



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

Case Reference : **MAN/00DB/LDC/2017/0034**

Property : **Hebble Wharf, Navigation Walk, Wakefield,
WF1 5RD**

Applicant : **Waterfront Wakefield (Hebble Wharf)
Limited**

Respondent : **Various leaseholders (see annex A)**

Type of Application : **Section 20ZA of the Landlord and Tenant Act
1985**

Tribunal Members : **Judge C. P. Tonge, LLB, BA
Mr. W. A. Reynolds, MRICS**

Date of Determination : **2 March 2018**

Date of Decision : **12 March 2018**

DECISION

Application and Background

1. The application in this case is dated 7 December 2017, was received by the Tribunal on 8 December 2017 and is made by Waterfront Wakefield (Hebble Wharf) Limited, the landlord of a property at Hebble Wharf, Navigation Walk, Wakefield, WF1 5RD.
2. The application seeks a determination from the Tribunal pursuant to Section 20ZA of the Landlord and Tenant act 1985 that consultation requirements should be dispensed with in conducting urgently needed repair work associated with damage occurring to flat 216 Hebble Wharf which forms part of the property.
3. The Respondents in the case are the owners of long leases for 57 flats at the property.
4. The urgent repair requested is to repair a leak to a rain water fall pipe and replace water saturated insulation material in the fabric of the building.
5. Dispensation from consultation is requested on the basis that the work is urgently required to stop further damage to flat 216 and for the comfort of the long leaseholder, Mrs Yvonne Burns, who is having to mop up rain water that is leaking into the property. The Applicant also points out that scaffolding has been erected at the building so that this leak could be properly investigated and that it will save a great deal of expense if the work can be done quickly, whilst the scaffolding is in place.
6. Directions, dated 20 December 2017 make it clear that the procedural Judge took the view that this case could proceed without an oral hearing if none of the parties requested a hearing. The parties did not request a hearing.
7. The Tribunal has received written representations for the landlord, including a copy of a lease for one of the flats at the property and a surveyors report. The Hebble Wharf Residents and Owners Association has served two sets of representations on behalf of the long leaseholders for 22 of the 57 flats within the property, including the long leaseholder of flat 216.
8. The Tribunal arranged to inspect the property at 10am on Friday 2 March 2018. The purpose of this was to permit the Tribunal to observe the location and extent of the damage being caused by the ingress of rain water. However, during the three days before this there had been significant snow across Yorkshire such that the Meteorological Office issued a yellow warning that driving was hazardous, coupled with a forecast of further snow and freezing conditions. Faced with this, on Thursday 1 March 2018, the Tribunal decided that it was too hazardous to have members and parties drive to the inspection and cancelled it. Parties were informed that the Tribunal intended to determine the case on Friday 2 March 2018, without an inspection.

9. During the morning of 2 March 2018 the Tribunal received a set of seven photographs taken that morning at the property, together with a further photograph also taken that morning. The photographs were provided by the leaseholder of flat 216 and show water damage to the interior of flat 216 and confirm that there is scaffolding outside it.

The Law

The Landlord and Tenant act 1985

Section 20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

Section 20ZA Consultation requirements: supplementary

(1) 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

- “qualifying works” means works on a building or any other premises, and
- “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

- (a) if it is an agreement of a description prescribed by the regulations, or
- (b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

The Issue

10. The only issue for this Tribunal to decide is whether or not to dispense with the normal consultation requirements pursuant to section 20 of the Landlord and Tenant Act 1985 and particularised in statutory instrument (2003/1987), Service Charges (Consultation Requirements) (England) Regulations 2003, Schedule 4, Part 2. The Tribunal makes it clear at this stage that any question of who is to pay the costs of this work and whether or not the costs are a reasonable service charge are not for this Tribunal to decide during this case.

Written Submissions

The Applicant Landlord

11. The landlord's case is that the repair to flat 216 is urgently required to stop rain water leaking into the flat, causing damage to the flat and inconvenience to the occupier. Further, that it makes good financial sense to effect this repair urgently now, whilst scaffolding remains in place after investigation of the problem by a surveyor. The landlord serves a surveyors report in support of this case. Submissions are made as to how long this water ingress has been a problem.

The Respondent

12. The case on behalf of the long leaseholders for 22 of the flats in this building is made by The Hebble Wharf Residents and Owners Association. No other representations were received from other long leaseholders. The case made by the Hebble Wharf Residents and Owners Association contains (inter alia) three passages.
13. The first is in their letter of 12 January 2018, where at point 3 the Respondents submit that "The Association accepts that an urgent repair is now necessary to the external pipe work and insulation..."
14. The second is in their letter of 25 January 2018, where at point 1, second paragraph the Respondents submit that "We accept that the work is urgent...."
15. The third is in their letter of 25 January 2018, where at point 3 the Respondents submit that "The Association accepts that an urgent repair is now necessary to the external pipe work and insulation..."
16. There are submissions as to how long the water ingress has been a problem and submissions relating to consultation and cost of repairs.

The Deliberations

17. It is clear that the parties who have adduced evidence in this case all agree that the repair is urgently needed.
18. Photographs support the fact that water ingress is causing damage to flat 216.
19. The survey report supports the contention that the repairs are urgently required.
20. The Tribunal agrees with the Applicant that the pipe repair and replacement of water saturated insulation materials should be carried out at the same time

to stop further water leaks and damage to flat 216 and that it is reasonable to dispense with all consultation requirements so that the urgent work can progress without further delay.

The Decision

21. The Tribunal determines that the repairs specified in paragraph 4 above are urgently required and that it is reasonable to dispense with all consultation requirements so that the work can be carried out without further delay, whilst the scaffolding remains in place.
22. The Tribunal does not have jurisdiction in the present case to make any determination over any question of who is to pay the costs of this work and whether or not the costs are a reasonable service charge and accordingly, no such determination is made.

12 March 2018

Tribunal Judge C Tonge