



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

Case Reference : LON/00AC/LDC/2013/0085

Property : Flats 1-18 Temple Close, Cyprus Road, London N3 3SB

Applicant : Mr Quy (freeholder)

Representative : Fortune Management

Respondents : The leaseholders of Flats 1-18 as set out on the schedule attached to the Directions dated 27 August 2013

Representative : None

Type of Application : To dispense with the requirement to consult lessees about major works – S20ZA Landlord and Tenant Act 1985

Tribunal Members : P M J Casey MRICS

Date and venue of Hearing : Paper determination on 22 October 2013 10 Alfred Place, London WC1E 7LR

Date of Decision :

DECISION

Decision of the tribunal

- (1) The tribunal determines that it is satisfied that it is reasonable to dispense with all of the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations)

The application

1. The applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) that the consultation requirements of the Act may be dispensed with in respect of certain works at Flats 1-18 Temple Close, Cyprus Road, London N3 3SB (“the property”)
2. The applicant requested a “paper determination” and the Tribunal accepted that this was appropriate although the Directions for the management and progression of the application gave the respondent lessees of the flats at the property the opportunity to request an oral hearing; none did so.
3. The Directions further required the applicant to serve a copy on each lessee together with a pro forma response slip which they were asked to complete showing their support of or opposition to the application. The lessees of Nos 3, 6, 9 and 10 returned the form and supported the application, the lessee of No 8 did so but only supported the application in respect of works to block 15-18 while the lessee of No 12A, who had recently purchased the flat, did not return the pro forma but sent the managing agents an email raising a number of points but did not say specifically whether for or against. None of the other leaseholders responded, though most have apparently now paid their share of the cost of the works. Although provided for in the directions neither the lessee of No 8 nor the lessee of 12A provided statements to the Tribunal setting out the grounds of their opposition, representations as to whether it may be appropriate to grant dispensation “on terms” such as a reduction in the service charge costs or payment of their reasonable legal/professional costs incurred in the proceedings nor evidence of what they might have done differently if they had been consulted.
4. The bundle of documents produced by the Applicant in accordance with the directions was considered by the Tribunal on 22 October 2013

The background

5. The property which is the subject of this application comprises four blocks of purpose built flats. None of the works for which dispensation

is claimed affect block 1-6. The blocks are two storied and built of brick and tile around 1970.

6. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Respondents hold long leases of the flats at the property which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. There is no suggestion in this application that the works undertaken fall outside the Applicant's obligations under the leases nor that the lessees are not required to contribute to the costs of the works.

The issues

8. The relevant issue for determination had been identified in the directions as whether or not it would be reasonable for the Tribunal to grant the Applicant dispensation from all or any of the consultation requirements set out in the Act and the Regulations in respect of certain major works carried out at the property.
9. Having read the evidence and submissions from the Applicant and considered all of the documents provided, the tribunal has made the determination applied for.

The tribunal's decision

10. The tribunal determines that it is reasonable to dispense with all of the consultation requirements of the Act and the Regulations in respect of the works referred to in the application dated 19 August 2013.

Reasons for the tribunal's decision

11. The works comprised repairs to the gable end walls to both sides of block 15-18 and one end only of the other two blocks. The managing agents, Fortune Management, were advised on 7 August 2013 by the cleaning and gardening contractor that the verge board fascia and soffit timbers to the lefthand side gable of block 15-18 had collapsed. They instructed a roofing contractor, Paul Lavan to attend, report on the damage and give an estimate of the repair cost. The section which had failed was only prevented from falling to the ground because it had snagged on a protruding vent pipe.
12. The roofing contractor advised that the cement pointing to the tile edges along the gable had failed and allowed water to penetrate the roof

structure and rot the timber supports. The other gable to the block showed similar symptoms and he also expressed concerns about one gable end to each of the other two blocks though advising that the full extent of the damage and repair needed could only be ascertained by opening up the roof above the gable ends. The managing agents taped off the grassed areas below the affected walls and put up warning signs as well as writing to all lessees and residents warning them of the potential dangers.

13. They regarded the problem as a serious one in health and safety terms as the areas were used by residents for such matters as drying laundry. Accordingly they instructed the contractor to carry out the works without delay on the basis of his estimate of £,4600 including scaffolding for each of the four gable walls. By early September all had been repaired at the estimated cost and the fascias and soffits had been replaced in UPVC.
14. The managing agents also go an estimate from another contractor who was engaged to carry out a fully consulted on programme of external decorations in the autumn. He quoted £4,550 per gable but excluding scaffolding.
15. At all stages the managing agents have kept lessees informed by letter and indeed given a credit to each as the planned decorating works will cost less as the UPVC replacement soffits and fascias will not need painting. They will also they say use the scaffolding erected for the decorating to examine and if necessary deal with the remaining gables after consultation.
16. It is difficult to see how the managing agents could have discovered the problem earlier through the contractors who regularly clean the gutters of leaves as suggested by the lessee of Flat 8 as there are no gutters across the gable wall. The problem once it arose clearly presented health and safety risks of some magnitude and did need dealing with urgently. The advice given was that the four gables should be dealt with and the managing agents cannot be criticised for following it.
17. There is no evidence before the Tribunal that any of the lessees has suffered any prejudice by the lack of consultation and the Tribunal is of the opinion that it is reasonable in all the circumstances to grant the dispensation sought which is the sole matter before the Tribunal

Name: P M J Casey

Date: 10 November 2013