



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

**Case Reference** : LON/00AP/LDC/2014/0034

**Property** : Harcourt Court, 16-17 Haringay  
Park, Crouch End, London N8 9JB.

**Applicant** : Southern Land Securities Limited

**Representative** : Hamilton King Management  
Limited

**Respondent** : Various Lessees

**Representative** : None known

**Type of Application** : Application for Dispensation under  
S.20ZA Landlord & Tenant Act  
1985.

**Tribunal Members** : Miss. A. Hamilton-Farey LLB,  
FRICS, FCI Arb

**Date of Decision** : 16 April 2014.

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**DECISION**

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**Decisions of the Tribunal**

- (1) The Tribunal refuses dispensation from the requirements to consult lessees in relation to the repairs to below ground drainage at the above premises.

**Background and Reasons for the Decision:**

- (2) The Tribunal received an application relating to urgent drainage works at the premises on 4 March 2014. The Applicants' Representatives informed the Tribunal in that application that following problems with the drains a CCTV survey was undertaken revealing numerous displaced joints and cracks. The report produced by 24Hr Aquaflow Services Limited ("Aquaflow") with accompanying photographs however described the drains as being in a 'Clean and Free-Flowing Condition'. A further inspection was carried out in January 2014 by M. T. Drains who did not identify any major problems, but whose photographs following a camera survey confirmed the condition shown in the Aquaflow survey.
- (3) Directions for this matter were issued on 12 March 2014 requiring lessees affected to respond to the Tribunal and Applicants to say whether or not they agreed with dispensation.
- (4) The Tribunal received 4 affirmative responses and 1 from a lessee who disagreed with dispensation being given.
- (5) The lessee concerned disagreed with dispensation for the following reasons:-
  - a. That there was no evidence of sewage back up at all.
  - b. That the Applicants are already aware of an issue regarding the inadequacy of the above ground drains, and this was being dealt with during ongoing major works.
  - c. That there was a discrepancy between the photographs from the AquaFlow report and the date on which the Applicants state that the survey was undertaken. The Applicants' statement of case refers to notification from residents that there were drainage problems on 20 February 2014, however Aquaflows' photographs were taken on 5 December 2013, and therefore if the matter was as urgent as described, why did the Applicants wait so long before applying for dispensation?
  - d. Finally that there was no reference in the M.T. Drains survey that the drains were 'backing up'.
- (6) The Tribunal considers that dispensation should only be given in circumstances where it is impracticable to comply with the Regulations, or that an emergency situation can be demonstrated. In this instance, although the evidence shows that the drains have cracks and displaced joints, this does not, in the Tribunal's opinion constitute an emergency situation, whereas for example a collapsed drain might. In addition, the Applicants have not shown that it would be more

expensive to clear the drains on an ad-hoc basis whilst consultation is being undertaken, as opposed to carrying out of the works now.

- (7) Although no response was made by the Applicants' to the dissenting lessees' statement, the Tribunal has not been made aware of any major works currently underway at the property, or whether it is practical to include these works within that contract, given that no evidence was provided on this issue, I do not take into account any possible future works.
- (8) The Tribunal is persuaded however by the photographic evidence accompanying the Aquaflo report. These are clearly dated 5 December 2013, and it is not clear therefore why the Applicants waited so long to apply for dispensation, or issue the Notice of Intention. In the Tribunal's opinion the statutory consultation process could have commenced as soon as the defects were noted, and the complete process could have been complete before the application was made to the Tribunal.
- (9) Finally no compelling evidence has been provided to demonstrate that the drains are in such a poor condition as to constitute a health and safety risk, and in the circumstances, the Tribunal does not consider these works constitute an emergency and for these reasons refuses the dispensation sought.

Aileen Hamilton-Farey