

12498



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

Case Reference : **MAN/00CH/LDC/2017/0012**

Property : **Willerby Court, Regent Court, Ripley Court, Stretford Court, Acomb Court, Bedale Court and Barford Court, which collectively comprise the Harlow Green Estate, NE9 7JF.**

Applicant : **The Borough Council of Gateshead**

Representative : **Mr Roddy Currie**

Respondents : **Various long leaseholders (see Annex)**

Representative : **N/A**

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

Tribunal Members : **Deputy Regional Valuer N. Walsh
Judge S. Duffy**

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

Date of Decision : **17 November 2017**

DECISION

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DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the following works:

- 1. the installation of new rooves and new windows for all blocks;**
- 2. a new façade at Regent court; and**
- 3. the installation of a district energy scheme to provide (a) heating and hot water to all blocks and (b) electricity to Barford Court and Stretford Court.**

No further Orders or determinations are made.

REASONS

Background

1. On 3 July 2017, an application dated 16 June 2017 was received by 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 the Borough Council of Gateshead, who is the freeholder of Willerby Court, Regent Court, Ripley Court, Stretford Court, Acomb Court, Bedale Court and Barford Court, which collectively comprise the Harlow Green Estate (“the Property”). The Applicant is the current landlord to the long leaseholders of the 66 flats acquired originally through the Right to Buy provisions of the 1985 Housing Act. The Respondents to the application are the long leaseholders of those flats. A list of the Respondents is set out in the Annex hereto.
3. The Property comprises of seven high rise blocks of flats providing in total 621 flats.
4. The principle issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements. The Applicant has also sought a number of additional determinations and declarations, which the Tribunal will consider, if necessary, having decided the principle issue before this Tribunal. **This application does not concern the issue of whether any service charge**

costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of section 27A of the Act.

5. The Applicant was scheduled to commence works in August 2017 with an estimated completion date in Autumn 2018. The Tribunal has not received any further updates as to the progress of the proposed works and presumes that the works are progressing as planned. These works relate to works of repair and improvement to the Property and include:
 - 5.1 the installation of new rooves and new windows for all blocks;
 - 5.2 a new façade at Regent court; and
 - 5.3 the installation of a district energy scheme to provide (a) heating and hot water to all blocks and (b) electricity to Barford Court and Stretford Court.
6. The Council placed a contract for the Works under the Framework Agreement for national Major Works dated 8 May 2013, made between Scape System Build Limited (which the Council is a significant shareholder in together with 5 other local authorities) and Willmott Dixon Capital Works Limited. The Framework Agreement which is available for use by any public body in the UK, was made in accordance with the European Union Procurement Directives. By securing a contractor through the Framework Agreement, the Council secured a significant contribution, 50 percent, towards the cost of the district energy scheme from the European Regional Development Fund (ERDF).
7. Willmott Dixon scored highest out of the 9 construction companies who responded to the Pre-Qualification Questionnaire for the award of the Framework Agreement. It then scored highest out the six tenders received on both price and quality, which were equally weighted. The Council therefore asserts that the contractor chosen has the skills, experience and resources to deliver a high quality and competitively priced refurbishment of the Property.
8. The Applicant Council is seeking to recover the proportionate costs of these works, after deducting the ERDF grant funding. The cost estimates are described by the Applicant as being for “illustrative purposes only”, so the Tribunal is unable to rely on the accuracy of these estimates. Given that the contract was signed on 4 May the Tribunal would hope that these estimates are more than illustrative and in fact closer to at least indicative costings, while accepting that they nevertheless remain estimates. The estimated cost per flat for the works in all the blocks, excluding Regent Court, is just less than £12,750.
9. Regent Court, excluding its contribution towards the district energy scheme, has an estimated cost per flat of just under £24,500, which presumably reflects the significantly higher costs associated with the

proposed works to its external façade. The Applicant's Statement of Case confirms that the district energy scheme applies to all blocks and outlines in Table 2 a total cost for the district energy scheme of £2,154,778 in respect of Regent Court. Despite this the remainder of the cost column below this in Table 2 is showing £0. The Tribunal can only assume that this is an error and the additional cost will be applied to the respective long leaseholders within Regent Court in respect of the new district energy system. The result being that the total cost per flat in Regent Court will significantly exceed the estimate of c.£24,500 per flat.

10. On 19 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. No such notification was received and the Tribunal therefore convened on the date of this decision to consider the application in the absence of the parties. In response to directions, the Applicant's representative provided written submissions and documentary evidence in support of the application on 15 August 2017. Copies of these together with the Tribunal's directions were provided to each Respondent. The Tribunal received 15 replies to its directions from qualifying participating Respondents. 4 of which supported the application, 10 opposed it and 1 neither supported or opposed the application but instead called for further communication and explanation from the Applicant.
11. The Tribunal did not inspect the Property.

Grounds for the application

12. The Applicant is of the opinion that the existing heating system, the windows, rooves and the façade to Regent Court are all nearing the end of their useful lives. The Council is concerned for the safety of the building and its occupants, and so believes these works of repair and improvement are appropriate now to ensure a safe and comfortable living environment for all the residents; including the long leaseholders.
13. The Applicant feels that it is unable, because of the particular set of circumstances in this case, to fully meet the consultation requirements of the Service Charges Regulations 2003. The council has proceeded on the basis that the consultation requirements set out in Schedule 4 (Part 1) are the most appropriate because public notice of the Framework Agreement itself was required. The Applicant is also keen that the leaseholders and tenants are afforded the opportunity to have their views heard on the works and the changes. However, Ms Janice Adams in her witness statements expresses the view that Schedule 4 (part 1) does not apply to call off contracts from a Framework Agreement because they are not subject to public notice. She also is of the opinion that Schedule 4 (part 2) is not appropriate and concludes:

"The Council is left in a position where it cannot fully comply with any of the consultation requirements under the 2003 regulations because of the nature of the SCAPE framework".

