



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

Case Reference : **LON/OOAE/LDC/2019/0054**

Property : **41-50 Lawns Court, The Avenue,
Wembley, Middx., HA9 9PN**

Applicant : **Jehudah Goldenberg**

Representative : **R. Davidoff (ABC BM Ltd.)**

Respondents : **The leaseholders of
41-50 Lawns Court**

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 : **30 May 2019**

DECISION

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 the application.

Background

2. The applicant, has through its agent ABC BM 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 was dated 3 April 2019 and fee payment, acknowledged in a letter dated 26 April 2019 to the agent. The proposal is to proceed with extensive and external communal drainage, paved and walled areas to be the subject of a significant scheme of repairs. The nature and extent of the works was drawn to the attention of the leaseholders in 2018 but they declined on consultation at that time to support the scheme. Now works were started therefore. More recently the insurer has intimated that insurance cover could be withdrawn unless the works proceed quickly. On being advised of this, the landlord’s agent reports that the leaseholders now support the works, but there is a difficulty in fully satisfying the S.20 procedural requirements.

Directions

4. Directions dated 29 April 2019 were issued by the Tribunal without any oral hearing. They provided for the Tribunal to determine the applications during the week commencing 27 May 2019 and that if an oral hearing were requested by a party, it take place on 29 May 2019. They provided that the applicant must immediately send to each leaseholder 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 3 May 2019.
5. Any leaseholders who opposed the application had, by 13 May 2019 to notify the Tribunal with any statement and supporting documentation. The respondent leaseholders of were those set out in the schedule to the application.

Applicants Case

6. The property is a block of 10 purpose built flats. A copy lease dated 12 January 2006 for flat No.49, was provided by the applicant as representative of all others. There being no evidence to the contrary, the Tribunal assumed that all the residential leases are in essentially the same form.
7. The application was marked 'fast track' at box 10, and that: *"The insurance company want to cancel the buildings insurance cover until the works are completed."*
8. The application stated at box 7 that the application concerned qualifying works and that these had not been carried out.
9. Further details within the 'Grounds for seeking Dispensation' section of the application form included those of the proposed works: *"- take up the existing external front pathways and damaged retaining walls, lay appropriate foundations reinforce walls with steel bars and steel helibars as per instructed surveyors specifications. Rebuild the retaining walls and pathways as per instructed surveyors specifications. Other necessary ancillary works as may be required."*
10. The consultation that had already been carried out; *"A Section 20 consultation process was carried out, the Part 1 Notice was served on 5.12.2017 and the Part 2 Notice was served on 27.4 018 and then again on 19.11.2018."*
11. Dispensation from the full consultation was required by the applicant because it was said that the insurance company now wanted to cancel the insurance cover until the works programme had been completed. It further explained that whilst a full Section 20 consultation had been carried out in 2017 when the leaseholders had objected to the works, they had now (since 1 March 2019) accepted that they needed to proceed. The difficulty stated was that although 3 prices from 3 contractors for the works had been obtained in 2017, the leaseholder's nominated contractor's tender bid, said to have been sent to the landlord around that time, had not been received by the landlord's surveyor until December 2018. Not only was this well outside the consultation period which ended much earlier in 2018, it was at an apparently unrealistic price, such that the landlord's surveyor had concluded then that the bidder had misunderstood the scope of works and would not have been able to carry them out at the price stated.
12. The applicant's agent confirmed by a email dated 29 May 2019 to the Tribunal, that *"we emailed all the leaseholders with the application form"*

and the directions on 29 April and we also displayed the in the communal hallway on the same day.”

13. The Tribunal did not receive any objections from any of the 10 respondents.
14. 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 paper hearing which took place on 30 May 2019. A decision was made the same day.
15. 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

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

The Law

17. 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.
18. 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.”
19. 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

20. 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.
21. 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.
22. No evidence has been produced that any of the respondents have challenged the consultation process and no written submissions have been received.
23. The additional works for roof/ wall have been considered by the Tribunal.
24. 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.
25. **It should be noted that 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

30 May 2019