

11443



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

Case Reference : **MAN/30UP/LDC/2016/0010**

Property : **112, 116, 118 & 120 Inskip
Birch Green
Skelmersdale
Lancashire
WN8 6JU**

Applicant : **West Lancashire Borough Council**

Respondents : **The leaseholders of 116, 118, 120 &
122 Inskip
(See Annex)**

Representative : **N/A**

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

Tribunal Members : **Judge S Duffy**

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

Date of Decision : **27 May 2016**

DECISION

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Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in respect of the replacement of the communal entrance doors to the property (both front and rear) and associated works as set out in the estimate from Entrotec Limited dated 7 April 2016.

REASONS

Background

1. On 19 April 2016 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 relates to 116, 118, 120 and 122 Inskip, Birch Green, Skelmersdale, Lancashire WN8 6JU (“the Property”) and was made by Ms Farzana Valli of the Applicant council’s Directorate of Housing and Inclusion Services.
3. The Respondents to the application (listed in the Annex hereto) are the long leaseholders of the 4 residential flats within 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 replacement of the communal doors to the front and rear of the Property. In the application Ms Valli explains the reasons for, and nature of, the works in the following terms:

“The communal doors both front and rear at present are in need of replacement as they are beyond repair and have become obsolete. The current security doors are not secure and do not have a lock system that is in working condition. The integrated door entry system is not in working order and anyone can enter the property thus potentially comprising the safety and security of the leaseholders.”
6. On 11 May 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.

7. Written submissions and documentary evidence in support of the application were provided by Ms Valli. No submissions were received from the Respondents.

Grounds for the application

8. Ms Valli has lodged a witness statement and annexures with the Applicant's bundle. The witness statement provides more detail as to the reasons for the application and a history of the repairs to the doors. It transpires from the repair history that, over the last three years, the doors have required repairs on numerous occasions. From the content of the rest of the witness statement it is clear that when the doors are unlocked the security of the block is compromised and that the leaseholders then suffer from the antisocial behaviour of unwanted visitors.
9. Ms Valli submits that following the usual section 20 ZA procedure would add at least 3 months onto the replacement programme and that there has actually been some degree of consultation in respect of the possible colours of the replacement doors.
10. Appended to Ms Valli's witness statement is an estimate from of Entrotec Limited dated 7 April 2016 estimating the cost of replacement in the sum of £11,825.35. The proposed replacement works include supplying and fitting replacement front and rear security doors and the provision of associated equipment.

Law

11. 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.

12. 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.*

13. "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).

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. 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

16. The Tribunal must decide whether it is reasonable for the works to proceed 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.

17. 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 such as this in which there is an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.
18. In the present case there is a good reason why the works cannot be delayed as the doors are apparently unrepairable and they now compromise the security of the leaseholders. The Tribunal also notes that the leaseholders have had the opportunity to make submissions in respect of this this application but have chosen not to make any.
19. Accordingly, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements in respect of the replacement of the communal entrance doors to the property (both front and rear) and associated works as set out in the estimate from Entrotec Limited dated 7 April 2016. However, it is important for all of the parties to note that this dispensation 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.

JUDGE S. J. DUFFY

ANNEX

List of Respondents (as provided by the Applicant)

| | |
|----------------------|------------|
| Mr Adrian McElhinney | 116 Inskip |
| Mr Brogan | 118 Inskip |
| S Blain & G Dobson | 120 Inskip |
| R Home | 122 Inskip |