

12372



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

Case reference : LON/00BG/LDC/2017/0095

Property : 20-24 St Matthews Row, London E2
6DT

Applicant : SMSRA Limited

Respondents : The leaseholders of the Property as
per the application

Type of application : To dispense with the requirement
to consult leaseholders about
major works

Tribunal members : Judge P Korn
Mr D Jagger MRICS

Date of decision : 18th September 2017

DECISION

Decision of the tribunal

- (1) The tribunal dispenses with the consultation requirements in respect of the qualifying works which are the subject of this application to the extent that they have not already been complied with.
- (2) No cost applications have been made.

The application

1. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("**the 1985 Act**") from the consultation requirements imposed on the landlord by section 20 of the 1985 Act in relation to certain qualifying works, to the extent that those requirements have not already been complied with.
2. The building comprises 22 apartments. The application concerns a roof leak which the Applicant states occurred suddenly following two torrential rain incidents in July and August 2017. The roof is a flat roof, and the Applicant hired scaffolding to inspect it. The Applicant submits that, for the reasons referred to below, it would be inappropriate to go through the full consultation process.

Paper determination

3. In its application the Applicant stated that it would be content with a paper determination if the tribunal considered it appropriate. In its directions the tribunal allocated the case to the paper track (i.e. without an oral hearing) but noted that any party had the right to request an oral hearing. No party has requested an oral hearing and therefore this matter is being dealt with on the papers alone.

Applicant's case

4. The Applicant states that scaffolding was erected on 7th August 2017, for the purpose of working out the best solution to the problem with the flat roof, at a cost of £2,500 + VAT. The inspection was carried out by KBK Property Inspector Ltd whose recommended solution was to place a heavy-duty felt overlay over the failed roof. On receiving this advice the Applicant then instructed its managing agents to begin the statutory consultation process but it also decided to proceed with the carrying out of the works. The works have now been completed.
5. The reasons for applying for dispensation are stated to be threefold. First, if the works had not been commenced immediately the Applicant would have lost the benefit of the initial scaffolding costs in that it would have had to pay for scaffolding all over again after completing the consultation process. This cost would have been passed on to the

leaseholders. Secondly, the water damage to Apartment 3 was continuing and there was a concern that it would get worse. Thirdly, there was a risk that the insurance would disallow further claims and put in place a high excess if immediate action was not taken.

6. The section 20 notice of intention was served on leaseholders on 11th August 2017 by email and on 14th August 2017 by post, together with notice of KBK's estimate and photographs of the affected area and of the completed work. The work was carried out and completed by KBK on 24th August 2017.
7. The Applicant is a leaseholder-owned company of which 21 out of 22 leaseholders are members.

Responses from the Respondents

8. Thirteen of the Respondents have written to the tribunal in support of the application for dispensation, and none of the other Respondents has opposed the application or made any other representations.

The relevant legal provisions

9. Under Section 20(1) of the 1985 Act, in relation to any qualifying works *"the relevant contributions of tenants are limited ... unless the consultation requirements have been either (a) complied with ... or (b) dispensed with ... by ... the appropriate tribunal"*.
10. Under Section 20ZA(1) of the 1985 Act *"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..., the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements"*.

Tribunal's decision

11. The tribunal notes the circumstances in which the application for dispensation has been made. Based on the evidence supplied by the Applicant, which has not been contradicted by any of the Respondents, the tribunal notes that there was a significant cost saving to be gained by carrying out the works without waiting for completion of the consultation process in order to avoid paying repeat scaffolding costs. In addition, there was a risk that the damage would be exacerbated by not proceeding quickly and a possible risk of increased insurance premiums.
12. None of the Respondents has raised any concerns with the tribunal nor opposed the application for dispensation, and thirteen of them have

positively supported the application. The Applicant did at least start to go through the consultation process and to keep leaseholders informed within the limited time available.

13. In our view, the cost saving in relation to the scaffolding was a sufficient justification for not completing the statutory consultation process in the context of (a) the concern about the possibility of the damage getting worse and the possible effect on insurance, (b) the fact that no issues have been raised by the leaseholders and the fact that thirteen of them have positively supported this application and (c) the fact that the Applicant is owned by 21 out of the 22 leaseholders.
14. Therefore, we are satisfied in this case that it is reasonable to dispense with the formal consultation requirements in respect of the qualifying works which are the subject of this application to the extent that they have not already been complied with.
15. For the avoidance of doubt, this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness of the cost of the works. Therefore, despite the wording of the statement that the leaseholders were asked by the Applicant to sign, **it is still open to leaseholders to challenge the reasonableness of the cost itself** unless the leaseholders by making that statement intended to concede that the cost of the works itself was reasonable.

Name: Judge P Korn

Date: 18th September 2017

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.