Singleton & Ms White
Mr Senior & Ms Senior
Ms H M Harwood
Mr Sissling Ms Sissling
Ms L J Brett
Mr & Mrs Hutchinson
Mr T Neale
Mr Naqavi
Mr Varley
Ms Stow
Mr Wierbianski
Ms Thomas
Mr & Mrs Smith
Mr & Mrs Allack
Mr & Mrs Shemwood
Mr & Mrs Grange
Mrs O'Hara
Ms Staveley
Mr Jennings & Ms Simpson
Mr & Mrs Shelley
Mr Renton
Ms Gillatt

Interest

Various
3 Water Mill Court
1 Water Mill Court
4 Water Mill Court
5 Water Mill Court
6 Watermill Court
7 Water Mill Court
8 Watermill Court
9 Water Mill Court
11 Water Mill Court
6 Woodcote Fold
8 Woodcote Fold
10 Woodcote Fold
12 Woodcote Fold
14 Woodcote Fold
16 Woodcote Fold
18 Woodcote Fold
20 Woodcote Fold
22 Woodcote Fold
24 Woodcote Fold
26 Woodcote Fold
28 Woodcote Fold
30 Woodcote Fold
32 Woodcote Fold
34 Woodcote Fold
36 Woodcote Fold
40 Woodcote Fold
42 Woodcote Fold
44 Woodcote Fold
48 Woodcote Fold
50 Woodcote Fold
Flat 2 in 1 Woodcote Fold
Flat 2 in 3 Woodcote Fold
3/3 Woodcote Fold
Flat 2 in 5 Woodcote Fold
Flat 3 in 5 Woodcote Fold
Flat A in 32 The Rag Mill
Flat B in 32 The Rag Mill
Flat C in 32 The Rag Mill
I Pump House Cottage Lower Holme Way
10 (Cottage) Goose Eye
11 Cranberry Cottage Goose Eye (Road)
16 (Cottage) Goose Eye (Road)
22 (Cottage) Goose Eye (Road)
15 Old Mill Cottage Goose Eye (Road)
9 Sandy Bank Goose Eye (Road)
The Turkey Inn Goose Eye (Road)
30 The Rag Mill
34 The Rag Mill