



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

Case Reference : **MAN/00DA/LDC/2020/0024**

Property : **Timblebeck, Fearn Island Mills, Neptune Street, Leeds, LS9 8AR**

Applicant : **Grey GR Limited Partnership**

Representative : **JB Leitch Limited**

Respondents : **Various – see annex**

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

Tribunal Members : **Judge P Forster
Mr P Mountain**

Date of Decision : **11 August 2020**

Date of Determination : **14 August 2020**

DECISION

Decision

Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to Tumblebeck, Fearn Island Mills, Neptune Street, Leeds, LS9 8AR, to install a L5 fire alarm system in the building.

Reasons

Background

1. The First-tier Tribunal received an application on 3 MAY 2020 under s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a decision to dispense with the consultation requirements of s.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 applicant, Grey GR Limited Partnership, is the registered proprietor of the freehold interest in Tumblebeck, Fearn Island Mills, Neptune Street, Leeds, LS9 8AR, registered at HM Land Registry under title number WYK674915 (“Tumblebeck”). The applicant is a successor in title to the original lessor, Eastgate Property Company Limited.
3. Tumblebeck forms part of the Fearn Island Mills development which comprises both new and old buildings, the original buildings having been converted for residential purposes. Tumblebeck is a residential block comprising 25 apartments (“the apartments”) and has one entrance and a staircase. The apartments are let subject to the terms of long residential leases.
4. The respondents are the residential leaseholders of the apartments. The leases (“the lease”) for all the apartments are in similar terms. Where the apartments have been sub-let on a long lease, the sub-lessees have also been listed as respondents to the application.
5. The only issue for the Tribunal to determine is whether it is reasonable to dispense with the consultation requirements.
6. The tribunal issued directions to the parties on 6 July 2020. It considered that the application was one that could be resolved either by way of the submission of written evidence leading to an early determination or by a hearing if requested by the parties. If any party wished to make oral representations, they were to inform the tribunal within 28 days. None of the parties asked for an oral hearing and therefore the application was decided on the documents alone. The tribunal did not inspect the property.

Discussion

7. Following the incident at Grenfell Tower on 14 June 2017, the Ministry of Housing, Communities and Local Government (“MHCLG”) has issued guidance notes and advice regarding building safety for building owners. Guidance Note 14 requires all residential buildings over the height of 18 metres to have their external cladding systems tested to establish its flammability.
8. The applicant, via its managing agent, Centrick Property Management, commissioned a survey of Timblebeck which was inspected on 12 December 2019. A report was received on 8 January 2020 which stated that Timblebeck failed in a number of areas. The test on the external cladding materials identified that it was not of “limited combustibility” and is classed as a type 3 risk category.
9. The findings of the report were notified to West Yorkshire Fire & Rescue Service (“WYFRS”) which inspected Timblebeck on 12 January 2020 and immediately required the implementation of a walking watch, along with a new interlinked fire alarm system to be installed. The walking watch was put in place that day at a cost of £3,864.00 plus VAT per week. The walking watch is required to remain in place until a suitable temporary common fire alarm system is installed.
10. The applicant proposed to install a LD3 fire alarm system, but this was not acceptable to WYFRS and it would not have removed the requirement for a walking watch. For that to happen, a L5 system would be required along with a scheme of monitoring and testing. A L5 system is designed for buildings that have a particular fire risk identified which warrants some special attention and also requires the installation of sounder in the building in accordance with the L1 category requirements.
11. A specification and two quotations were obtained for an L5 system. The first from Redley Electrical Services for £41,229.00 plus VAT and the second, from Fire Compliance Services for £38,217.71 plus VAT. The applicant initially was minded to accept the quotation from Redley Electrical Services because although it was not the cheapest, it included the costs associated with removing the temporary fire alarm system and when that was taken into account it was only £501.29 plus VAT more expensive. Redley Electrical Services was able to immediately start work whereas Fire Compliance Services would not commence the works during the Covid-19 restrictions. More recently, Fire Compliance Services confirmed that they were now able to start work immediately. Due to ongoing discussions with Redley Electrical Services the works had not been started. The applicant therefore decided to appoint Fire Compliance Services in order to ensure the earliest possible commencement date for the works which would mean that there would be no longer be a need for a walking watch at a weekly cost of £3,864.00 plus VAT.

Liaison with leaseholders

12. A formal consultation has not been undertaken in accordance with the procedures set down by the Service Charges (Consultation Requirements) (England) regulations 2003. Unless dispensation is given, in advance of carrying out the works, the applicant is required to carry out a formal consultation. The applicant submits that it has acted within the spirit of the 2003 Regulations and based on the information available to it and the timescale needed to undertake the works.
13. The applicant submits that the leaseholders have been appraised throughout both by meetings and by correspondence. The applicant has served notice of its intention to carry out works. The period for observations by the leaseholders expired on 27 April 2020. A majority of the leaseholders have consented to the application for dispensation being granted.
14. The works in respect of which a dispensation is sought are as follows: the installation of a L5 fire alarm system in Timplebeck.

Grounds for the application

15. The Applicant's case is that it is necessary to undertake these works quickly to adequately protect the occupants of Timplebeck flat 38 and the rest of the Property. The Applicant proceeded with the works based on the lowest quotation obtained. It asks the Tribunal to grant retrospective dispensation in respect of these works, which it considered to be so urgent as to warrant avoiding the additional delay that compliance with the consultation requirements would have entailed.

The Law

16. 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.

17. 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.

18. “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).

19. 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.

20. 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

21. The Tribunal must decide whether it is reasonable for the works to proceed without the applicant first complying in full with the s.20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about the 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 nominations for possible contractors. The landlord must have regard to those observations and nominations.
22. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works. 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.
23. It follows that, for the tribunal to decide whether it is reasonable to dispense with the consultation requirements, there needs to be a good reason why the works should and could not be delayed. In considering this, the Tribunal must consider the prejudice that may be caused to leaseholders by not undertaking the full consultation while balancing this against the risks posed to leaseholders by not taking swift remedial action. 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.
24. In the present case, there has been only limited compliance with the consultation requirements but there is no doubt that the works are necessary and urgent. The applicant has abided by the spirit of the 2003 Regulations, serving a notice of intention to carry out the works and keeping the leaseholders regularly informed about the situation. The sooner the works are carried out the sooner the burden of paying for the walking watch is removed.
25. The tribunal finds that it is reasonable for the works to proceed without the applicant first complying in full with the s.20 consultation requirements. The balance of prejudice favours permitting such works to proceed without delay.
26. In deciding to grant a dispensation, it has had regard to the fact that no objections were raised by the respondent leaseholders in compliance and that a majority of them have agreed to the application for dispensation being made to the tribunal.

27. The tribunal emphasises the fact that it has solely determined the matter of whether or not it is reasonable to grant a dispensation from the consultation requirements. This decision 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.

11 August 2020
Judge P Forster

Annex

Mr P M Bulmer
Ms A Jagpal
Yorkshire Housing Limited
Mr A Chatziagorakis
Dr A Steyn & Miss P Steyn
Mr & Mrs B R Roberts
Mr J Burton
Mr N Dewsnap
Dishforth UK Ltd
Mr Richard Shelton
Mr A J Shaw
Ms S D Cummins
Ms N A Whiteford
Mr A Wade
Mr Greaves
Mr D Morris
Mr J Prince
Ms K Slinger
Mr D R Smith
Mr J Shaw
Ms J M Haggart
Ms R E Loftus
Mrs J A Dudley
Mr S Heywood
Mr S M Driver
Mrs L P Coulson