14. The Applicant therefore believes that it has no alternate but to apply for dispensation under S20 of the Landlord and Tenant Act 1985.

Law

15. 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.

16. 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 or qualifying long term agreement, 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.*

17. "Qualifying works" for this purpose are works on a building or any other premises, and "qualifying long term agreement" means an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months (section 20ZA(2) of the Act), and section 20 applies to qualifying works and qualifying long term agreements 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 and £100.00, respectively.

18. 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

19. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements.

Conclusions

20. The Council appears to be undertaking these works in a transparent fashion and in full compliance with procurement rules and best practice. This has nevertheless presented the Applicant with considerable complexity, uncertainty and difficulty when it comes to complying with statutory consultation requirements.
21. It would seem sensible for the Tribunal to consider firstly whether it is/was reasonable for the works, be they qualifying works or works subject to a qualifying long-term agreement, to commence without the Applicant first complying with the Section 20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about works, the reason for the works being undertaken, and the estimated cost of those works. Importantly, it also provides tenants with the opportunity to provide general observations and in some circumstance to provide nominations for possible contractors. Where applicable the landlord must have regard to those observations and nominations. Should the Tribunal deem it appropriate to grant dispensation, then this will obviate the need for the additional determinations and declarations being sought by the Applicant.
22. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake significant works.
23. It follows that for the Tribunal to decide to dispense with the consultation requirements, it must be satisfied that it is reasonable to do so. In considering whether or not it is reasonable to do so, the Tribunal must consider the prejudice that would be caused to tenants by not undertaking the consultation while balancing this against the risks posed to tenants by delaying the works. The balance is likely to be tipped in favour of dispensation in a case in which there is or was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation. The prescribed procedures are not intended to act as an impediment when urgent works are required.
24. As noted above 10 of the participating Respondents opposed this application, with 4 supporting it. Clearly the proposed works equate to very significant costs to the long leaseholders and many understandably are concerned about the financial implications for them, how they can afford these works, whether the work will be carried out to a good standard and provide the efficiencies and costs savings promised. A number of leaseholders do not believe that the Council has had regard to and listened to their concerns and opinions. Some of the leaseholders who oppose the application acknowledge the need to replace the windows but question the need to do all these works now as one improvement scheme, but most particularly oppose the district energy scheme. While these concerns are completely rationale

and understandable, they in the main go to the question of whether it is reasonable to undertake these works, is the cost of these works reasonable and will the works be completed to a good standard. They largely relate to the question of whether any service charge costs will be reasonable or payable when the landlord seeks reimbursement for these works through the annual service charge to leaseholders. These are in the main matters which are governed by section 19 of the Landlord and Tenant Act 1985.

25. Some leaseholders have however suggested that they have been prejudiced by the fact that the consultation exercise undertaken has not been extensive enough and by not being allowed to nominate a contractor. These clearly are pertinent points for the Tribunal to consider and carefully weigh up in deciding whether or not to grant dispensation.
26. In the present case, the Council are seeking to repair and improve the estate to provide good quality housing primarily for its tenants but also its leaseholders. They have engaged with residents, explained the scheme, sought and responded to the observations received. Clearly, they have not met the expectations of all the leaseholders and by their own admission they doubt if they have been able to meet the statutory consultation requirements in full.
27. The proposed works are an extensive scheme of repair and improvement, totally in excess of £10 million. The Council has complied with the mandatory and appropriate procurement procedures to ensure a suitably competent contractor is appointed for such a major building project and that value for money is safeguarded by appointing a contractor from an approved competitively tendered framework agreement. While the Tribunal understands that not all of the leaseholders agree with the proposed scheme nor welcome the heavy financial burden it places on them, it is difficult to see a different outcome occurring even if the consultation requirements were complied with in full by the Applicant.
28. By proceeding with the works now and by placing a contract for the works under the Framework Agreement for National Major Works, the Council was able to secure a 50% grant from the European Regional Development Fund towards the cost of the district energy scheme. Thereby reducing the cost of the total costs of the work by many millions of pounds and producing very significant financial savings for the Council and leaseholders alike. Given the scale and complexity of these works, not to mention the procurement and value for money requirements to be met, it is hard to envisage that individual leaseholders would realistically be in a position to nominate viable alternate contractors to undertake this scheme.
29. Reflecting this and the fact that the majority of the 66 leaseholders have not claimed to have been prejudiced by a lack of consultation we find that it is reasonable for these works to proceed without the

Applicant first complying with Section 20 consultation requirements. The balance of prejudice favours granting dispensation.

30. We would however emphasise the fact that the Tribunal has solely determined the matter of whether or not it is reasonable to grant dispensation from the consultation requirements. This decision 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

J Bell	Acomb Court
G & C Bennett	Acomb Court
H Graham	Acomb Court
L Hills	Acomb Court
K Maxwell	Acomb Court
M Thompson	Acomb Court
J Bell	Bedale Court
K Henderson	Regent Court
S Lowerson	Regent Court
M Dowson	Ripley Court
L McBeth	Stretford Court
W Brown	Willerby Court
M Farmborough	Willerby Court
B Lowery	Willerby Court
J McCoy	Willerby Court