



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

Case Reference : **LON/00BK/LDC/2019/0100**

Property : **Heron Place, 3 George Street/9 Thayer Street
London W1U 3QG/3JL**

Applicant : **Eskmuir Properties Limited**

Representation : **Samuel Thompson
Burlington Estates**

Respondents : **Various Leaseholders, see Annexe A
of the application form**

Type of Application : **Under section 20ZA of the Landlord and Tenant Act 1985 ('the Act') for dispensation from the consultation requirements in respect of qualifying works**

Date of Application : **20 June 2019**

Date of Decision : **25 July 2019**

Tribunal: : **Mrs A J Rawlence MRICS**

DECISION

DETERMINATION

The Tribunal grants dispensation from the consultation requirements contained in section 20 of the Act and the associated Regulations in respect of the qualifying works, the subject of the Application.

Reasons for the Tribunal's determination

Introduction

1. On 20 June 2019 Eskmuir Properties Limited ('the **Applicant**') applied to the Tribunal ('the **Application**') for an order under section 20ZA of the Act dispensing with the consultation requirements contained in section 20 of the Act and associated regulations in respect of Heron Place, 3 George Street/9 Thayer Street, London W1U 3QG/3JL ('the **Property**'). The Respondents are the leaseholders of the 37 flats at the Property.
2. Section 20ZA (1) of the Act provides as follows:

'(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 do so.'
3. The works the subject of the Application, which had not been commenced at the date of the Application, involved replacement of cold water tanks at the Property and associated works. The Applicant stated that the reason for the urgency was that it became apparent that works were required to ensure no water leakage from the cold water storage tank room. Further details are contained in the paragraphs containing the Applicant's submissions (see below).
4. The Applicant requested a paper track (i.e. on the basis of the written submissions of the parties).
5. Directions were issued by the Tribunal dated 26 June 2019.
6. The Tribunal proceeded to determine the Application without an inspection as photographs had been supplied by the Applicant.

The relevant lease provisions

7. The Tribunal was provided with a copy of the Lease for Flat 2 Heron Place. It is assumed that the remaining leases are similar in all material respects. The Lease is dated 28 October 2014 and is made between Eskmuir Properties Limited (Landlord) and Michael Robert Kopelman. In consideration of a premium and the payment of a service charge, the Lease grants the Property to the Tenant for a period expiring on 31 May 2168.
8. Schedule 7 of the Lease states the Landlord's Covenants.

4 *“The Landlord shall keep the Reserved Property and all fixtures and fittings therein and additions thereto in a good and substantial state of repair decoration and condition....*

9. The Tenant covenants to pay the service charge which shall mean the amounts properly certified in accordance with provisions of Schedule 6 Paragraph 18.
10. The mechanism for the payment of the service charge is found in Schedule 6 paragraphs 19 and 20.

The Applicant's submissions

11. The Applicant uses Burlington Estates to carry out the management of the Property. On 21 May 2019 a contractor was asked to investigate a leak in the cold water storage tank room following reports from the Building Manager. Remedial works were carried out.
12. On 5 June 2019 it was reported that the tanks were again leaking and that the water had almost reached the height of the pumps. The contractor advised the replacement of the cold water supply tanks and deemed the works as urgent to prevent any further damage to other equipment associated with tanks or cause consequential damage to the property or cars within the car park
13. The Applicant duly informed all the leaseholders on 16 June 2019 of the planned scope of the required works and an update was provided on 21 June 2019. Two quotations were obtained with works to start when the relevant parts had arrived.
14. The application was made on 20 June 2019 when it was stated that works were urgent otherwise residents would be left with no water supply to their toilets, sinks and shower as well as have possible damage to the Property and car park.
15. No consultation had been carried out due to the urgency of the works, although all leaseholders were aware that these works were due to take place and the reasons.
16. The Tribunal notes that there have been no representations from the respondents.

The Tribunal's Determination

17. The Tribunal was provided with convincing evidence that the work was urgent to prevent damages to the property and retain a water supply to all residents.
18. It is not the concern of the Tribunal, in any case, as to whether the cost was reasonably incurred. The Respondents retain the right to challenge the cost by making an application under section 27A of the Act at a later date. The question before the Tribunal is whether it is reasonable, in the circumstances of the case to dispense with the consultation requirements. The Tribunal therefore determines that it is just and equitable that dispensation is granted from the consultation requirements contained in section 20 of the Act and the associated regulations requested by the Application.

19. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
20. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
21. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
22. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

A J Rawlence MRICS – Chairman.