



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

Case Reference : **MAN/30UH/LDC/2022/0004**

Property : **Lune Quays, Millenium Heights, Lune Street,
Lancaster LA1 2AT**

Applicant : **Lune Quays Management Company
Limited**

Representative : **Homestead CSL**

Respondents : **Leaseholders of Flats at the Property**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Member : **Judge L Bennett**

Date of determination : **28 July 2022**

Date of Decision : **28 July 2022**

DECISION

Application

1. Lune Quays Management Company Limited applies to the Tribunal under Section 20ZA of Landlord and Tenant Act 1985 (the Act) for dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987) in respect of fire safety works (the Works) carried out at Lune Quays, Millenium Heights, Lune Street, Lancaster LA1 2AT (the Property).
2. The Respondents are Leaseholders of Flats at the Property and listed at the Annex to this decision.

Grounds and Submissions

3. The application was received by the Tribunal on 2 July 2021.
4. The Applicant is the resident management company with responsibility for the building.
5. Lune Quays is a purpose built 7 storey wooden framed building, constructed in 2005. The ground floor of the building is for commercial properties and services while the remaining 6 floors are residential totalling 22 leasehold flats
6. On 2 March 2022, a Tribunal Judge made directions requiring the service of documents by the Applicant on each of the Respondents. The directions provided that in the absence of a request for a hearing the application would be determined upon the parties' written submissions.
7. In response to directions the Applicant has provided a statement of case with supporting documents.
8. The Applicant's statement of case sets out a chronology of events leading up to the application for dispensation and also includes an update of events post application.
9. On 13 January 2021, an inspector from Lancashire Fire and Rescue Service visited the property to evaluate the fire safety provided. This resulted in the service of an Enforcement Notice dated 19 January 2021, due to failure to comply with provisions of the Regulatory Reform (Fire Safety) Order 2005, because people were unsafe in case of fire. The schedule to the notice further explains the provisions not complied with. The time scale for completion was 12:00 hours on 20 April 2021.
10. An extension of time to comply with the Enforcement Notice to 12:00 hours on 13 July 2021, was granted on 20 April 2021.
11. Application was made to the Tribunal on 2 July 2021 for dispensation from the Section 20 consultation requirements for the works. Separate Section 20 notices would be necessary for each stage which would cause delay to the work required. There was a real possibility of a Prohibition Order being served if the Enforcement Notice was not complied with, which would result in closure of the building.
12. A surveyor and structural engineer have surveyed the building with a view to installing a dry riser. As the building is wooden framed, it was feared that the weight

of a dry riser in use may damage the structure of the building. (This has since been withdrawn from the enforcement notices as it has been discovered that the Fire and Rescue Service agreed at the time of construction that a dry riser was not required as a sprinkler system was being installed.) Cost up to withdrawal of the notice – Surveyor £4,140. Structural Engineer - £3,562.56. (LF&R have stated that they would still prefer a dry riser to be installed in the future because of the height of the building).

13. A fire strategy document has been drawn up for the building by a fire engineer as neither the Architect nor developer have copies of the original documents. Cost £8,160.
14. A type 4 Fire Risk Assessment at a cost of £3,594 has been carried out which has identified problems with fire stopping in the building. This work was considered the most important to address as the Fire and Rescue Service would not assist in prioritising the works required at the time. Prices were obtained and residents surcharged a total of £18,705 for the work. The Fire and Rescue Service called a meeting and imposed a waking watch with less than 12 hours' notice. The waking watch was put in place at a total of £24,563 which was paid out of the funds gathered, including that for the fire stopping, while residents were surcharged for the watch costs. Residents were asked for payment plans as they were unable to pay lump sums. Lancashire Fire & Rescue Service called another meeting and agreed to work being carried out to the fire systems in the building which would remove the need for the waking watch. This coincided with the waking watch removal fund being announced. This has been applied for and the application approved.
15. A new fire alarm is being fitted which incorporates the sprinkler system and the smoke vents in the building. Both systems have been surveyed and have been found to be deficient. Work to the sprinkler system has so far cost £1,548.24 to get it to a standard Lancashire Fire & Rescue Service will accept and to connect to the fire alarm. The Smoke vent system has been surveyed and currently needs work in the region of £19,400 to make it work correctly.
16. Fire stopping work - as soon as funding is available, the work will be carried out. This has been agreed with Lancashire Fire and Rescue Service as the first priority.
17. Equipment for firefighters – smoke vents. This is subject to the recent report and will be discussed with Lancashire Fire and Rescue Service. This is work that was not expected.
18. Maintenance of sprinkler system - the sprinkler system is now connected to the fire alarm and will provide a warning if activated. It is not possible at this time to certify the system because of faults identified. These will have to be rectified at an as yet unknown cost.
19. Maintenance of fire alarm - at the time the latest notices were produced, the new fire alarm was being fitted. The installation has been completed but has highlighted problems with the smoke vent system.
20. Maintenance of emergency lighting - this is regularly tested and maintained with the fire alarm. Records are being forwarded to Lancashire Fire and Rescue Service.

21. Co-operation/co-ordination - site directors and residents are being kept informed of works being carried out and the issues being raised. It is known that the external cladding of the building is 60 minutes fire resistant. However, a survey will be required (Latest estimate is in the region of £18,000 + access equipment cost). Once the survey is carried out there may be shown to be issues behind the fascia to deal with.
22. The Tribunal did not receive any submissions from a Respondent Leaseholder. Neither the Applicant nor a Respondent requested a hearing.
23. The Tribunal convened without the parties to make its determination on 28 July 2022.

Law

24. Section 18 of the Act defines “service charge” and “relevant costs”.
25. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
26. Section 20 of the Act states:-
“Limitation of service charges: consultation requirements
 Where this Section applies to any qualifying works..... the relevant contributions of tenants are limited..... Unless the consultation requirements have either:-
 a. complied with in relation to the works or
 b. dispensed with in relation to the works by a tribunal.
 This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.
27. “The appropriate amount” is defined by regulation 6 of The Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) as “..... an amount which results in the relevant contribution of any tenant being more than £250.00.”
28. Section 20ZA(1) of the Act states:-
 "Where an application is made to a 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."

Tribunal’s Conclusions with Reasons

29. I have determined this matter following a consideration of the Applicant’s case 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 Tribunal has not heard from a Respondent in response to the application. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing. Determining this matter does not require me to decide disputed questions of fact.

30. It is not necessary to consider at this stage the extent of any service charges that may result from the works payable under the terms of the Respondents' leases. If and when such is demanded, and if disputed, it may properly be the subject of a future application to the Tribunal.
31. I accept from the details provided by the Applicant the urgent nature of the works. It is noted that the works are expanding in complexity. Having to serve separate Section 20 notices would be time consuming and add to delays to the works. Many unforeseen issues have come to light due to the construction of the building. Regular meetings have been held with site directors who have discussed all stages with the residents.
32. Balancing the need for urgent action against dispensing with statutory requirements devised to protect service charge paying Leaseholders, I conclude the urgency outweighs any identified prejudice. Dispensation from consultation requirements does not imply that any resulting service charge is reasonable.
33. Nothing in this determination or order shall preclude consideration of whether the Applicant may recover by way of service charge from the Respondents any or all of the cost of the work undertaken or the costs of this application should a reference be received under Section 27A of the Landlord and Tenant Act 1985.

Order

34. The Applicant is dispensed from complying with the consultation requirements in respect of the work specified in the application.

Laurence J Bennett
Tribunal Judge
28 July 2022

Annex

Leaseholders

Flat 1	Miss M Grabowska
Flat 2	Mr M A Cheal
Flat 3	Mr. M. Winrow
Flat 4	Mr SPS Jalwal
Flat 5	Mr. C. G. Riva
Flat 6	Mrs M E Dickson
Flat 7	Mr J D Broadley & Ms R V Mead
Flat 8	Mr D Kiziuk
Flat 9	Mr L Fisher & Mr A D Stanyon
Flat 10	Ms S J Leaver
Flat 11	Mr D D Da Silva Grave
Flat 12	Ms K Murray
Flat 12A	Mr J Kudra
Flat 14	Ms P A Scott
Flat 15	Mrs B Oeser
Flat 16	Mr D B T Murray
Flat 17	Mr A J Robertson
Flat 18	Messrs M & W. and Ms M Challis
Flat 19	Mr J Helme
Flat 20	Ms R E Binfield
Flat 21	Mr S D & Mrs J R Barnett-Cormack
Flat 22	Mr D J Mayor & Ms J A Collinson