



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

Case Reference	:	LON/00AH/LDC/2019/0089
Property	:	5-7 Penge Road, London SE25 4EJ
Applicant	:	5-7 Penge Road, London SE25 4EJ RTM Company Ltd
Representative	:	Catherine Guenand (Managing Agents)
Respondent	:	The leaseholders of 5-7 Penge Road. The details of the leaseholders are appended to the application
Representative	:	None
Type of Application	:	An application under section 20ZA of the Landlord and Tenant Act 1985 for dispensation from consultation prior to carrying out works
Tribunal Members	:	Mr I B Holdsworth FRICS MCI Arb
Date and venue of Hearing	:	20 August 2019, 10 Alfred Place, London WC1E 7LR
Date of Decision	:	20 August 2019

DECISION

Decisions of the Tribunal

The Tribunal determines that dispensation should be given from all the consultation requirements in respect of the works to realign and replace the surface drain to the rear of this property (defined as the “surface water drain works”) at 5-7 Penge Road, London SE25 4EJ required under s.20ZA of the Landlord and Tenant Act 1985 (the “Act”) for the reasons set out below. The agreed cost of the surface water drain works is £9,960 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 realignment and renewal of the Aco surface drain at the rear of 5-7 Penge Road, London, SE25 4EJ **“the property”**.
2. An application was received by the First-tier Tribunal dated 31 May 2019 seeking dispensation from the consultation requirements. Directions were issued on the 28 June 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 Victorian era built four-storey building which was converted to 12 self-contained, one bedroomed flats during the 1960’s.
7. The property has suffered from defective drains since September 2018. A number of CCTV investigations and subsequent repair to the foul drains at the property has been done since the problem was identified.

The Tribunal are told that the property insurer has contributed around £12,500 to the cost of these remedial works.

8. The drain repair works did not include the ACO channel as the insurance loss adjuster claimed the defect was caused by defective design. The recent failure of this drain has led to water ingress into flat C, a basement flat.
9. The residents of flat C reported damage to their property from water ingress on 19 May 2019. The drainage problem was then advised to the residents at the property by letter sent on 31 May. This letter explained the urgent need to carry out surface water drain repair and also that it was the intention of the RTM to seek dispensation from statutory consultation from the First-tier Tribunal.
10. The RTM obtained a single quote from First Response for the works which amounts to £9,960 inclusive of vat. It was not considered justified to obtain further works quotes because of the likely costs this would incur.
11. After receipt of the First Response works quote a skype meeting was held to discuss the proposed works and cost. The meeting was attended by 6 leaseholders and the remainder received recordings of the meeting on completion. No objections to the proposed works was received from any of the leaseholders. It is not the intention of the Applicants to carry out any further consultation about this matter.
12. The Applicant contends that the surface water drainage works are needed urgently to ensure the integrity of the property, the health and safety of residents, particularly those residents who occupy flat C, at the 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 Applicant that provided information on the background to the surface water drainage works.
14. A copy of a specimen lease for each flat is supplied. The cost of carrying works to the property is chargeable under provision 4(a)(ii) in the lease which states that “*subject to and conditional upon payment being made by the tenant of the interim charge and the service charge*”... the Landlord covenants to maintain “*all such gas, and water mains and pipes and drains waste water and sewage ducts.*”
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 surface water drain 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. One Respondent did offer his support to the works.
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 C. 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 surface water drain 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)