

12191



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

**Case Reference** : **LON/00AG/LDC/2017/0037**

**Property** : **14-29 & 30-45 Frognal Court,  
London NW3 5HG**

**Applicant** : **Martin Kingsley  
(Court Appointed Manager)**

**Representative** : **KMP Solutions Ltd.**

**Respondents** : **The leaseholders of 14-29 & 30-45  
Frognal Court London NW3 5HG**

**Representative** : **None provided**

**Type of Application** : **S20ZA of the Landlord and Tenant  
Act 1985 - dispensation of  
consultation requirements**

**Tribunal** : **Mr. N. Martindale**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **19 May 2017**

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## DECISION

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LON/OOAG/LDC/2017/0037

### Decision

1. The Tribunal grants dispensation from the requirements on the applicant to consult the respondents under S.20ZA of the Landlord and Tenant Act 1985, in respect of the application.

### Background

2. The applicant, Martin Kingsley, has through his representative KMP Solutions Ltd., applied to the Tribunal by way of an application under S20ZA of the Landlord and Tenant Act 1985 ("the Act") for the dispensation from all or any of the consultation requirements contained in S20 of the Act.
3. The application is dated 21 March 2017, and is in respect of works to *"install lift openings on the floors below a new rooftop development above the flats in this property. The work is to form part of the overall scheme but in order to obtain the favourable price quoted by the same developer there is insufficient time to undertake full consultation."* Moreover the applicant maintains that the separate tendering of this additional item with potentially, a different contractor, would attract a very considerably higher cost to the leaseholders.

### Directions

4. Directions dated 10 April 2017 were issued by the Tribunal without any oral hearing. They provided for the Tribunal to determine the applications during the seven days commencing 17 May 2017 and that if an oral hearing were requested by a party, it take place on 15 May 2017.
5. They also provided that the applicant must by 21 April 2017, send to each leaseholder copies of the application, directions and reply form, whilst also displaying a copy of same in a prominent position in the common parts of the property. Confirmation to the Tribunal, of compliance by the applicant, was required by 25 April 2017.
6. They further provided that any leaseholders who opposed or supported the application had by 5 May 2017, to notify the Tribunal with any statement and supporting documentation.

7. In the event the Tribunal did not receive clear confirmation of compliance with the directions regarding consultation nor was such correspondence received by the due date. Instead the applicant confirmed, in their letter of 11 May 2017, that they had received only one form back - from the leaseholder of five flats, No.18, 19, 22, 31, 37. The form confirmed that this respondent supported the application for dispensation from full consultation. The applicant confirmed that they had not received any others.
8. The respondent leaseholders of the thirty flats were those set out in the schedule to the application.

### **Applicants Case**

9. The property appears to be a purpose built block of 30 flats located in as part of the large Froggnal Court flat development, located on Finchley Road NW3. A copy of the lease for 'Flat No.21 Froggnal Court' was provided by the applicant as representative of all others. There being no evidence to the contrary, the Tribunal assumed that all the residential leases are in essentially the same form.
10. The application, at box 10, stated that: *"We have been given a very small window of opportunity in which to accept a proposal by developers to install lift openings on the floors below a new rooftop development."*
11. The application at, the 'Ground for Seeking Dispensation', further stated: *"There is currently ongoing development works on the roof of this building by the Landlord to create additional flats. New lifts are being installed to access the new flats in the top floor. The developers have confirmed that they would be willing to arrange for the lifts to stop on the lower floor provided the leaseholders on the lower floor contributed towards the additional cost. They are only being asked to contribute towards the additional cost of having the lift openings on the lower floors and not the capital expense of the lift itself. By way of background we understand that these blocks did have lifts many years back but they were put out of use."*
12. The applicant confirmed to the Tribunal that all leaseholders had been informed of the application and invited to make representation if they objected.
13. The applicant confirmed that these works had not commenced.
14. The Tribunal did not receive any objections from any of the respondents.

15. The applicant had requested a paper determination. No application had been made for on behalf of any of the respondents for an oral hearing. This matter was therefore determined by the Tribunal by way of a paper hearing which took place on 19 May 2017.
16. The Tribunal did not consider that an inspection of the property would be of assistance and would be a disproportionate burden on the public purse.

### **Respondents Case**

17. The Tribunal did not receive objections from any of the respondents.

### **The Law**

18. S.18 (1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S.20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
19. Dispensation is dealt with by S.20 ZA of the Act which provides:-  
**“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.”**
20. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-  
**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) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**
- (e) specify-**
  - (i) the address to which such observations may be sent;**
  - (ii) that they must be delivered within the relevant period; and**
  - (iii) the period on which the relevant period ends.**

**2(1) where a notice under paragraph 1 specifies a place and hours for inspection-**

- (a) the place and hours so specified must be reasonable; and**
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

**(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.**

**3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.**

**4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.**

### **Tribunal's Determination**

- 20. The scheme of the provisions is designed to protect the interests of tenants, 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.
- 21. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who

may ultimately pay the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.

22. No evidence has been produced that any of the respondents have challenged the consultation process and no written submissions have been received.
23. The contractor's prices based on the specifications they supplied, for each of the two applications and sets of work, have been considered by the Tribunal.
24. On that basis, the Tribunal is satisfied that it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with on both applications.
25. **It should be noted that in making its determination of this application, it does not concern the issue of whether any service charge costs are reasonable or indeed payable by the leaseholders. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

N Martindale

19 May 2017