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

Case Reference : **LON/00AU/LDC/2015/0048**

Property : **1 Ardilaun Road, London N5 2QR**

Applicant : **Orchidbase Limited (freeholder)**

Representative : **Michael Richards & Co**

Respondents : **The leaseholders of Flats 1-4 as set out on the schedule attached to the Application dated 9 April 2015**

Representative : **None**

Type of Application : **To dispense with the requirement to consult lessees about major works – S20ZA Landlord and Tenant Act 1985**

Tribunal Members : **P M J Casey MRICS**

Date and venue of Hearing : **Paper determination on 18 May 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **31 May 2015**

DECISION

Decision of the tribunal

- (1) The tribunal determines that it is satisfied that it is reasonable to dispense with all of the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations)

The application

1. The applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) that the consultation requirements of the Act may be dispensed with in respect of certain works at 1 Ardilaun Road, London N5 2QR (“the property”)
2. The applicant requested a “paper determination” and the Tribunal accepted that this was appropriate although the Directions for the management and progression of the application gave the respondent lessees of the flats at the property the opportunity to request an oral hearing; none did so.
3. The Directions further required the applicant to serve a copy on each lessee together with a pro forma response slip which they were asked to complete showing their support of or opposition to the application though it was made clear that a non-response would be taken as support. None of the leaseholders responded.
4. The bundle of documents produced by the Applicant in accordance with the directions was considered by the Tribunal on 18 May 2015.

The background

5. The property which is the subject of this application is a three storey former house built about 1900 which has been converted into four self-contained flats.
6. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Respondents hold long leases of the flats at the property which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. There is no suggestion in this application that the matter in respect of which the dispensation is sought falls outside the Applicant’s obligations under

the leases nor that the lessees are not required to contribute to the costs incurred by the Applicant landlord.

The issues

8. The relevant issue for determination had been identified in the directions as whether or not it would be reasonable for the Tribunal to grant the Applicant dispensation from all or any of the consultation requirements set out in the Act and the Regulations in respect of certain major works carried out at the property by the Applicant's insurers under an insurance policy for the property which requires the Applicant to pay an excess of £2,500 towards the cost which it seeks to recover from the Respondents through the service charge.
9. Having read the evidence and submissions from the Applicant and considered all of the documents provided, the tribunal has made the determination applied for.

The tribunal's decision

10. The tribunal determines that it is reasonable to dispense with all of the consultation requirements of the Act and the Regulations in respect of the works referred to in the application dated 9 April 2015.

Reasons for the tribunal's decision

11. In 2013 the managing agents, Michael Richards & Co became aware that the property appeared to be suffering from damage caused by subsidence and duly advised their insurance company who in its turn instructed various experts to investigate the cause of the problem. After surveys, investigation and monitoring the insurers' and the managing agents were advised that the property had indeed been affected by subsidence though there was little evidence of progressive movement. The cause appeared to be the roots of two local authority owned trees in the pavement to the front of the property. The local authority declined to take any action and the insurers, having put the local authority on notice in respect of any further damage decided to carry out works to repair the cracks etc caused by the movement and instructed one of its own approved contractors to carry out the works which the insurers would pay for. Hence the managing agents were unable to consult the lessees in respect of the works the cost of which, at £3,219.02 inclusive of VAT exceeded the limited set out in the Regulations. However the insurance policy had an excess provision requiring in the case of subsidence, the insured to contribute £2,500 to the cost of the claim which the managing agents duly paid. The Applicant wishes to recover this sum from the lessees through the service charge and, as it arises from works to the property which if carried out by the applicant would have constituted major works and required consultation with the

lessees if the full sum were to be recovered, is the reason for the application which in the circumstances the Tribunal can see no reason not to grant.

12. The insurers have also agreed to repay to the Applicant the sum of £1,920 spent in 2013 on drain surveys and repairs and front door repairs the need for which was caused either by the tree roots or the movement of the property. None of these works comprised major works which required consultation but if these costs have been included in the service charge to be met by the lessees then they obviously fall to be re-credited.
13. The managing agents have kept lessees informed by letter of the progress of the insurance claim and of this application.
14. There is no evidence before the Tribunal that any of the lessees has suffered any prejudice by the lack of consultation and the Tribunal is of the opinion that it is reasonable in all the circumstances to grant the dispensation sought which is the sole matter before the Tribunal

Name: P M J Casey

Date: 31 May 2015