

12566



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

**Case Reference** : **LON/00AC/LDC/2017/0128**

**Property** : **Dolphin Court, Woodlands,  
London NW11 9QY**

**Applicant** : **Dolphin Court (Woodlands)  
Limited**

**Respondent** : **The long leaseholders of  
Dolphin Court**

**Present at  
hearing/Representatives** : **Mr M Kingsway (Managing  
Agent for the Applicant)  
Mr Lo, Ms Chan, Mr Calciano  
(leaseholders)**

**Type of Application** : **Dispensation from consultation**

**Tribunal Judge** : **Mr M Martyński**

**Dates of Hearing** : **3 January 2018**

**Date of Decision** : **8 January 2018**

---

**DECISION**

---

## DECISION SUMMARY

1. Dispensation is granted in respect of the consultation requirements regarding the following works:  
Fire safety works resulting from a Fire Brigade Enforcement Notice dated 9 November 2017 relating to Dolphin Court
2. It is a condition of the dispensation that by no later than 24 January 2018, the Applicant contacts the Fire Brigade and requests a meeting to take place in the lobby area outside Flat 29 Dolphin Court to discuss the exact fire safety measures required by the Fire Brigade after having inspected that area and having heard the comments of the parties at that meeting. Mr Lo and Miss Chan are to be included in the meeting and in all correspondence to arrange that meeting.

## BACKGROUND

3. The subject property consists of two purpose-built, seven-storey blocks containing 30 flats in total. The blocks were said to be constructed in or about the 1960s.
4. The Applicant holds the freehold interest in the blocks.
5. There are two penthouse flats on the top floor of each block on the top two levels. There is one lift in each building. The lifts serve all the floors. As the penthouses each have a separate floor, they are accessed either via the lifts or by the stairs. Once one exits from the lift or stairs at the penthouse levels, there is a lobby area leading to the flat. Obviously the only persons who would generally have any need to use or access that lobby area are the owners of those penthouses. Mr Lo and Miss Chan are the owners of one of the penthouse flats, Flat 29. Their lease states that the rights included in their demise are the 'exclusive use' of the lobby area outside their flat. Their lease appears to define their flat as confined to that area behind their front door. The lobby area appears to be included in the definition of 'Reserved Premises' in the lease.
6. Over recent years there has been an issue regarding the penthouse flat's use of the lobby areas. It would appear that the owners of the penthouses have, in one way or another, used the lobby areas as extensions of their homes by way of furnishings, possession and decorations.
7. The Applicant's Managing Agent, Mr Kingsley of K M Property Management, made an application dated 9 November 2017 seeking dispensation from the requirement to consult leaseholders<sup>1</sup> regarding fire safety works to:

---

<sup>1</sup> The law requires leaseholders to be consulted about works that will result in a Service Charge in excess of payable by a leaseholder – the relevant regulations regarding consultation are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (Schedule 4) – the relevant parts of those regulations are set out in the appendix to this decision

- (a) amend and upgrade existing communal doors to current fire regulations
  - (b) new signage
  - (c) re-site extinguishers
  - (d) make lobby alterations (by clearing those areas to make them 'sterile')
8. Dispensation was sought from the consultation requirements on the ground that the works were urgent. The urgency was said to be an Enforcement Notice served by the Fire Brigade giving just two months to carry out the necessary works.
  9. Directions on the application were made by the tribunal. Those directions set the matter down to be considered on the papers alone. However, following a request from Mr Lo and Ms Chan (Flat 29), the matter was set down for a hearing.
  10. Objections to the application were received from two leaseholders; Mr Lo and Ms Chan (Flat 29) and Mr Stebbing (Flat 1).

#### **THE HEARING**

##### *Mr Kingsley*

11. The Managing Agent, Mr Kingsley explained the background of the matter from his point of view. Prior to his firm's appointment in or about September 2016, there had been a number of managing agents for the subject property in a short space of time.
12. Prior to Mr Kingsley's appointment, a previous managing agent had instructed a company called 4site to carry out a fire safety review in or about October 2016.
13. Mr Kingsley agreed that he was on notice from the outset of his appointment that there had been an issue with the penthouses, buildings insurance and fire safety.
14. In 2017, Mr Kingsley decided to get an updated fire safety report from 4site as it appeared that no action had been taken regarding the earlier report and that report was now out of date.
15. A new report was issued by 4site in May 2017. Mr Kingsley then in or about late July/early August 2017 sought to get quotes to carry out the fire safety work identified by 4site.
16. In late September 2017, the Fire Brigade contacted Mr Kingsley and informed him that they had been called to the blocks, had carried out an inspection and were going to serve an Enforcement Notice requiring the carrying out of various fire safety works.

