

9437



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

Case Reference : LON/00BD/LDC/2013/0096

Property : Bridge Way House, 107-113 High Street,
Whitton, TW2 7LD

Applicant : Twickenham Property Ground Limited

Representative : Mr H. S. Khosa

Respondents : 1. Dilip Damian Agarwal
2. Louis Francis Harrison
3. Peter Patrick Corey

Representative : N/A

Type of Application : Determination of an application for
dispensation from the consultation
requirements of s.20 Landlord and
Tenant Act 1985

Tribunal : 1. Mr A Vance LLB (Hons)
2. Mr J F Barlow JP FRICS

Date of Decision : 24.10.13

DECISION

Decision

1. The Tribunal grants dispensation from the whole of the consultation requirements for qualifying works under section 20ZA of the Landlord and Tenant Act 1985 (“The Act”).
2. This dispensation is granted in respect of works already carried out to the parapet walls of Bridge Way House, 107-113 High Street, Whitton, TW2 7LD (“the Building”) in May 2013 and October 2013.

Introduction

3. This is an application made under section 20ZA of the Act for a determination permitting the Applicant to dispense with all of the consultation requirements set out in Section 20 of the Act and the regulations made under that section namely the Service Charges (Consultation Requirements) (England) Regulations 2003.
4. The Applicant is the freehold owner of the Building, which comprises four commercial units on the ground floor; two residential units on the first floor and two residential units on the second floor. The leasehold interest in Flat 2 is vested the Applicant. The leasehold interests in remaining residential flats are vested in the Respondents.

The Application

5. The Applicant seeks dispensation from the whole of the consultation requirements in respect works already carried out to the parapet wall located on the third floor of the Building and the surrounding area.
6. From the Applicant’s Statement of Case it appears that it purchased the freehold of the Building at auction in December 2012 and that it was registered as proprietor of the Building at the Land Registry in March 2013.
7. Prior to its acquisition of the Building a “Dilapidations Survey Report” dated 06.08.10 was prepared by Sheraton-Davis Associates which indicated that (amongst other matters) work was required to areas of the parapet of the Building fronting on to Bridge Way. It appears from the report that parapet ledge tiles were loose and that pointing and rendering was defective.
8. The Applicant was provided with a copy of this report by the partner of Mr Agarwal, the tenant of Flat 1, in late January 2013. However, the Applicant did not carry out any remedial works to the parapet wall at that time.

9. The primary reason for this delay seems to be that the Applicant considered that the residential leases held by the Respondents were defective in that there was uncertainty as to who was responsible for repairing and maintaining the parapet walls.
10. The Tribunal has not been provided with copies of these leases but we have had sight of copies of the three subsequent leases all dated 13.09.13 entered into by the Applicant and the individual Respondents following entry into Deeds of Surrender and Re-Grant. It is the Applicant's position that the new leases make it clear that the responsibility for repair and maintenance of the parapets rests with the Applicant and that the Respondents are liable to contribute towards the Applicant's costs of doing so by way of service charge.
11. On 09.05.13 the Applicant was contacted by the local authority who informed it that debris had fallen from the parapet walls on to the forecourt surrounding the Building. The Applicant arranged for loose rendering to be removed as a matter of urgency at a cost of approximately £250. No invoice in respect of these costs has been provided to the Tribunal.
12. Once the new leases were executed the Applicant proceeded to arrange for further works to be carried out by a company called Building Matters. Their invoice dated 02.10.13, in the sum of £600 including VAT, refers to the removal of loose render from the parapet walls and fire escape ceiling and making good as required.
13. Directions were issued by the Tribunal on 26.09.13 in which the Applicant was notified that the Tribunal will wish to be appraised as to why works were not commenced at an earlier date given that debris fell from the Building in early 2013. The Applicant was directed to provide a copy of the Tribunal's directions to each leaseholder as soon as possible. The Respondents were directed to confirm whether or not they opposed the Application and, if so, whether it may be appropriate for the Tribunal to grant dispensation on terms and to provide evidence of what they would have done differently if the Applicant had complied with the consultation process. It was also directed that the Application was to be dealt with on paper unless any of the parties requested an oral hearing. No hearing was requested and the matter has therefore been determined on the papers.
14. Letters were sent by the Tribunal to the Respondents on 27.09.13 enclosing a copy of the Application and the directions issued on 26.09.13. The only written response received was from Mr Agarwal who stated that he consented to the Application and that he did not want to make any representations.

