



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

Case reference : LON/00BJ/LDC/2019/0103

Property : Falcon Wharf, 34 Lombard Road,
London SW11 3RF

Applicants : HML PM Limited (formerly HML
Hawksworth) Managing agents

Representative : Nick Hughes

Respondents : Various Leaseholders of Falcon Wharf

Type of application : To dispense with the requirement to
consult in respect of a qualifying long
term agreement

Tribunal : Judge Daley
Mr Taylor FRICS

Date of decision : 02 October 2019

DECISION

The Tribunal has determined not to grant the Application to dispensation with the statutory consultation requirements in relation to a long term agreement for a combined service provision for concierge, security and incident emergency response for Falcon Wharf.

Reasons

1. The Applicant made an application, which was received on 25 June 2019 for dispensation in respect of concierge services. Directions were given on 27 June 2019, Direction 5 required the landlord to send copies of the application and directions to leaseholders on or before 5 July 2019. The application at direction 6 required those leaseholders who oppose the application to send details of their opposition to the landlord and the Tribunal in a pro forma to the Tribunal on 12 July 2019. There were 5 objections received. One of the leaseholders indicated that they wished for

this matter to be dealt with at an oral hearing. The matter was set down for hearing on 2 October 2019. Mr Hughes attended on behalf of the applicant. There was no attendance on behalf of the leaseholders who had objected, however the Tribunal was able to consider the objections as all 5 of the leaseholders had made detailed written objections.

2. At the hearing Mr Hughes explained that Falcon Wharf was on Lombard Road, and that it shared the site with a hotel the Hotel Rafayel and that entrance to Falcon Wharf was via the hotel, there were 144 units, which were subject to the terms of the original lease, and 15 units which had subsequently been built by the freeholder, so the terms of the lease were likely to change to reflect this.
3. The concierge service was provided by an employee of the Applicant during the hours of 7am to 3pm (Monday to Friday) and that coverage outside of those hours was provided by staff employed by the freeholder provided via the hotel. Coverage was provided 24 hours a day for 365 days of the year. Mr Hughes informed the Tribunal that the requirements to provide the concierge service was set out in the lease (the Tribunal did not examine the lease, as there did not appear to be any dispute concerning the terms of the lease or the necessity for the service).
4. Mr Hughes submissions concerning consultation are set out in the application. He stated:- "... If we were to seek comparable prices from other companies apart from ... having to go to numerous separate companies for the combination of services... such responses would be financially prohibitive... We therefore request to forego consultation to save leaseholders from the unnecessary costs of the consultation process"
5. The Tribunal was informed that the costs of consultation was likely to be an initial charge of £350.00 plus £30.00 per unit (approximately (£4770.00) It was accepted by Mr Hughes that the current costs for the service was in the range of £160,000, given this the service charges payable by the leaseholders was approximately £1000.00 per unit.
6. The Tribunal considered the objections from the leaseholder of flat Ms Brown, Olfa Meliani, Rod Smith, and Ray Walsh and Ms Lisa Paterson (via email), all of the objections centred on the lack of transparency; concerning arrangements between the freeholder who owns the hotel and also some of the units and also provided the concierge service, the fact that it was difficult to quantify the service, and the fact that the out of hours response to emergencies in the building was not effective. The leaseholders also noted the high cost of the service.
7. The Tribunal asked about the difficulties of consultation, and whilst it accepted that there may be difficulties in obtaining tenders from like for like contractors for the service, it considered that this difficulty and the cost did not outweigh the rights of the leaseholders to participate in consultation, which would provide transparency, and which could potentially result in a saving to the leaseholders.
8. The Tribunal was mindful that it might prove difficult to find a like for like service, however this would not been known until the Applicant had undertaken a consultation exercise.

9. In accordance with the Supreme Court's decision in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854, the primary issue when considering dispensation is whether any lessee would suffer any financial prejudice as a result of the lack of compliance with the full consultation process, the Tribunal could not be satisfied that there would be no financial prejudice to the leaseholders.
10. The Tribunal is also not satisfied that the problems identified are such as to justify not going through the full consultation process. Given the objections, (albeit from a small number of leaseholders), and the potential prejudice to the leaseholders in terms of cost and service provided, the Tribunal is not satisfied that it is reasonable to dispense with the statutory consultation requirements.

Name: Judge Daley

Date: 02 October 2019