

12021



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

Case Reference : LON/00AR/LDC/2017/0002

Property : 1 - 8 Heathlands, Witham Road,
Romford, Essex RM2 5XB

Applicant : East Thames Ltd

Representative : Imram Mustak, East Thames Ltd.

Respondents : Leaseholders of eight flats within
Heathlands, Witham Road

Representative : None

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 : 15 February 2017

DECISION

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, East Thames Ltd. applied to the Tribunal 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 was dated 16 December 2016, received on 23 December 2016, acknowledged in a letter dated 4 January 2017 to the applicant. The proposal is for urgent works to the roof of the property.

Directions

4. Directions dated 5 January 2017 were issued by the Tribunal without any oral hearing. They provided for the Tribunal to determine the applications during the week commencing 13 February 2017 and that if an oral hearing were requested by a party, it take place on 15 February 2017. They provided that the Applicant must by 20 January 2017, send to each leaseholder and the landlord copies of the application and directions whilst 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 12 January 2017.
5. Any leaseholders who opposed the application had, by 20 January 2017 to notify the Tribunal with any statement and supporting documentation.
6. The Respondent leaseholders of were those set out in the schedule to the application. The applicant had until 2 February 2017 to send one copy of the bundle to the Tribunal.

Applicants Case

7. The property appears to be a block of 8 flats, located in Heathlands, Witham Road. A copy of the leases for ‘plot 1 Witham Court, Witham Road, Gidea Park’; ‘6 Heathlands Witham Road Gidea Park formerly plot 6 Witham Court Witham Road Gidea Park’; and ‘Plot 2 Witham Court, Witham Road Gidea Park’ were 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.

8. The application was marked 'fast track' at box 10. The Grounds stated that: *"The works will include erect scaffolding to access roof valleys, repairing the ridges and tiles and replacing the front and back valleys. As the qualifying works are to be carried out under a qualifying long term agreement (QLTA) only the more limited consultation under schedule 3 would be applicable in any event..."* and these *"...Urgent necessary works are to be carried out at the best price to deliver quality and value for money."* They continued; *"The works are necessary and required to be carried out within a timeframe which would not allow for 30 days consultation."*
9. The application stated at box 7 that the application concerned qualifying works and that these had been carried out. The applicant provided a copy of a 'quotation' dated after the works appeared to have been completed, for a total of £5227.14 ex VAT. No substantive specification, no quantities, no schedule of rates were provided, nor was any documentation from the QLTA, which had been referred to in the application. No condition report, no photographs were provided, nor was there mention of a particular sudden event or emergency to, or arising from a roof leak.
10. The Tribunal was provided with a undated short schedule listing two earlier but unrelated repairs to the roof of this block. They were 1: work to replace some loose/ broken tiles above flats 7 and 8 – reported 9 August 2016, to start by 12 August 2016, completion due by 30 August 2016, actually completed 28 December 2016. And 2: work to repair/ replace leaking plastic gutter at third storey adjacent to flat 11 which had already caused a build up of green algae – reported 13 June 2016, start due 16 June 2016, completion due 4 July 2016, actually completed 28 July 2016.
11. The Applicant confirmed by a letter dated 30 January 2017 to the Tribunal that all leaseholders had been informed of the application and invited to make representation if they objected and they had received none directly.
12. The Tribunal did not receive any objections from any of the Respondents.
13. 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 15 February 2017. A decision was made the same day.
14. 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

15. The Tribunal did not receive representations or objections from any of the Respondents.

The Law

16. 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.

17. 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.”

18. 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

- 19. 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.
- 20. 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.

21. No evidence has been produced that any of the Respondents have challenged the consultation process and no written submissions have been received.
22. The single 'quotation' dated 9 December 2016 totalling £5,227.14 (plus VAT) was provided. It was the billed cost contained the following statement: "*Specification of the Works – Erect Scaffold to access roof valleys. Additional cost for the roofing repairs to be agreed roof access is available.*" Reference was made in this 'quotation' to an 'attached breakdown'. It was not provided. The exact nature of the problems which suddenly arose and which required a speedy remedy is not provided in detail. No condition report on the initial condition had been made available which might have justified it being treated as an emergency rather than just another matter covered by planned cyclical inspection and programmed maintenance which would have been subject to prior consultation.
23. 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, BUT only because on this occasion it received no objections to the application from any of the leaseholders, to the application.
24. **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

15 February 2017