The Law

15. The Tribunal is being asked to exercise its discretion under section 20ZA of the Act to dispense with the consultation requirements in respect of qualifying works. The Tribunal may make that determination if it is satisfied that it is reasonable to dispense with those requirements.
16. The relevant consultation requirements are set out in Part 2 of Schedule 4 of Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations") a copy of which is annexed to this decision.
17. The procedure has three stages. In outline, these involve, at Stage 1, the landlord providing each lessee with notice of intention to carry out qualifying works and allowing them an opportunity to make observations about the proposals. This is followed by Stage 2 which requires that the landlord to provide the lessees with notice of the proposal to enter into an agreement for the works. Details of the estimates obtained from the contractors need to be provided, or made available, and a further period is allowed within which the lessees can make written observations on any of the estimates. Stage 3 (which requires provision of a notice of the reasons for entering into an agreement, a summary of the observations made and the landlord's response to these) is omitted if the lowest estimate is accepted or the contract is awarded to a person nominated by a tenant.

The Tribunal's Decision and Reasons

18. The Tribunal is mindful of the fact that the statutory consultation procedures provide leaseholders, who will ultimately have to pay the costs of the works in question, with important safeguards which, in the Tribunal's view, should not be dispensed with readily. The Tribunal needs to be satisfied that the works in question were sufficiently urgent to warrant dispensing with the consultation requirements and that it is reasonable to do so.
19. The Applicant acquired the Building in December 2012. It was aware soon afterwards that a report, prepared in, August 2010, had identified serious structural defects to the Building. It is a matter of concern that no works were carried out until after part of the parapet walls collapsed on to the forecourt below in May 2013. We do not accept that the Applicant's wish to regularise the residential leases justified this delay given the obvious public safety concerns.
20. Nor (apart from the reference to uncertainties in the terms of the relevant leases) is there any evidence before us to indicate that it was unreasonable for the Applicant to have commenced the s.20

consultation process in May 2013 after the debris fell from the parapet wall, if not when it received the dilapidations report in January 2013.

- 21.** If it had done so this would have enabled the Respondents to make representations concerning the works required and the choice of contractor.
- 22.** Nevertheless, despite these concerns, we are satisfied that it is reasonable for the Tribunal to grant dispensation sought by the Applicant. This is for the following reasons:
 - 22.1.** We agree that the works carried out in May 2013 (at a cost of £250) and October 2013 (at a cost of £600) were sufficiently urgent to warrant the grant of dispensation. As indicated by the incident in May 2013, there was a clear health and safety risk in the Building that the Applicants have sought to address.
 - 22.2.** The nature of the works and the costs incurred do not appear to be disproportionate to the identified risk.
 - 22.3.** The fact that none of the Respondents have objected to the grant of dispensation (and that one has consented) is a factor relevant to our determination.
 - 22.4.** We also bear in mind the decision in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 in which the majority of the Supreme Court set out guidance as to the purpose of the Regulations. The majority opinion was that the purpose is to ensure that lessees are protected from (a) paying for inappropriate works, or (b) paying more than would be appropriate. The Court considered that when considering dispensation requests, the Tribunal should focus on whether the lessees were prejudiced in either respect by the failure of the landlord to comply with the Regulations (relevant prejudice). The factual burden of identifying some relevant prejudice is on the lessees. No prejudice has been advanced by any of the Respondents and none is evident to us. None have sought to argue that the costs incurred by the Applicant (a total of £850) would have been lower had consultation taken place.
- 23.** The parties should note, however, that this determination is solely in respect of dispensation from the consultation requirements. It has no bearing on the question of whether or not the costs of the works were reasonably incurred or whether they are recoverable from the Respondents through the service charge.
- 24.** Nor should the Applicant assume that dispensation would inevitably be granted in the event that it were to make a further application to

dispense from the provisions of the statutory consultation procedures. As stated above, these procedures provide leaseholders with important safeguards which should not be dispensed with readily.

Amran Vance

Judge of the First-Tier Tribunal

Date: 29.10.13

Appendix of 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) there 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.