FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/3OUF/LDC/2021/0076**
Properties	**:**	**Croft Manor, Mason Close, Freckleton, Preston, PR4 1RG**
Applicant	**:**	**Croft Manor Services Ltd.**
Representative	**:**	**Coupe Bradbury Solicitors Ltd.**
Respondents	**:**	**Various – see annex**
Type of Application	**:**	**S. 20ZA Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge P Forster** **Ms A Ramshaw FRICS**
Date of Decision	**:**	**16 May 2022**

DECISION

Decision

Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to urgent works to upgrade the fire alarm system.

Reasons

Background

1. The First-tier Tribunal received an application on 21 October 2021 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 application was made on behalf of Croft Manor Services Ltd. ("the Applicant"), in respect of Croft Manor, Mason Close, Freckleton, Preston, PR4 1RG ("the Property"). The Respondents to the application are the long leaseholders of the flats within the building. A list of the Respondents is set out in the annex hereto.

3. The only issue for the Tribunal to determine is whether it is reasonable to dispense with the consultation requirements.

4. The application identifies the subject property as a block of 42 flats.

5. The works in respect of which a dispensation is sought is the upgrading of the existing fire alarm system.

6. The works are urgently required because in a number of fire risk assessments conducted since 2017 and particularly by Lancashire Fire Protection dated 20 March 2019 the existing fire alarm system was deemed to be unsafe. The occupants in the block are at risk of injury or death in the event of a fire. A further assessment was carried out by Tunstall Healthcare (UK) Ltd. on 19 July 2021 which found that the existing system is "beyond serviceable, all equipment is [approximately] 30 years old including detection. No backup battery supply. Does function but needs replacing ASAP". The previous board of directors did not put the works in hand. The current board was appointed on 13 August 2021 and wishes to proceed with the works. It instructed Speedek Services Ltd. to carry out an inspection on 14 September 2021 and a number of significant issues were identified with the existing system.

7. The Applicant intends to completely replace the existing fire alarm system. Quotes were obtained from three contractors and the directors have decided to appoint Walker Fire to undertake the works. There are sufficient funds in the service charge account to pay for the works.

8. The Applicant wrote to all the leaseholders on 25 November 2021 setting out the position and calling for a vote. Option A on the ballot paper was "vote to retain the current board for the remainder of their tenure and therefore agree to the board acting on your behalf, including the installation of a new fire detection and alarm system". 23 votes were cast in favour representing 85% of the returned papers. Option B was "vote that the current board standdown and that a new board is elected to manage Croft Manor Services Ltd." 4 votes were cast representing 15% of the returned papers. 2 papers were spoiled and 6 papers disqualified for duplication.

9. The proposed works are "qualifying works" within the meaning of section 20ZA(2) of the Act.

10. On 12 January 2022, the Tribunal issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received, and the Tribunal therefore convened on the date of this decision to consider the application in the absence of the parties. The directions included at paragraph 5 a provision that required the Applicant to write to each of the Respondents informing them of the application and providing them with information about the application process. The Applicant's representative confirmed that this had been done.

Grounds for the application

11. The Applicant's case is that it is necessary to undertake these works quickly to adequately protect the occupants of the flats in the block. By implication, the Applicant's case is that the works relate to common parts of the Property which the landlord is obliged to maintain under the terms of the leases, with the costs associated therewith being recoverable from the tenants via service charge provisions incorporated within the leases. The Tribunal was provided with a specimen copy of the lease relating to Flat 6.

12. The Applicant asks the Tribunal to grant dispensation in respect of the 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

13. 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.*

14. 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.*

15. "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 in 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).

16. 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.*

17. 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

18. 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.

19. 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.

20. It follows that, for the Tribunal to decide whether it was 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 is caused to tenants by not undertaking the full 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 was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.

21. In the present case there is no doubt that the works are necessary and pressing for the occupiers of the apartments. The Tribunal finds that it is reasonable for these 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 have proceeded without delay.

22. In deciding to grant a dispensation, the Tribunal has had regard to the fact that no objections were raised by the Respondent leaseholders in compliance with the Tribunals Directions of 12 January 2022.

23. The Tribunal would emphasise the fact that it has solely determined the question of whether or not it is reasonable to grant a retrospective 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 recoverable or reasonable; or, indeed, that such charges will be payable by the Respondents. The Tribunal makes no findings in that regard and, should they desire to do so, the parties will retain the right to make an application to the Tribunal under s.27A of the Landlord & Tenant Act 1985 as to the recoverability of the costs incurred, as service charges.

Judge P Forster
16 May 2022

Annex

Respondents

Mr Darwen & Ms Gallagher
Mr Notman
Ms Rudd
Mrs Hankinson
Mr Goodman
Ms Mottley
Mr & Mrs Hughes
Ms Jones
Mr Tomlinson
Mr & Mrs Pedley
Mr & Mrs Shaw
Mr Naylor
Ms Newman
Ms Hollingsworth
Mr Montgomery
Ms Darwen
Ms Bell
Ms Roach
Mr Downes
Mr & Mrs Fenney
Ms White
Ms Campbell
Mr Crook
Ms Davies
Mr & Mrs Ouldcott
Mr & Mrs Holden
Mr & Mrs Handley
Ms Burrow
Mr & Mrs Roberts
Mr & Mrs Connolly
Mr Handley
Ms Thornton
Ms Mitchell
Ms Higginson
Ms Mullen
Mrs Mann
Ms Gregg