



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

Case Reference : **MAN/30UH/LDC/2018/0029**

Property : **3 & 4 Green Square Flats
Kirkby Lonsdale
Carnforth
Lancashire
LA6 2BU**

Applicant : **South Lakes Housing**

Representative : **N/A**

Respondents : **Ms L Woods-Jack – Flat 3
Ms G Day – Flat 4**

Representative : **N/A**

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

Tribunal Members : **Judge J Holbrook
Deputy Regional Valuer N Walsh**

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

Date of Decision : **7 November 2018**

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 refurbish a cracked chimney stack which has been causing water penetration at the Property.

REASONS

Background

1. On 5 September 2018, 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 by South Lakes Housing, the owner of Green Square Flats, Kirkby Lonsdale, Carnforth, Lancashire LA6 2BU ("the Property"). The Property is understood to comprise a two-storey block of four flats of traditional rendered brick construction. Two of the flats are let on short-term tenancies. The other two (flats 3 & 4) are subject to long leases. The Respondents to this application are the long-leasehold owners of those flats: Ms L Woods-Jack and Ms G Day respectively.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern the refurbishment of a chimney stack at the Property and associated works (such as the erection of scaffolding).
5. On 10 September 2018, the Tribunal issued directions and informed the parties that, unless it 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. Documentary evidence in support of the application was provided by the Applicant and brief written representations were also received from Ms Woods-Jack.
6. The Tribunal did not inspect the Property.

Grounds for the application

7. The Applicant's case is that, following an inspection of the Property, it was noted that a chimney appeared to be the cause of a penetrating leak. A further inspection revealed that a section of render had delaminated away from the brickwork resulting in several large cracks on all four elevations of the chimney, which had become loose and is therefore a safety hazard.
8. The Applicant wishes to carry out refurbishment works to the chimney as a matter of urgency in order to remove the hazard and deal with the leaks before the problem escalates further.
9. The Applicant anticipates that the total cost of the proposed works will be £2,760 (inclusive of VAT). This includes the costs of scaffolding; re-rendering the chimney stack (including new pots); and re-setting/replacing leadwork, as required.

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 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 action to ensure that the condition of the Property does not deteriorate further (and that the safety of its occupiers is not put in jeopardy) 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 indeed an urgent need for swift action to be taken to refurbish the chimney stack in order to remove the immediate hazard it poses. There is also an urgent need to address the associated water penetration problem. We find that the balance of prejudice favours permitting the works to proceed without delay. We also note that, whilst the statutory consultation requirements have not been fully complied with, the Respondents have been informed about the proposed works and their likely cost. We therefore consider it appropriate to make an order dispensing with the consultation requirements.
18. In coming to this conclusion, we also note that neither Respondent appears to oppose the application. Ms Woods-Jack has pointed out that the water penetration issue only came to light after decorating contractors engaged by the Applicant had drawn attention to a crack in the chimney (and the Applicant accepts that this was indeed the case). However, Ms Woods-Jack does not appear to dispute the existence of the defects in question or the need for urgent remedial action now to be taken.
19. 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.

Judge J Holbrook
7 November 2018