

9/6/14



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

Case Reference : LON/00AG/LDC/2013/0149

Property : 31 Maresfield Gardens, London
NW3 5SD

Applicant : Maresfield Gardens Limited

Representative : Kubie Gold Associates Limited,
managing agents

Respondents : Mr D Levenstein (Flats A and B)
Dr and Mrs R Stone (Flat C)
Ms M Gilbert (Flat D)
Ms Z Ardo (Flat E)
Mr and Mrs J Zimmern (Flat F)

Representative : None

Type of Application : For dispensation of the
consultation requirements under
section 20ZA

Tribunal Members : Judge O'Sullivan
Mr D Banfield FRICS

Date of Decision : 10 March 2014

DECISION

Decisions of the tribunal

- (1) The tribunal makes an order for dispensation under section 20ZA of the 1985 Act.
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the dispensation of any or all of the consultation requirements in respect of works carried out to the property known as 31 Maresfield Gardens, London NW3 5SD (the “Property”).
2. The application relates to external works of repair which commenced on 14 November 2013.
3. All of the respondents are members of the company.
4. The Applicant asserts that the perilous state of the Property required the external refurbishment work to be completed without further delay.
5. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with. This application does not concern the issue of whether any service charge costs are reasonable or payable.

The background

6. The application was received on 22 November 2013. Directions were made dated 26 November 2013 and in accordance with those directions the parties made statements of case and lodged bundles.

The Hearing

7. A hearing took place on 5 February 2014. The Applicant was represented by Dr Levenstein, a director, and Mr Williamson of the managing agents. Ms Ardo, the leaseholder of Flat E and her partner, Mr Simon of Flat E, also attended and had filed a bundle.

8. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act.

The Applicant's case

9. The Applicant had filed a bundle in accordance with the directions.
10. The Applicant set out its grounds for the application in the application itself and in a further statement contained in the bundle.
11. The Applicant says that works to the building have been delayed for a considerable number of years and the condition of the Property has deteriorated rapidly. In 2012 and 2013 the managing agents say that they received a number of complaints about falling masonry and roof tiles onto the front car park and the terrace of Flat C.
12. Consultation under section 20 of the 1985 Act was commenced on 9 May 2012. This was delayed for several reasons including adverse weather and finally concluded with a stage 2 notice being served on 3 April 2013 after further quotations were received. However the section 20 consultation is not relied upon as there were complaints about the successful contractor, Allprop from two lessees. The section 20 process was suspended to deal with these complaints. It was mutually agreed with the leaseholders that further quotations would be obtained and due to the urgency of the works to “bypass” a further section 20 process, Ms Ardo, the leaseholder of Flat E did not agree to “bypass” the section 20 process. All other leaseholders signed a form agreeing that the landlord could “dispense” with the section 20 procedure.
13. A draft specification of works was then circulated dated 23 September 2013. Four new quotations were then obtained. Although interim works were considered (to protect falling masonry) due to the cost of scaffolding and the reluctance of the contractors to quote for such works it was decided this was not a viable option.
14. Four quotations were received ranging from £29,397 to £135,731. The quotations were sent to the leaseholders with a specification and it is said by the landlord that these were debated with the leaseholders. The cheapest quotation from H& S Property Services UK in the sum of £29,397 was selected.
15. It is said by the landlord that Ms Ardo raised concerns about the surface of her terrace which she said was leaking. The Applicant says it has no record of any issue with the terrace having been reported prior to 2013. Ms Ardo requested that her tiles be replaced and any leak fixed. However the Applicant advised Ms Ardo that the surface of the terrace was within her demise and thus did not form part of the

landlord's responsibility. The Applicant says that Ms Ardo then requested that her service charge arrears be written off in exchange for her agreement to the works but this was refused.

16. A survey was commissioned dated 16 September 2013 from Thresholds Surveyors. The works began in November 2013. Since then further works have become apparent which are required to the chimney and the tiled edge of a chimney stack serving Flat C but these do not form part of this application. The estimated cost of those further works is £2901.70 plus Vat.

