



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

Case Reference : **BIR/00DA/LDC/2019/0003**

Property : **Basilica, Albion Street, Leeds LS1 6LZ**

Applicant : **Basilica Management Limited**

Representative : **Ward Hadaway Law Firm**

Respondent : **Various Leaseholders (see Annex A of the application form)**

Type of Application : **Dispensation under section 20ZA Landlord and Tenant Act 1985**

Tribunal Members : **Judge T N Jackson
Mrs A Rawlence MRICS**

Date of Decision : **28 August 2019**

DECISION

Decision

We grant dispensation from statutory consultation required by section 20 of the Landlord and Tenant Act 1985 in relation to major works required to install a system to shut off water in individual apartments in the event of a leak.

Reasons for decision

Introduction

1. By application dated 3rd May 2019, the Applicant has applied for a dispensation of all of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 ('the 1985 Act').
2. The application relates to major works required to install a system to shut off water in individual apartments in the event of a leak.
3. The matter was transferred to Midland Panel from the Northern Panel because of a potential conflict of interest.
4. Directions were issued on 30th May 2019 and 9th July 2019.

Background

5. The Applicant is the landlord of the Property which comprises 94 residential apartments situated above retail premises situated on the Headrow in Leeds City Centre. The Respondents are the Leaseholders of the apartments. Norton and Company are appointed as agents to collect sums due under the Leases and to carry out the Landlord's management functions under the Leases.
6. The apartments are all subject to long residential leases understood to be granted on similar terms. We have been provided with a copy of the Lease for Apartment 58 dated 16th June 2006 as an example.
7. There has been a long running and repetitive issue in the Property of the hot water tanks in individual apartments bursting, leading to flooding of the individual apartments and other units below, including the ground floor retail area. The hot water tanks appear to have a 'life expectancy' of around 10 years before they burst. The hot water tanks are situated within each individual apartment and serve each apartment alone with no element of commonality.
8. Under the terms of the Leases, the repair of the hot water cylinder and associated pipework within an apartment falls within the premises demised under the Lease. The obligation to repair rests with the Leaseholder unless the damage is caused by an Insured Risk. If the Leaseholder is in breach of the covenant to repair and flooding ensues which affects third parties, remedying the consequences of that breach is the Leaseholder's responsibility (unless there is insurance cover).
9. However, the resulting insurance claim and managing the insurance is an issue for the Applicant, and the Freeholder, who arranges the insurance. The Applicant collects the insurance premium via the service charge on behalf of the Freeholder.

10. As a result of repeated claims made during the last 5 years, the cost of the insurance claims has risen significantly, as has the excess for each claim. According to the letter dated 15th April 2019 from Norton & Company to the Leaseholders a copy of which has been produced, the excess is now £50,000 per claim for apartments where the tank has not been replaced and £25,000 for apartments where the tank has been replaced. Claims over the last three years have amounted to £267,973.74, (not including the last incident which flooded and closed the retail premises PC World on the ground floor on a Saturday before Christmas and which is likely to lead to an extremely high claim for consequential loss).
11. If preventative measures are not undertaken, the Applicant advises that the insurers have stipulated that they will remove “escape of water” cover from the insurance cover for the Property until work has been completed to prevent any further damage. If such measures were to be put in place and there were no further claims within a period of time, the insurers would reinstate the cover with an excess of £10,000 for apartments that had replaced their tanks and would review after 6 months the position with the apartments where tanks had not been replaced.
12. The Applicant has worked with the Leaseholders to encourage them to install new water tanks to mitigate the risk. Currently, 74 of the 94 apartments have replaced the tanks, leaving 20 tanks which are at risk of causing damage if they fail.
13. The Applicant has resolved, as a matter of urgency, to take measures to address the situation and proposes to install a system which will automatically shut off the supply of water to an individual apartment after given a period of time, for example 5,10,15, or 20 minutes, if water is running. Whilst the system will not prevent bursts, it should mitigate the damage caused. The Tribunal has been provided with the Installation and Operation Manual for such a system. The insurers are insisting that such a system is installed to continue to insure the Property.
14. The Applicant has obtained quotations for the system to be installed at the Property. We have been provided with a schedule showing quotes (inclusive of VAT) from 3 contractors with costs ranging from approximately £33,660 to £39,164 for a system which is battery operated, and costs ranging from £32,610 to £45,849 for a similar system which is based on fixed wiring. The cheapest quote, (although the Applicant is not required to accept the cheapest), would amount to a contribution of £347 per apartment, which is in excess of the statutory limit of £250 limit imposed by The Service Charges (Consultation Requirements) (England) Regulations 2003.
15. The Applicant proposes to commence the works as a matter of urgency in order to mitigate the risk of any further extensive flooding. The Applicant is concerned that if a statutory consultation was to take place, which would take between three and six months, then there is a real risk of substantial damage being caused to the apartments or commercial premises resulting in a further insurance claim, and the possibility of the Property becoming virtually uninsurable.
16. The Applicant has kept the Leaseholders informed of its intentions, specifically in the letter from Norton and Company dated 15th April 2019. Leaseholders have been given details of the system, a schedule detailing the quotations received and informed of the likely charge for each apartment. The letter advises Leaseholders of the statutory requirement to consult under section 20 of the 1985 Act but expresses the concern

