



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

<b>Case Reference</b>	:	<b>LON/00AW/LDC/2019/0111</b>
<b>Property</b>	:	<b>48-50 Harrington Gardens, London SW7 4LT</b>
<b>Applicant</b>	:	<b>48-50 Harrington Gardens Management Company Limited</b>
<b>Representative</b>	:	<b>Burlington Estates</b>
<b>Respondent</b>	:	<b>Various leaseholders of the 19 flats that comprise the property. The details of which are submitted with the application.</b>
<b>Representative</b>	:	<b>None</b>
<b>Type of Application</b>	:	<b>An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation from consultation prior to carrying out works</b>
<b>Tribunal Members</b>	:	<b>Mr I B Holdsworth FRICS MCI Arb</b>
<b>Date and venue of Hearing</b>	:	<b>20 August 2019, 10 Alfred Place, London WC1E 7LR.</b>
<b>Date of Decision</b>	:	<b>20 August 2019</b>

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**DECISION**

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## **Decisions of the Tribunal**

**The Tribunal determines that dispensation should be given from all the consultation requirements in respect of the works to expose a defective gas supply to the property and carry out all necessary repairs to make safe the supply, (defined as the “gas supply repair works”) at 48-50 Harrington Gardens, London SW7 4LT required under s.20ZA of the Landlord and Tenant Act 1985 (the “Act”) for the reasons set out below. The agreed cost of the gas supply repair works is £92,450.40 inclusive of VAT.**

### **The application**

1. The Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) to dispense with the statutory consultation requirements associated with undertaking essential repair and renewal to the gas supply at 48-50 Harrington Gardens, London SW7 4LT **“the property”**.
2. An application was received by the First-tier Tribunal dated 16 July 2019 seeking dispensation from the consultation requirements. Directions were issued on the 23 July to the Applicant. These Directions required the Applicant to advise all Respondents of the application and provide them with details of the proposed works.
3. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

4. This matter was determined by written submissions. The Applicant submitted a Bundle of relevant materials to the Tribunal.
5. No responses were received by Tribunal from the Respondents since they were advised of the intention to seek dispensation from the statutory consultation procedure by the managing agents.

### **The background**

6. The property which is the subject of this application is a purpose built five-storey building with a lower ground floor. The property has 19 self-contained flats all served by a communal gas supply.
7. The route of the gas supply runs from the exterior to the duct work in the common parts through the basement flat number 17. The property has recently undergone a comprehensive refurbishment which included works to floor voids, plumbing and internal walls. Since those works were undertaken tradesmen and residents of the flat have complained about a strong intermittent

odour. The odour was described as being in likeness to that of a domestic gas smell.

8. This problem was brought to the attention of the residents in November 2018 when the previous managing agents issued a Letter of Intent to pursue a consultation on necessary repair works to the gas supply.
9. Burlington Estates were appointed as managing agents in December 2018 and brought the matter to the Residents Annual General Meeting on 27 February 2019. It was resolved at that meeting that gas engineers would be instructed to carry out further investigations and that the managing agents should seek dispensation from consultation for any necessary expenditure from First-tier Tribunal.
10. Three quotes were obtained for the works and the lowest tender after adjustments was submitted by B & G Plumbing. The total cost of the tendered works is £92,450.40 inclusive of VAT. It is suspected any cost of providing alternative accommodation to residents affected by the proposed works is not included within that sum and will be a separate cost to the service charge account.
11. No subsequent Notice of Intention to carry out the proposed gas supply repair works was sent to leaseholders and it is not the intention of the Applicants to carry out any further consultation about this matter.
12. The Applicants contend that the gas supply repair works are needed urgently to ensure the health and safety of residents, particularly of those residents who occupy flat 17 at basement/lower ground level of the building.
13. Prior to my determination I had available a Bundle of papers which included the application, the directions and a copy of written representations prepared by the Applicants that provided information on the background to the lift works.
14. A copy of a specimen lease for each flat is supplied. The cost of carrying out works to the property is chargeable under provision 4 in the lease which refers to Schedule 5 which requires the Landlord to maintain the "*Retained Premises*". The Retained premises are defined at Schedule 2 and include "*sanitary, gas, electrical, heating or ventilation apparatus.*"
15. The only issue for me to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the gas supply repair works. This application does not concern the issue of whether any service charge costs are reasonable or payable.

### **The determination**

16. I have considered the papers lodged. There is no objection raised by the Respondents, either together or singularly.

17. There is a demonstrated need to carry out the works urgently to minimise the risk of significant further damage to the property and reduce the likelihood of harm to the residents, particularly those who occupy flat 17. I cannot identify any prejudice caused to the Respondents by the grant of dispensation from the statutory consultation procedure.
18. It is for these reasons that I am satisfied it is appropriate to dispense with the consultation requirements for the gas supply safety works.
19. **My decision does not affect the right of the Respondents to challenge the costs or the standard of work should they so wish.**
20. **In accordance with paragraph 10 of the Directions, it is the Applicant's responsibility to serve a copy of the Tribunal's decision on all Respondent leaseholders listed on the Application.**

Valuer Chairman: Ian B Holdsworth

20 August 2019

## **Appendix of relevant legislation**

### **Section 20 of the Act**

- (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) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long-term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).