



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

Case reference : LON/00AY/LDC/2015/0109

Property : Thurleigh House, 10 Thurlow Park Road, Tulse Hill London Se21 8JB

Applicant : Southern Land Securities Limited

Representative : Hamilton King Management Limited

Respondent : Various leaseholders as per application

Representative : None

Type of application : Section 20ZA Landlord and Tenant Act 1985- To dispense with the requirement to consult leaseholders about the works.

Tribunal member(s) : Judge: N Haria
Lay member : L Walter

Date of decision : 7 December 2015

DECISION

Decision of the Tribunal:

The Tribunal grants an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of works for the treatment of Japanese Knotweed as per the quotation from Eco Control Solutions in the sum of £4,647.00 plus VAT, subject to these works falling under the Landlord's obligations under the leases of the flats.

The application:

1. The applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for a dispensation of the consultation requirements imposed under s.20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations") in respect of works to the property required to prevent the encroachment and associated damage by Japanese Knotweed.

Hearing

2. The parties did not request a hearing and so the matter was dealt with on the papers.

Background:

3. The property is a purpose built block of flats over ground and two upper floors with internal access through a central stairwell. Thurleigh House is situated next to land belonging to Network Rail. Its construction is of pitch tile and brick face (to the frontage) with rendered finishes to the entrance door and first floor communal window, the side and rear elevations have pebbledash finishes.
4. The Applicant is the landlord and is represented by the managing agent.

Directions:

5. The tribunal issued directions on the 2 October 2015 providing for the lessees to be notified of the application and given an opportunity to respond to the application. The tribunal received no responses from the lessees.

Inspection:

6. The Directions issued did not provide for an inspection of the property and no request for an inspection was made by either party. The tribunal did not consider an inspection to be necessary or proportionate to the issue.

The Applicant's Case:

7. The Applicant's case is fully set out in the application and supporting documents.
8. The Applicant produced a copy of the lease relating to Flat 1, the Applicant did not confirm that this lease is a sample lease, so the tribunal could not be sure that the leases of all the flats had all been granted in an identical form.
9. The managing agent states that they were first made aware of the Japanese Knotweed infestation at the end of August 2014, they obtained a report from contractors. They were advised by the leaseholders as well as the contractors that the Japanese Knotweed had emanated from the land belonging to Network Rail and at the request of the leaseholders they wrote on the 24 September 2014 to National Rail advising them that the infestation had spread from their land to Thurleigh House.
10. Following several letters and other correspondence between the managing agent and Network Rail, on 11 May 2015 a letter was sent to Turliegh House from BLM the claims handlers and lawyers acting for Network Rail denying liability in respect of the spread of the Japanese Knotweed.
11. The managing agents took the advice of their solicitors and on the 7 July 2015 they were advised to undertake the works.
12. The managing agents arranged to obtain two quotations, one from Eco Control Solutions and another from Japanese Knotweed Eradication. The managing agents have decided to proceed with the quotation from Eco Control Solutions as it includes more treatments than that from Japanese Knotweed Eradication and so it is a more competitive quotation.
13. The contents of the report from Eco Control Solutions makes clear that knotweed treatment needs to start immediately and cannot wait for the section 20 Consultation process to be concluded. Accordingly, Eco Control Solutions have been asked to proceed with the first treatment in September.

The Respondent's Case:

10. The Application and the Directions were sent to the Respondents. The Directions invited representations from the Respondents but no representations have been received.

The Law:

11. **s. 20** of the 1985 Act provides that:

“(1) Where this section applies to any qualifying works....., the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.”

12. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) the tribunal.

13. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

14. **s. 20ZA** of the 1985 Act provides:

“(1) Where an application is made to a leasehold valuation 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.”

15. Under Section 20ZA(1) of the 1985 Act, "where an application is made to a ...tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements". The basis on which this discretion is to be exercised is not specified.

The consultation requirements for qualifying works are set out in Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003.

The Tribunal's decision:

16. 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.
17. The scheme of the provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any particular 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.
18. 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 as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
19. 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 as a result of the lack of consultation.
20. The tribunal having considered the evidence is satisfied that the works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply.
21. The tribunal is satisfied that the works are of an urgent nature given the damage likely to be caused to the structure, foundations and walls of the property by the rapid and intrusive growth of Japanese Knotweed infestation.
22. The tribunal is satisfied that the works are for the benefit of and in the interests of both landlord and leaseholders in the Property. The tribunal noted that none of the leaseholders had objected to the grant of dispensation.
23. The tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to the failure to consult. The tribunal does not consider that there would have been any significant saving in the cost of the works in the event that the statutory consultation had been fully complied with. The tribunal is not persuaded that the leaseholders have suffered any financial prejudice as a result of the failure to consult.
24. The tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted under the 2003 Regulations. However, the works were urgent and the applicant has taken reasonable steps in the circumstances and time available, to provide the leaseholders

with relevant information. 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, suffered any relevant prejudice.

25. 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 with in respect of the works for the treatment of Japanese Knotweed as per the quotation from Eco Control Solutions in the sum of £4,647.00 plus VAT.

26. **It should be noted that in making its determination, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees. The tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

Name: N Haria

Date: 7 December 2015