

12104



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

Case Reference : **MAN/00CX/LDC/2016/0021**

Property : **57-63 Hoyle Court Drive, Shipley BD17 6ES**

Applicant : **Incommunities Limited**

Respondents : **Mr M Yates
Mr B C Holmes-Robinson
Ms G J Holmes**

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

Tribunal Members : **Laurence Bennett (Tribunal Judge)
Jonathan Holbrook (Tribunal Judge)**

Date of determination : **25 November 2016**

Date of Decision : **30 November 2016**

DECISION

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Application

1. Incommunities 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 reroofing, replacement of soffits and fascias and guttering at the Property.
2. The Respondents are Leaseholders of flats at the Property.

Grounds and Submissions

3. The application was received by the Tribunal on 3 October 2016.
4. The Applicant is the Freeholder of the Property.
5. On 14 October 2016 Judge Bennett made directions which provided that in the absence of a request for a hearing the application would be determined upon the parties' written submissions.
6. The Property is a purpose built block comprising 4 flats.
7. The Applicant stated in the application form that water ingress issues during periods of rainfall have caused internal damage.
8. Further information provided gives details of the problems, the remedies proposed and a quotation.
9. The Applicant states that the Leaseholders have been contacted and invited to comment. A sole verbal response was that work should proceed.
10. The Applicant states that the work is urgent to prevent damage on the onset of more inclement weather.
11. A response received on behalf of the Leaseholder of 63 Hoyle Court Drive confirms that rain has caused damage to the interior as well as the fabric and states: "I am totally in agreement that this work needs to be carried out a.s.a.p."
12. Neither the Applicant nor a Respondent requested a hearing.
13. The Tribunal convened without the parties to determine the application on 25 November 2016.

Law

14. Section 18 of the Act defines "service charge" and "relevant costs".
15. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
16. 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 the appropriate tribunal

This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.

17. “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.”
18. 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

19. We considered the written evidence accompanying the application.

Our conclusions are:-
20. It is not necessary for us to consider the extent of the service charge payable by the Respondents that might result from the works. If disputed when demanded an application may be made to the Tribunal under Section 27 Landlord and Tenant Act 1985.
21. We find from the details of the work proposed that it is necessary for work to commence as quickly as possible to prevent further deterioration caused by water ingress. The lack of repair has potential to impact on the health, safety, utility and comfort of occupiers and visitors to the Apartments and common parts at the Property.
22. Although formal consultation has not taken place, we have not identified a specific prejudice to Leaseholders in the circumstances. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable.
23. We conclude it reasonable in accordance with Section 20ZA(1) of the Act to dispense with the consultation requirements, specified in Section 20 and contained in Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987).
24. 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

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