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

Case Reference : **MAN/00BN/LDC/2017/0017**

Property : **Compass Point
1 Pocklington Drive
Manchester
M23 1ED**

Applicant : **Compass Point Building
RTM Company Limited**

Representative : **Clear Building Management Ltd**

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

Representative : **N/A**

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

Tribunal Members : **Judge J Holbrook
Judge S Duffy**

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

Date of Decision : **22 August 2017**

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 remedy structural defects which have resulted in distortion of window frames and balcony door frames and ingress of water to the apartments in the Property.

REASONS

Background

1. On 21 July 2017, 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 on behalf of Compass Point Building RTM Company Limited, which has acquired the right to manage the building known as Compass Point, 1 Pocklington Drive, Manchester M23 1ED (“the Property”). The Property is a purpose built residential development of 52 apartments, constructed in 2007. The Respondents to the application are the long leaseholders of those apartments. A list of the Respondents is set out in the Annex hereto.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. Dispensation is sought in relation to urgent works to remedy structural defects in the Property which are attributable to differential movement between the timber structure and masonry cladding of the building and excessive shrinkage to the timber structure.
5. On 27 July 2017, 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. Although one Respondent (Mr Wynn Davies, leaseholder of apartment 4) initially objected to the application being determined without a hearing, that objection was subsequently withdrawn. No other objections were received and the Tribunal therefore convened on the date of this decision to consider the application in the absence of the parties.
6. In response to directions, the Applicant’s representative provided written submissions and documentary evidence in support of the application. Copies of these were provided to each Respondent. The

only comments in response were received from Mr Wynn Davies. As noted at paragraph 20 below, however, it is not entirely clear whether Mr Wynn Davies opposes the application.

7. The Tribunal did not inspect the Property.

Grounds for the application

8. The Applicant has produced a copy of a surveyor's report identifying the defects described at paragraph 4 above. The report goes on to state that those defects have resulted in distortion of window and external balcony door frames; dropped window cills both internally and externally; water and moisture ingress to exposed openings where seals have failed; and exposure of the internal structure of the Property to the natural elements.
9. Fortunately, it appears that the Applicant has the benefit of a building defects guarantee insurance policy which covers these defects. A claim has been made under the policy and, indeed, contractors have been selected to carry out remedial works following a tendering exercise undertaken by loss adjusters appointed by the insurance company.
10. Work cannot begin until the excess payable under the insurance policy has been paid by the Applicant. We understand that the amount of that excess is £60,277.36. Effectively, therefore, this will be the cost to the Applicant of carrying out the remedial works. The Applicant proposes to recover that cost from the Respondents by means of service charges under the leases of the apartments and it is for this reason that the Applicant now seeks dispensation from the consultation requirements.
11. The Applicant contends that it is appropriate to dispense with the consultation requirements in these circumstances. It also argues that dispensation is appropriate so that the works can be completed before the onset of winter. One apartment has been particularly badly affected by the defects, which have resulted in constant puddles in its living room and bedrooms.

Law

12. 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.

13. 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.

14. “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).

15. 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.

16. 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

17. 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.

18. 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 occupiers of the Property are not placed at undue risk or inconvenience 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).
19. In the present case, we have no hesitation in finding that the balance of prejudice favours permitting the works in question to proceed without delay. Not only is it clearly appropriate for the inconvenience currently being suffered by residents of the apartments to be dealt with as soon as possible, but it is also clear that compliance with the consultation requirements would serve no useful purpose in these particular circumstances. This is because the choice of contractor to carry out the works is ultimately a matter for the insurance company and its loss adjusters, not for the Applicant. The cost of the works is also being borne by the insurer (subject, of course, to payment of the excess).
20. In deciding to grant dispensation, we have taken account of comments made by Mr Wynn Davies. He stated that one of the directors of the Applicant's managing agents has "a documented history of liquidating companies". Even if it is correct, the relevance of this remark to the present proceedings is not immediately obvious. The RTM company has applied for dispensation so that it can pay the excess on the building defects insurance policy and, for the reasons stated, it is appropriate for the application to be granted.
21. Nevertheless, the fact that the Tribunal has granted dispensation from the consultation requirements should not 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

List of Respondents

Name	Property
Mr J McHugh	Flat 1
Mr F Walker	Flat 2
Mr J M Kimilu	Flat 3
Mr & Mrs R Davies	Flat 4
Ms J Chapman & Mr G Thompson	Flat 5
Dr M Faheem & Dr G Khan	Flat 6
Mr & Mrs R Dale	Flat 7
Mr & Mrs Y Dharashivkar	Flat 8
Mr & Mrs P Loizou	Flat 9
Mr T Jones & Ms E McIntyre	Flat 10
Ms L Foden	Flat 11
Mr L Toreveli	Flat 12
Mr R Chin	Flat 13
Mr N Briggs	Flat 14
Mr J Thompson	Flat 15
Mr J R Gray	Flat 16
Ms A W Tang	Flat 17
Mr G Tuozzo & Ms D Mathieson	Flats 18, 34 and 52
Ms M Moore	Flats 19 and 26
Mr I Shaikh	Flat 20
Mr P Dogra	Flat 21
Mr & Mrs C Mensah	Flat 22
Mr A Bahadori	Flat 23
Mr G Perano	Flat 24
Ms F M Tuozzo	Flat 25
Ms J Davies	Flat 27
Mr S Yasin & Mr G Sohaib	Flat 28
Mr A Jackson	Flat 29
Mr M Bialy	Flat 30
Mr & Mrs P Hill	Flat 31
Mr J Woolfstein	Flat 32
Ms L Worrall	Flat 33
Mr A Yaseen & Mrs Al-Qysi	Flat 35
Mr J E Doherty	Flat 36

Ms S Murathodzic	Flat 37
Mr & Mrs A Hall	Flat 38
Mr & Mrs A Sanderson	Flat 39
Sri Laksmi Property Investments Ltd	Flats 40, 43 and 46
Mr H Sidhu	Flat 41
Miss L Atkinson	Flat 42
Mr W Wilkinson & Ms R Morgan	Flat 44
Mr A Thomas	Flat 45
Sr A Abdelmuniem & Mr I Elfadel	Flat 47
Mr J Tharcismani	Flat 48
Ms J Hurd	Flat 49
Mr J Evans & Mr A Kwaniewski	Flat 50
Mr & Mrs N Rogers	Flat 51