



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

**Case Reference** : **LON/OOB/LDC/2019/0004**

**Property** : **14, 14A, 14B, 14C Smeaton Road,  
London SW18 5JH**

**Applicant** : **Lesley Ballard (Landlord)**

**Representative** : **JCF Property Management Ltd.**

**Respondents** : **All leaseholders of the Property**

**Representative** : **None**

**Type of Application** : **S20ZA of the Landlord and Tenant  
Act 1985 - dispensation of  
consultation requirements**

**Tribunal** : **Mr. N. Martindale**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **5 March 2019**

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**DECISION**

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**Decision**

1. The Tribunal grants dispensation from the requirements on the Applicant to consult the Respondents under S.20ZA of the Landlord and Tenant Act 1985, in respect of this application.

**Background**

2. The Applicant, Lesley Ballard, has through his representative, JCF Property Management Ltd., applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the dispensation from all or any of the consultation requirements contained in S20 of the Act.
3. The application is dated 21 December 2018, received by the Tribunal on 9 January 2019. The application related to works to a first floor balcony considered by the landlord to be their responsibility under the leases, to effect and the costs of which they are entitled to recharge under the service charge provisions to all flats in the Property.

**Directions**

4. Directions dated 15 January 2019, were issued by the Tribunal without any oral hearing. They provided for the Tribunal to determine the applications during the seven days commencing 4 March 2019 and that if an oral hearing were requested by a party, it take place on 5 March 2019. They provided that the Applicant must by 31 January 2019, send to each leaseholder and the landlord copies of the application and directions whilst displaying a copy of same in a prominent position in the common parts of the property. Confirmation to the Tribunal, of compliance by the Applicant, was required by that same date.
5. They further provided that the leaseholders who objected to the application should complete a standard form and return this to the Tribunal and sent a written statement to the landlord. Leaseholders had until 8 February 2019 to complete both.
6. The Directions concluded by requiring the landlord, to prepare a bundle of documents including representations from the leaseholders and return this to the Tribunal by 22 February 2019.
7. In the event, the Tribunal did not receive objections from any of the four leaseholders. The applicant did not comply with the Directions in that it did not file a bundle for the Tribunal but instead referred back to the form and documents initially supplied. The Tribunal therefore determined to deal with the case on such documents as it had received.

## Applicants Case

8. The property appears to be a detached two storey purpose built block of 4 flats located in Smeaton Road. There are two first floor flats with balconies and two ground floor flats underneath. From the description of the problem by the landlord and the sample lease provided, it appears that the open balconies demised to each first floor flats are located directly over enclosed space forming part of the kitchen to each of the ground floor flats. Further it appears from the lease that whilst the use and interior of each flat is let, the structure is retained by the landlord. The landlord appears to retain responsibility to maintain the structure of the whole building and therefore any structural faults with the balconies. The costs of such works are to be recovered by the landlord under the service charge from each of the leaseholders.
9. The Applicant confirmed to the Tribunal that all leaseholders had been informed of the application and invited to make representation if they objected.
10. In the application it was stated at box 10, that: *“There is a leak from the first floor balcony into the kitchen of the ground floor flat which means the owner of the ground floor flats is unable to find new tenants until repairs to the balcony have been completed.”*
11. Under ‘Grounds’, the applicant states: *“The owner of the vacant ground floor flat reported a leak into her kitchen through the balcony of the first floor flat. We instructed a surveyor to inspect the balcony and he has recommended repairs that will cost in the region of 7k. The owner of the flat being leaked in to, quite reasonably does not want to wait over two months while we complete the consultation process so it was agreed by all flat owner to seek dispensation form the consultation process so works can proceed as soon as possible.”*
12. By way of explanation the landlord stated *“In normal circumstances we would have served a Notice of Intention that we intended to repair the balcony. Followed by a statement of estimates but due to the urgency of the work all flats confirmed via email that they wanted JCF to seek dispensation from consultation procedure.”* Copies of emails were provided.
13. They continued, *“The works will cost c.7k or £1750 for each lessee which is well above the £250.00 threshold for consulting lessees. As the leak continues and the owner of the flat is unable to fund new tenants until the repairs to the balconies have been carried out, it was agreed by all flat owners to seek dispensation from the consultation process so works can proceed as soon as possible.”*

14. The Tribunal did not receive any objections from any of the Respondents.
15. The Applicant had requested a paper determination. No application had been made for on behalf of any of the Respondents for an oral hearing. This matter was therefore determined by the Tribunal by way of a the papers.
16. The Tribunal did not consider that an inspection of the property would be of assistance and would be a disproportionate burden on the public purse.

### **Respondents Case**

17. The Tribunal did not receive representations or objections from any of the Respondents.

### **The Law**

18. S.18 (1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S.20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
19. Dispensation is dealt with by S.20 ZA of the Act which provides:-  
**“Where an application is made to a leasehold valuation 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.”**
20. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-  
**1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –**  
**(a) to each tenant; and**

**(b) where a recognised tenants' association represents some or all of the tenants, to the association.**

**(2) The notice shall –**

**(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**

**(b) state the landlord's reasons for considering it necessary to carry out the proposed works;**

**(c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**

**(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**

**(e) specify-**

**(i) the address to which such observations may be sent;**

**(ii) that they must be delivered within the relevant period; and**

**(iii) the period on which the relevant period ends.**

**2(1) where a notice under paragraph 1 specifies a place and hours for inspection-**

**(a) the place and hours so specified must be reasonable; and**

**(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

**(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.**

**3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.**

**4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.**

### **Tribunal's Determination**

21. The scheme of the provisions is designed to protect the interests of tenants, and whether it is reasonable to dispense with any particular requirements

- in an individual case must be considered in relation to the scheme of the provisions and its purpose.
22. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately pay the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
  23. No evidence has been produced that any of the Respondents have challenged the consultation process and no written submissions have been received.
  24. The landlord's agent's estimate of the cost of the works is based on contractor's estimate which appears to have been obtained by one of the leaseholders themselves. The evidence of the cost is therefore very sparse but is clearly beyond the £1000 unaffected by a lack of consultation.
  25. On that basis, the Tribunal is satisfied that it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with on both applications.
  26. **In making its determination of this application, it does not concern the issue of whether any service charge costs are reasonable or indeed payable by the leaseholders. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

**N Martindale**

**5 March 2019**