

10542



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

Case Reference : LON/00AZ/LDC/2014/0164

Property : 17 Eastdown Park, SE13 5HU

Applicants : 17 Eastdown Park RTM Ltd

Representative : Natado Solicitors

Respondents : Linda Thackray
Filiz Fethioglu
Anette Bartha
Ayo Adojutelegan

Interested Party : Herbertstown Property Limited -
freeholder

Type of Application : Application under section 20ZA to
dispense with consultation
requirements

Tribunal Members : Judge T Cowen

Date of Decision : 26 January 2015

DECISION

Decision of the tribunal

- 1. The tribunal grants dispensation in respect of the Applicant's proposed works.**

The application

1. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 (the "1985 Act") from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
2. The application is in respect of qualifying works which have not yet been commenced.
3. The only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs are recoverable or payable.
4. The application to the tribunal was dated 5 December 2014 and directions were given this matter on 5 January 2015.

The background

5. The Property is a Victorian house converted into four flats..
6. The directions dated 5 January 2015 decided that the matter should be determined urgently for reasons of the health and safety of the occupiers. They also provided for the matter to be determined on paper without a hearing, unless any party requested a hearing. No party has requested a hearing, so I have decided this matter on the papers and without a hearing.
7. The directions further provided a mechanism for the application to be brought to the attention of all leaseholders and any residents' association, for any of them to register their response to the application and for the preparation of bundles in the event of a dispute.
8. By a letter dated 19 January 2015, the Applicant confirmed that it had served the directions and the application on all leaseholders. All of the leaseholders who are also members of the RTM Company consent to the application. There has been no response from Linda Thackray, the only leaseholder who is not a member of the RTM Company.

The Applicant's case

9. The Applicant contends that the roof is leaking every time it rains and that urgent roof repair works are needed. The Applicant has already served a stage 1 section 20 notice in respect of the roof repair works (for which scaffolding will be necessary), but would now like to be able to carry out additional work to the brickwork while the scaffolding is up. The Applicant argues that it is in the interest of all parties to use that scaffolding to carry out all the works in one go, but that going through the section 20 consultation process in full for all the works would lead to undesirable delay and wasted extra costs of scaffolding.
10. The Applicant is an RTM Company. Three of the four leaseholders are members of the RTM Company and consent to this application. The purpose of a section 20 consultation would be to consult with the remaining one leaseholder who is not a member of the RTM Company, Linda Thackray.
11. The section 20 notice which has been served is dated 6 November 2014 and was sent to Linda Thackray. The work proposed in the section 20 notice is the renewal of the roof and associated works the necessity for which may become apparent once the scaffolding is up. It was a stage 1 notice inviting observations and nominations for contractors. Despite this, the Applicant has provided a quote dated 26 November 2014 for £14,850 (inc VAT) for the roof works.

The Respondent's case

12. There has been no response from Linda Thackray. All other leaseholders consent to the application. The only other Respondent is the freeholder, Herbertstown Property Limited, which has asked to become a member of the RTM Company and to be a party to these proceedings. The freeholder has been served with the application and the directions, but has not objected to the application.

The tribunal's decision

13. The tribunal dispenses with the statutory consultation requirements of section 20 of the 1985 Act in relation to the proposed works. I have considered the possibility of imposing conditions on the dispensation, I have decided against doing so.

Reasons for the decision

14. I had to consider whether it was reasonable to grant dispensation. The relevant statutory provisions are found in subsection 20ZA (1) of the 1985 Act under heading "Consultation Requirements: Supplementary". That subsection reads as follows: "*Where as 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 it is reasonable to dispense with the requirements”.

15. In the light of the decision of the Supreme Court in *Daejan Investments v Benson* [2013] UKSC 14, I must consider whether dispensation would cause prejudice to the leaseholders. The burden of identifying relevant prejudice falls on the leaseholders who are seeking to resist the application. In this case, there are no such leaseholders. *Daejan* also made it clear that the purpose of the statutory consultation requirements was to ensure that the leaseholders were protected from paying for inappropriate works or paying more than was appropriate.
16. There is no evidence of any such risk in this case. Nor is there any evidence of prejudice. There is every reason to allow the Applicant to get on with the work as soon as possible and to be able to do other reasonable works at the same time.
17. The leaseholders will of course enjoy the protection of section 27A of the 1985 Act so that if they consider the costs of the works to be unreasonable they may make an application to the tribunal for a determination of their liability to pay the resultant service charge.
18. For all of the above reasons I conclude that it is appropriate to exercise the discretion conferred by section 20ZA of the 1985 Act by dispensing with the consultation requirements in relation to the proposed works.
19. There were no applications for costs before the tribunal.

Chair Judge T Cowen **Date** 26 January 2015