that unless immediate action is taken, another flood could see substantial damage being caused to apartments or the commercial premises, which will be uninsured or face a large excess and run the risk of the Property effectively becoming uninsurable. The letter advises the Leaseholders that the Applicant proposes to commence the works as a matter of urgency whilst in parallel making an application to the Tribunal to dispense with the consultation requirements. Leaseholders are asked to forward to Norton and Company by return any observations, including any suggestions as to contractors they would like to propose to quote for the works

Lease

17. The parties to the Leases are the owner, Landmark Developments Limited (1), the Landlord, Basilica Management Limited (2) and the individual Leaseholders. The Leases are granted for a 250 year period. We have reviewed the sample Lease and are satisfied that the respective responsibilities as described in paragraphs 8 and 9 above are reflected in Clauses 3.5.1; 3.11.1; 3.11.2; 3.11.5; Schedule 4, Part D Clause 7.11 and Schedule 5 of the Lease. As the Leaseholders have not objected to the application, we see little purpose in reciting the relevant Clauses.

Hearing/Inspection

18. There was no inspection or hearing and the matter was determined on the papers. Direction 5 of Directions dated 30th May 2019 required any Leaseholder who objected to the application to notify the Tribunal and the Applicant by 28th June 2019. Direction 6 stated that any Leaseholder who failed to notify the Tribunal of opposition to the application would be treated as consenting to the dispensation application. No objection was received from any Leaseholder.

The Law

19. The only issue for determination is whether we should dispense with the statutory consultation requirements.
20. In accordance with section 20ZA (1) of the 1985 Act, the Tribunal may dispense with the consultation requirements “if it is satisfied it is reasonable to do so”.
21. It is important to note that the present application is concerned only with the issue of whether it is reasonable to dispense with the consultation requirements so that in principle, the Applicant can recover from the Respondents the full costs of the works. A determination by the Tribunal that the consultation requirements should be dispensed with does not preclude an application under section 27A of the 1985 Act to determine whether the relevant contribution is payable at all or whether the relevant contribution is reasonable.

Deliberations

22. We are satisfied that it is reasonable to dispense with the consultation requirements in the circumstances of the present case, for the following reasons:
 - i. The power to dispense with the consultation requirements was included in the 1985 Act primarily to provide for circumstances where urgent action is required.

- ii. Having regard to the history and cause of the repetitive claims for flooding, and that 20 apartments have not replaced the tanks, the proposed works are urgent as the works are necessary to reduce the continuing risk of flooding.
- iii. If the works are not carried out urgently, there is a real possibility that the Property will become uninsurable
- iv. The Leaseholders have been given the opportunity to suggest other contractors. No Leaseholder has notified the Tribunal of their opposition to the application, and pursuant to the Directions, are therefore treated as having consented to the application. We do not consider that the Leaseholders are prejudiced or will suffer any loss of opportunity as a result of the dispensation of the statutory consultation requirements.

23. The Tribunal therefore determines that the consultation requirements are dispensed with in relation to major works required to install a system to shut off water in individual apartments in the event of a leak.

Appeal

24. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson