



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

Property	Chatburn Court, Warrington Road, Culcheth, Warrington, Cheshire, WA3 5RB
Applicants	Beech Housing Association
Respondents	See Annex A
Case number	MAN/00EU/LDC/2020/0058
Date of Application	13 October 2020
Type of Application	Landlord and Tenant Act 1985 – Section 20ZA
Tribunal Members	K M Southby (Judge) E Scull (Valuer Member)
Date of Decision	7 April 2021
Date of Determination	29 April 2021

DECISION

DECISION

The consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 and in Schedule 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) are dispensed with in respect of the proposed works to the Warden Call system as set out in Document F of the Case Bundle provided by the Applicant

BACKGROUND

1. On 13 October 2020 Beech Housing Association (“the Applicant”) made an Application, to the Tribunal under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”), which sought dispensation from compliance with the consultation requirements provided for by section 20 of the Act. The requirements in question are those set out in Schedule 1 to the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the regulations”). The Application was in respect of proposed works to the warden call system as set out in Document F annexed to the Applicant’s Statement of Case.
2. The properties which are the subject matter of the application are a purpose-built block of 32 leasehold flats for residents aged 55 and over including common parts made up of Communal Lounge, Kitchen and Laundry facility.

INSPECTION

3. The Tribunal was unable to conduct an inspection of the property at this time due to lockdown restrictions, and the determination was conducted purely on the papers.

LAW

4. 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.

5. 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.*

6. “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).

7. 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.

8. 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.

EVIDENCE

9. The Tribunal have received written representations from the Applicant that following multiple callouts, engineers have determined that the existing warden call system does not reliably dial out to the call centre, and that replacement parts for the current system are obsolete and that the existing system is at the end of its useful life.
10. The works proposed by the Applicant are to replace the current emergency call system and provide residents with a dispersed alarm and pendant linked to the system. The Applicant states that the reason for the urgency of the application and therefore the request to dispense with the consultation requirements is that they are unable to rely on the current system to provide emergency support to residents which could result in residents being unable to access support or the emergency services if required.
11. The Applicant has provided to the Tribunal the system report of EFT Systems which refers to problems with the system going back to February 2020 and the system described as being in a 'poor condition'. The report confirms that the system has been obsolete for a number of years and that repairs to the system can result in it being out of service for several weeks. It also suggests that the system will shortly be entirely unsupported following further upgrades to telephone exchanges.
12. The Tribunal has also been provided with a quote from Legrand and a quote from EFT Systems.
13. The tenants have been sent copies of the Tribunal correspondence and no response has been received from any of the Tenants.

CONCLUSIONS

14. The Tribunal must decide whether it is reasonable for the works to go ahead 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 nominations for possible contractors. The landlord must have regard to those observations and nominations.
15. 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.

16. It follows that for the Tribunal to decide to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed. 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 not taking swift remedial action. 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.
17. Whilst the Tribunal has some concerns that the remedial works were not commenced sooner, given that they were identified over a year ago, this is not the test for the Tribunal. The Tribunal agrees in the present case that the reasons advanced by the Applicant in support of the tribunal dispensing are reasonable and the works proposed are indeed urgent. Indeed, the Respondents have not opposed the Applicant's request. The Tribunal accepts the evidence of the Applicant that the Property's Warden Call System is obsolete and unreliable and requires replacement. We accept that in the context of the works being driven by a desire on the part of the Leaseholders to get the system repaired, to maintain the emergency service to tenants and the absence of their resistance to the application, the prejudice to the leaseholders in these circumstances is negligible. For this and the other reasons advanced by the Applicant the Tribunal agrees that it would be reasonable to grant dispensation.
18. In these circumstances therefore, the Tribunal agrees with the request and grants dispensation from compliance with all of the requirements set out in Schedule 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the proposed roof works as set out in Document E of the Tribunal Documentation provided by the Applicant.
19. We have had regard to the correspondence which has been sent to leaseholders and the fact that no objections were raised by the respondent leaseholders. No one has suggested that these works were not urgently required. No leaseholder has suggested that they will be prejudiced were we to grant dispensation. We conclude on balance that it is reasonable for these works to proceed without the Applicant first complying with Section 20 consultation requirements. The balance of prejudice favours permitting such works to proceed without delay.
20. 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.

Tribunal Judge K Southby
7 April 2021

Mrs M Crippin
Mrs AU Heightly-Halbert
Mrs A Cooper
Mr J Fairclough
Mr & Mrs McGowan
Mrs E Thomas
Mrs G Haywood
Mrs M Langford
Ms R Briggs
Mrs I Fatimilehin
Mrs J Carter
Mr & Mrs WG Johnson
Ms H Hennis
Mrs N O'Hara
Mrs MP Dunwoody
Mrs EM Boardman
Mrs W Needham
Mr & Mrs McCarthy
Mr R Unsworth
Mrs C Duggan
Mrs YM Hughes
Mrs H Appleton
Mr D Pearce
The Executors of Mr T Amos
Mrs M Monks
Mrs M Lewis
Mr & Mrs Ryan
Mrs J Miller
Mrs R Baillie
Ms B O'Donnell
Mrs B Thompson
Mr & Mrs Plant