



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

Case Reference : **MAN/00EY/LDC/2020/0015**

Property : **Harrowside Brow
28 Harrowside
Blackpool
FY4 1PE**

Applicant : **Harrowside Brow (Blackpool)
Management Ltd**

Representative : **Homestead CSL**

Respondents : **See Annex**

Representative : **N/A**

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

Tribunal Member : **Judge J Holbrook**

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

Date of Decision : **1 March 2021**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works comprising repointing the gable end of the building and replacing a double-glazing unit.

REASONS

Background

1. On 11 March 2020 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 the freeholder and management company of Harrowside Brow, 28 Harrowside, Blackpool (“the Property”). The Respondents to the application are the long leaseholders of the residential apartments within the Property whose details are 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. The works in respect of which a dispensation is sought concern the repointing of the gable end of the building together with replacement of a double-glazing unit.
5. Each of the Respondents has been given notice of the application and afforded the opportunity to make representations about whether it should be granted. No Respondent has done so and I have determined the matter following a consideration of the Applicant’s written representations, but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the Applicant has given its consent and the Respondents have not objected. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing: although the Respondents are not legally represented, the application is unopposed and the issues to be decided are readily apparent.
6. I did not inspect the Property, but I understand it to comprise a purpose-built residential development of nine units.

Grounds for the application

7. The Applicant's case is that the works in question were carried out urgently as water was penetrating into one of the apartments and it was also necessary to act quickly to avoid major damage to the fabric of the building. A letter was sent to each respondent leaseholder advising them of the nature and cost of the works and the reason for the urgency. I gather that none of the leaseholders objected to the Applicant's proposal.

Law

8. 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.

9. 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.

10. "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).

11. 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.

12. 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

13. 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.
14. In deciding whether to dispense with the consultation requirements in a case where qualifying works have been commenced or completed before the Tribunal makes its determination, the Tribunal must focus on whether the leaseholders were prejudiced by the failure to comply with the consultation requirements. If there is no such prejudice, dispensation should be granted.
15. In the present case, there is no evidence that the Respondents have been prejudiced by any lack of compliance: none of the Respondents have argued that they were prejudiced and none has objected to the application for dispensation.
16. I therefore conclude that dispensation should be granted. The fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that I 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. I make no findings in that regard.

ANNEX

List of Respondent leaseholders

Flat 1 Harrowside Brow – Mr D. Law
Flat 2 Harrowside Brow – Mrs C. A. Downer
Flat 3 Harrowside Brow – Mr & Mrs S. Parr
Flat 4 Harrowside Brow – Mrs V. Mallard
Flat 5 Harrowside Brow – Mrs H Cummins
Flat 6 Harrowside Brow – Mr & Mrs C. Proctor
Flat 7 Harrowside Brow – Miss A. A. Cryer
Flat 8 Harrowside Brow – Mrs A. Tchobanian
Flat 9 Harrowside Brow – Mr & Mrs G. Shepherd