



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

**Case reference** : **LON/00BK/LDC/2019/0189**

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

**Applicant** : **Eskmuir Properties Limited**

**Representative** : **Burlington Estates**

**Respondents** : **37 Leaseholders**

**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**

**Tribunal member** : **(1) Judge Daniela Brandler  
(2) Mr M Mathews, FRICS**

**Date and venue of hearing** : **2 December 2019  
Alfred Place, London**

**Date of decision** : **2 December 2019**

---

**DECISION**

---

## **Decision**

1. The tribunal grants the applicant retrospective dispensation from the statutory consultation requirements contained in section 20 of the Act in respect of works carried out to Heron Place, 3 George Street/9 Thayer Street, Marylebone, London W1U 3QG/ 3JL during July and August 2017. The costs incurred in respect of the works is said to be £22,708.88 including VAT.

## **Reasons for the Tribunal's determination**

### **Introduction**

2. On 19 November 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.
3. 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.'*
4. The works the subject of the Application, which had been completed by 10 August 2017, involved fire safety works. These were identified by the London Fire Brigade ('LFB') during their visit to the Property on 20 July 2017. At that meeting the LFB expressed significant concerns in particular in relation to smoke ventilation, fire separation between flats and the common corridors and the integrity of the protected staircases.
5. The Applicant stated that the reason for the urgency was because of the LFB's concerns, such that they considered an immediate evacuation of the building, with a waking watch on a 24/7 basis. The Applicants had expected to receive an Enforcement Notice or Notice of Deficiency. That neither of these were served, the Applicant believes is because of the swiftness of their response in remedying the LFB's immediate concerns.
6. The Applicant requested a paper track (i.e. on the basis of written submissions of the parties).
7. Directions in respect of this application were made by the tribunal on 31 October 2019. These provided for the applicant to send to each of the leaseholders, by hand delivery, or first class post, copies of the application form and the directions; to display a copy of both in a prominent position in the common parts of the property; and by 11 November 2019 file with the tribunal

a certificate to confirm that this has been done and stating the date(s) on which this was done.

8. Any leaseholders who sought to oppose the application were given an opportunity to respond by 15 November 2019 by completing a reply form and sending it to the tribunal; and by sending the landlord a statement in response to the application with a copy of the reply form.

### **The relevant lease provisions**

9. 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.
10. 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...."
11. The Tenant covenants to pay the service charge which shall mean that amounts properly certified according to the provisions of Schedule 6 paragraph 18.
12. The mechanism for the payment of the service charge is found in Schedule 6 paragraphs 19 and 20.

### **The Applicant's submissions**

13. The actions taken by the Applicants were as follows: -
  - (a) Door closers were fitted to all flat doors during the week commencing 24 July 2017. This created containment within the flats and by starting the compartmentation process, they limited the fire spread.
  - (b) The Applicants then fitted 30-minute fire resistant panels to the sides of the flat entrance doors and intumescent sealant being applied to the edging.
  - (c) Communal hallway vents were sealed to prevent smoke from the floors below being pulled into other lobbies.
  - (d) The external Grille was opened to allow smoke to safely escape.
14. The landlord's agent, Burlington Estates, sent a number of communications regarding these issues to the leaseholders. These were dated 28.6.2017, 30.6.2017, 20.7.2017, 24.7.2017 and 11.8.2017. In the communication dated 24.7.2017 Burlington sent the leaseholders a detailed letter about the ensuing works and the reason for these works.
15. The Applicant seeks an exemption due to the risk to life and the health and safety of the tenants. It was not possible to undertake the s.20 consultation process due to the urgency of the works. Had the works not been commissioned

immediately, a waking watch would have been required at a cost of nearly £500 per day. Alternatively, residents would have had to move out of the building until the works were completed.

16. The Applicant and their agent are of the opinion that the works reduced the overall cost to the tenants by avoiding the two options requested by the LFB. The works also remedied the risk to life very quickly.
17. The Applicant confirmed by email dated 11 November 2019 that they had complied with the directions and had served the leaseholders with the application and the Tribunal's directions and displayed a copy in the reception of the property.
18. No objections to this application have been received from any leaseholder.

### **The Tribunal's Determination**

19. The Tribunal was provided with convincing evidence that the work had been urgent for the safety of the residents in the property. This evidence is in the letter dated 18 October 2017 from C.S. Todd & Associates Ltd, Fire Safety Consultations, setting out the LFB officers' concerns for the safety of the residents if works were not carried out.
20. 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.
21. 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.
22. 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.
23. 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 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.
24. 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.

**Daniela Brandler**

**2 December 2019**

**APPENDIX 1**  
**RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.

‘;

**APPENDIX 2**  
**RELEVANT LEGISLATION**

**Landlord and Tenant Act 1985**

20ZA. Consultation requirements: supplementary

- (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 dispense with the requirements.

**Service Charges (Consultation Requirements) (England) Regulations 2003.**

**Part 2 - consultation requirements for qualifying works for which public notice is not required**

*Notice of intention*

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
  - (a) to each tenant; and
  - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
  - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
  - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
  - (c) invite the making, in writing, of observations in relation to the proposed works; and
  - (d) specify—

- (i) the address to which such observations may be sent;
  - (ii) that they must be delivered within the relevant period; and
  - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

#### *Inspection of description of proposed works*

- 2.** (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
  - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

#### *Duty to have regard to observations in relation to proposed works*

- 3.** Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

#### *Estimates and response to observations*

- 4.** (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.



- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
  - (a) from the person who received the most nominations; or
  - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
  - (c) in any other case, from any nominated person.
  
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
  - (a) from at least one person nominated by a tenant; and
  - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).
  
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
  - (a) obtain estimates for the carrying out of the proposed works;
  - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
    - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
    - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
  - (c) make all of the estimates available for inspection.
  
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
  - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
  - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
  - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
  - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
  - (a) each tenant; and
  - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—
  - (a) specify the place and hours at which the estimates may be inspected;
  - (b) invite the making, in writing, of observations in relation to those estimates;
  - (c) specify—
    - (i) the address to which such observations may be sent;

- (ii) that they must be delivered within the relevant period; and
- (iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

*Duty to have regard to observations in relation to estimates*

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

*Duty on entering into contract*

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
  - (b) where he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.
- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.