



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

Case Reference : **LON/00AK/LDC/2022/0020**

Property : **107 Church Street London N9 9AA**

Applicant : **Quadron Investments Limited**

Representative : **JPC Law**

Respondents : **3 leaseholders at the property**

Representative : **None**

Type of Application : **Dispensation from consultation**

Tribunal : **Mr I B Holdsworth FRICS MCI Arb**

Date and venue of hearing : **19th April 2020
Remote hearing**

DECISION

The Tribunal determines to allow this application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 in respect of works specified in the Tuffin Ferraby Taylor LLP works schedule to remedy dry rot, rising damp and fire safety hazards provided these works fall under the Landlord's obligations contained in the leases of the flats.

This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of Section 27a of the Act.

The Tribunal directs the applicant to send a copy of this Decision to the leaseholders and to display a copy in the common parts of the building.

The Application

1. The Applicant made an application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act (the “**Act**”). The application affects 3 leaseholders at 107 Church Street London N99AA (the “**Property**”) whose names are annexed to the application form. The Applicant asserts that it is necessary for works to be carried out at this property to remedy dry rot, rising damp and fire safety hazards.

Background

2. The Property is a three-storey semi-detached house which is converted into three self-contained flats.
3. An inspection was undertaken by Mr Rowling of Tuffin Ferraby Taylor LLP, Building Surveyors on 15th December 2021 which identified dry rot in timbers in close proximity to the adjacent property, a failed damp proof course and inadequate fire breaks incorporated within the internal walls at ground level.
4. The Tribunal is told that following the December inspection the managing agents instructed Mr Rowling to prepare a schedule of remedial works. This schedule is submitted in the bundle at pages 18-27. It is the intention of the managing agent, Salter Rex LLP to instruct Contract Administrators to select and supervise contractors to undertake the works listed in the schedule.
5. No indicative costs for the prospective works are presented to Tribunal as the Applicants claim works costing cannot be prepared until the Contracts Administrator is appointed and the competitive tenders obtained from suitable contractors. It is also asserted that further exploratory investigation is necessary to ascertain the extent of dry rot and lack of fire spread barriers.
6. It is the Applicants contention that urgent remedy of the fire safety defects is necessary to reduce occupants risk throughout the building. They also highlight the risk of dry rot contamination to timbers in adjacent property if the affected timber is not treated in a timely fashion. The Applicants claim that the failure of the damp proof course has led to extensive damp penetration at ground floor level.
7. The Tribunal is told at page 17 of the bundle an initial Section 20 notice was served on the Respondents in November 2018 and following the December 2021 inspection a revised Section 20 notice was issued. Despite the service of these initial notices the Applicants now seek dispensation from the statutory consultation scheme due to the urgency of the necessary works.

8. The Tribunal notes that the only issue which we are required to determine is whether it is reasonable to dispense with the statutory consultation requirements.

The Application

9. On 28th February 2022 the Tribunal gave directions. A reply form was attached to the directions to be completed by the leaseholders who oppose the application. The Tribunal notified the parties that we would determine the application on the basis of written representations unless any party requested an oral hearing. There was no request from any leaseholder or applicant for an oral hearing.

Statutory Duties to Consult

10. The obligation to consult is imposed by Section 20 of the Act. The proposed works are perceived as qualifying works. The consultation procedure is prescribed by Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the Consultation Regulations”). Leaseholders have a right to nominate a contractor under these consultation procedures.
11. The Landlord is obliged to serve leaseholders and any recognised tenants association with a notice of intention to carry out qualifying works. The notice of intention shall, (1) describe the proposed works, (2) state why the Landlord considers the works to be necessary, and (3) contain a statement of the estimated expenditure. Leaseholders are invited to make observations in writing in relation to the proposed works and expenditure within the relevant period of 30 days. The Landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The Landlord shall respond in writing to any person who makes written representations within 21 days of those observations having been received.
12. Section 20ZA (1) of the Act provides:

“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.”

Determination

13. This determination relies upon a bundle of papers which included the application, the Directions, a Statement of Case and copy of a specimen lease.

14. The bundle does not include any proposed costs for works or details of professional fees associated with the contractor selection, appointment or scheme supervision .
15. The Supreme Court's decision in the case of **Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854** clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.
16. The scheme of consultation provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.
17. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder because of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
18. The burden is on the landlord in seeking a dispensation from the consultation requirements. However, the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered because of the lack of consultation.
19. The Tribunal is satisfied that the works are of an urgent nature and they are for the benefit of and in the interests of both landlord and leaseholders in the Property.
20. They noted that no leaseholders objected to the grant of dispensation. This suggests that the benefit of carrying out these works urgently is recognised by the majority of the residents of the premises.
21. The Tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to any failure to consult.
22. The Tribunal notes that although a works specification is available for review the submitted bundle has no proposed works costing. The Tribunal accepts the managing agents explanation that it is necessary for Contract Administrators to be appointed and preliminary exploratory building works undertaken before a complete works specification and budget costing can be prepared. For this reason the Tribunal is not persuaded the leaseholders are likely to suffer any financial prejudice because of the failure to consult at this time.

23. The Tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted under the 2003 Regulations. In view of the circumstances under which the works became necessary the Tribunal does not consider that the leaseholders, in losing an opportunity to make observations and to comment on the works or to nominate a contractor, are likely to suffer any relevant prejudice.
24. The Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are dispensed in respect of the works specified in the Tuffin Ferraby Taylor LLP works schedule (pages 18-27 of the bundle) to remedy the identified dry rot, rising damp and fire hazards at the Property, subject to these works falling under the Landlord's obligations under the leases of the flats.

Chairman: Ian B Holdsworth Valuer Chairman

Dated: 19th April 2022