17. The Enforcement Notice was served on the Applicant company on 10 November 2016. The notice stated that the works had to be carried out by 2 January 2018.
18. Mr Kingsley then sought tenders from contractors to carry out those works.
19. As at the date of the hearing, Mr Kingsley said that approximately 90% of the works had been carried out; some of the outstanding works included the lobby outside flat 29 and the doors leading to that area from the stairs. Mr Kingsley thought that the total costs of the works would be in the region of £15,000 which would amount to in the region of £500 per flat depending on the percentages payable by each flat.

#### *Mr Stebbing*

20. Mr Stebbing is the owner of Flat 1. He was not present at the hearing but had written to the tribunal with comments on the application. He went over the issue regarding insurance and the penthouse lobby areas. He was not satisfied with the buildings insurance position saying that the insurers had withdrawn cover from the communal areas and external areas due to the fact that due to the use of the lobby areas by the penthouse flats. He stated that in order to rectify the situation, further insurance had to be obtained from another insurance company to cover those areas. He objected to the increased insurance premiums payable as a result of this. He decided to bring the matter to a head by contacting the Fire Brigade in May 2017. In general Mr Stebbing was unhappy that the issues of insurance and fire safety had dragged on for so long without resolution.

#### *Mr Lo and Miss Chan*

21. Mr Lo and Miss Chan bought their flat on the basis that they had 'exclusive use' of the lobby area outside their flat. They have been using that lobby area as a living area.
22. Mr Lo said that he had discussed the matter with the Fire Brigade and they had told him that they would be content with him continuing to use the lobby area as long as he installed a fire alarm there (he did not have anything in writing to confirm this position).
23. Mr Lo pointed out that in an email from the Fire Brigade to one of the leaseholders dated 24 October 2017, the Brigade had said that it was important to keep the 'common parts' of the block 'clear and sterile'. It was Mr Lo's case that the lobby area outside his flat was not a 'common part' as he had exclusive use of it under the terms of his lease.

#### *Mr Calciano*

24. Another penthouse owner and Director of the Applicant company, Mr Calciano, attended the hearing. He and the other two penthouse owners

had cleared their lobby areas. Mr Calciano added that the penthouse owners had used their lobby areas for many years and this had been agreed by previous managing agents.

#### **DECISION**

25. I made it clear to the parties at the hearing that I was only deciding the narrow question of whether or not to (retrospectively) allow the Applicant company to proceed with the fire safety work without going through the statutory consultation procedure with leaseholders. That issue had no bearing on whether the money spent on fire safety works or reports was properly spent or whether or not the penthouse owners had the right to use their lobby areas for any particular purpose.
26. Regardless of this decision, all leaseholders retain the right to challenge the Service Charge costs relating to fire safety and to take their own advice and proceedings regarding the lobby areas.
27. It appears to me that dispensation should be granted in respect of the works. The current managing agent has inherited a difficult situation as described above. There was little option but to get the fire safety works done as quickly as possible following the following the service of the Enforcement Notice and this did not allow time for consultation.
28. The only possible prejudice that this lack of statutory consultation has caused is that it has brought to a head the issue of the lobby outside Flat 29. Had there been consultation, it may have allowed more time for all parties to have had further discussions with the Fire Brigade as to exactly what was required in relation to that lobby so as to meet the Brigade's concerns. However, it seems to me that this issue was unlikely to be resolved without it being brought to a head in some way or another.
29. It is sensible and practical therefore for me to attach a condition to the dispensation as set out in paragraph 2 of this decision, that condition will remedy any lack of full discussion of the issue with the parties directly concerned and will, possibly, lead to a once and for all resolution of the question of the use of the lobby areas.

**Mark Martyński, Deputy Regional Tribunal Judge**  
**8 January 2018**

## ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. 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.

### **Appendix**

PART 2  
CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH  
PUBLIC NOTICE IS NOT REQUIRED  
Notice of intention

1.—(1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6.—(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) where he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.