



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

Case Reference : **LON/00BF/LDC/2022/0081**

Property : **Flats 1-65 Leith Towers, Grange Vale,
Brighton Road, Sutton SM2 5BY**

Applicant : **Leith Towers Management Limited**

Representative : **Kinleigh Folkard & Hayward**

Respondents : **65 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 : **20 July 2022
Remote determination**

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 fire safety works specified by London Fire Brigade and to be undertaken by Surrey Fire and Safety Limited in accordance with schedule dated 31st March 2022 provided these works fall under the Landlord's obligations contained in the leases of the flats. The estimated cost of the works is £50,160.

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 65 residential leaseholders situate at Flats 1-65 Leith Towers, Grange Vale, Brighton Road, Sutton SM2 5BY (the “**Property**”). The names and addresses of the respondent leaseholders are annexed to the application form.
2. The Applicant asserts that it is necessary for works to be carried out at this property to remedy fire safety hazards.

Background

3. The Property is an eleven storey residential development of flats containing 65 self-contained dwellings.
4. There was a fire at flat 4 on 18 March 2022. The London Fire Brigade (LFB) attended and extinguished the fire, resulting in some damage to the Property. The Fire Brigade made a series of recommendations following the fire to mitigate the fire risk at the Property. These included an immediate change in evacuation policy, the instruction of a Waking Watch and the recommendation that a Grade A L5 fire detection and alarm system be installed throughout the Property.
5. The LFB told Kinleigh Folkard & Hayward the managing agent that a failure to comply with the fire safety recommendations would result in the issue of a Prohibition Order which would confirm the Property unfit for habitation.
6. The managing agent subsequently obtained four quotations from specialist installers for the fire safety works. Surrey Fire & Safety Ltd (SFSL) returned a quotation of £50,160 inclusive of VAT to carryout the work. The alternative contractor prices to install the same specification of works ranged from £54,126 to £69,660. After consultation with the Directors of Leith Towers Management Limited, the managing agents confirmed Surrey Fire and Safety Works as the selected contractor.
7. The Tribunal is presented with an indicative works schedule and costing submitted by Surrey Fire & Safety Limited at page 32 of the bundle.
8. 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 any delay to the proposed remedy of the fire hazards would cause significant extra costs to the residents due to the cost of the Waking Watch, estimated at some £5,238 per week.

9. The Tribunal is told at page 77 of the bundle that in accordance with the Directions issued on 18 May 2022 and subsequently amended on 1 June and 12 July, the managing agents contacted all residents and the Residents Association to advise them of the proposed works. Applicants now seek dispensation from the statutory consultation scheme due to the urgency of the necessary works.
10. Copies of a briefing paper prepared by the managing agent and distributed to all residents is at page 14 of the bundle. A copy of a Notice of Intention letter dated 21 April issued in accordance with Section 20 procedure is at page 27. These documents report to residents the observed defects at the building, the justification for the proposed works and confirm the intention of Leith Tower Management Limited to proceed with necessary remediation in accordance with LFB direction.
11. 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

12. On 25 April 2022 the Tribunal gave directions which were subsequently amended on 1 June and 12 July after requests from the Applicant. A reply form was attached to the directions to be completed by the leaseholders who oppose the application. The Applicants provided all leaseholders, residential sub-lessee and other relevant leaseholders with copies of the Directions, Application, Statement of Case and supporting documents. The Tribunal notified the parties in the Directions 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

13. 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.
14. 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.

15. 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

16. This determination relies upon a bundle of papers which included the application, the Directions, a Statement of Case and supporting documents.
17. The bundle contains detailed works justification, a description of the proposed works and indicative costs.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.

23. 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.
24. The Tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to any failure to consult.
25. The Tribunal notes a works specification is available for review in the submitted bundle and this is provided with works quotations from four specialist contractors. The Tribunal accepts that the residents have had a reduced time period to comment on these quotations or consult prior to commencement of the remedial scheme. The Tribunal acknowledge the efforts made by the managing agent to secure competitive tenders for the fire safety works within a short time period. They are not persuaded an extended consultation period in accordance with Section 20 procedures would have produced a different commercial outcome. For this reason the Tribunal are unable to identify any financial prejudice to the leaseholders due to the failure to consult at this time.
26. 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.
27. 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 by London Fire Brigade, to be undertaken by Surrey Fire and Safety Limited in accordance with schedule dated 31 March 2022 (pages 31-40 of the bundle) to remedy the 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: 21 July 2022