The Respondents' position

17. The directions provided for any Respondent who wished to oppose the application for dispensation to serve a statement of case. The only Respondent who has opposed the application is Ms Ardo of Flat E.
18. Ms Ardo set out her opposition to the application in two statements and lodged a bundle which contained other relevant documentation. At the commencement of the hearing she provided another bundle containing photographs and various correspondence. Some of this was referred to by Ms Ardo during the course of the hearing.
19. Ms Ardo submitted that the assertion that the works are an alleged emergency is wrong. She suggests that neither of the two surveyors' reports refer to any works as being particularly urgent. The lack of any previous inspection of the roof area is also criticised. It is submitted that not all of the necessary works had been included in the major works project, in particular, the roof.
20. The timing of the works was also criticised with Ms Ardo saying that they had been carried out at the wrong time of year in winter when she had received advice that this was the worst time to carry out works.
21. When asked what she might have done differently had she been properly consulted Ms Ardo submitted that she would have insisted on a full structural survey incorporating the roof and front of terrace and insisted that all contractors made appointments to view the roof and the terrace. She would also have insisted that the works were carried out in spring and that as a result the longevity of the works would be increased.
22. Ms Ardo asked what terms she would suggest were the tribunal to consider making an order for dispensation on terms. She submitted that she should be awarded costs of £2361 which she says are the legal costs she has incurred in relation to taking advice in this matter. This

related to fees rendered by two separate firms of solicitors and Counsel's fees in taking advice. Ms Ardo confirmed that both firms of solicitors had given advice in relation to the same issues but that she had been unhappy with the advice given by the first solicitors.

23. In response Mr Williamson explained that the specification had been prepared from the ground and a contingency made for potential roof works which could not be seen. This was because scaffolding would have been needed to fully inspect the roof area. All four of the independent contractors had confirmed that they were not willing to inspect using a cherry picker and thus this had been the only option.
24. The tribunal also heard from Mr Williamson that the issues with the terrace at Ms Ardo's property had only been raised after the application for dispensation had been made. All the surveyors had been told to inspect the terrace but there had been problems with access.
25. As far as the allegation that the surveys did not refer to urgent works was concerned, it had been decided in consultation with the surveyor that the works needed to be carried out due to a genuine danger. The landlord had been assured that carrying out the works in winter posed no problem and that no painting was carried out in wet weather.

The Tribunal's decision

26. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the works outlined above.

Reasons for the Tribunal's decision

27. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
28. We were satisfied that the works were required urgently due to the factual matrix of delays with this project. We were also satisfied that the specification covered 99% of the works required, including the roof, and accepted the landlord's explanation as to why the specifications were prepared from ground level.
29. We considered whether Ms Ardo had suffered any prejudice by the failure to fully consult and were satisfied that she had not. There was no evidence of what she might have done differently had she been fully consulted. Ms Ardo had not taken part in the first consultation save for writing one letter querying an aspect of the works. There was a history of dispute between the parties and it appeared to us that the landlord had tried to resolve issues to Ms Ardo's satisfaction.

30. We also considered whether we should grant dispensation on terms. We concluded that dispensation on terms was not appropriate in these circumstances. Ms Ardo had taken legal advice. We were unsure of the ambit of that advice, were unsure of its relevance and it appeared there may well have been an element of duplication.

Payability of charges

31. The Tribunal would stress that it is not making any assessment of the reasonableness of the charges and a challenge to those charges may be raised by the leaseholder pursuant to section 27A of the 1985 Act in the future.
32. The tribunal hereby orders that the Applicant shall serve a copy of this decision on each leaseholder.

Application under s.20C

33. By a letter dated 10 February 2014 Ms Ardo and Mr Simon of Flat E applied for an order under section 20C of the 1985 Act. The landlord was invited to make submissions in response and did so by letter dated 14 February 2014. Having considered those submissions and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances that no order should be made under section 20C of the 1985 Act.

Name: S O'Sullivan

Date: 10 March 2014