

11964



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

Case Reference : **LON/00BG/LDC/2016/0143**

Property : **St Michaels Court, St Leonard Road,
London E14 6PS**

Applicant : **St Michaels Court RTM Company
Limited**

Representative : **Ashby Building Surveyors**

Respondents : **The long lessees of the flats at St
Michaels Court**

Representative(s) : **None**

Type of Application : **Section 20ZA Landlord and Tenant Act
1985 – dispensation with the need to
comply with section 20 of the Act in
relation to building works which have
been carried out**

Tribunal Members : **Judge John Hewitt
Mr Hugh Geddes Professional Member**

**Date and venue of
determination** : **25 January 2017
10 Alfred Place, London WC1E 7LR**

Date of Decision : **30 January 2017**

DECISION

Decisions of the tribunal

1. The tribunal determines that the need for the applicant to consult with the respondents pursuant to section 20 of the Act in respect of works to the spire (the Additional works) shall be dispensed with.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. Evidently St Michaels Court. A Grade II listed building, was a Victorian Church which has since been adapted to create 34 self-contained flats all of which have been sold off on long leases.
4. In August 2007 St Michaels Court RTM Company (the RTM Company) was incorporated and subsequently acquired the right to manage pursuant to the relevant provisions of Part 2 of the Commonhold and Leasehold Reform Act 2002. It appears that the RTM Company has appointed Hurford Salvi Carr Property Management Ltd (HSCPM) as its managing agents and through those agents the RTM Company has and does manage the development.
5. In April 2012 a company, St Michael's Court Freehold Limited (the Freehold Company), was incorporated and on 27 November 2013 that company was registered at Land Registry as proprietor of the freehold interest [119].
6. No information as to who comprise the members of the two companies has been provided but it appears that there are four directors of the RTM Company [124] and two directors of the Freehold Company [123].

There is one person who is a director of both companies, Mr Anthony Mescall.

7. It appears now to be common ground that at all material times the day to day management of the development rests with the RTM Company which collects the service charges and organises the provision of services and the repairs and maintenance of the development.
8. At the request of the RTM Company HSCPM was instructed to procure major works to be carried out. In broad terms these included external redecorations, stone work and masonry repairs, flat roof replacement, pitched roof repairs, rainwater goods repairs, installation of gutter brushes and leaf guards and associated minor works.

This major works project was entrusted to Ashby Building Surveyors. (ABS). It would appear that at an early stage ABS was incorrectly and/or inadvertently informed or led to believe that their client and the entity responsible for the project was the Freehold Company, whereas in fact it was the RTM Company. In consequence, some of the

- documentation, notices and other materials make reference to the Freehold Company, instead of the RTM Company.
9. Notice of intention to carry out works was given in August 2014 [3]. In March 2015 a tender report was prepared and issued to lessees [5]. A summary of that report and required information was set out in a notice to lessees dated 28 April 2015 [39]. A contract was duly placed and works commenced in June 2016. At that time the contract sum was £195,250 + fees + VAT.
 10. Evidently once scaffold access to the spire was available it was found that the spire section was original and in very poor condition. Pigeon access into the spire had led to metre deep guano, lead nailed on previously was seen to be detached in several areas and slates fixed to close boarding were seen to be loose and slipping.
 11. The independent advice given was that with the original works underway and the scaffold access in place and the dangers and risks associated with the poor condition of the spire and the loose slates, additional works to deal with these matters should be undertaken straight away (the Additional Works). Evidently the Additional Works have been started but it is not known if they have been completed and if so, at what cost. At [162-168] is an estimated projection of the costs of the Additional Works, prepared on a worst-case scenario. The cost given is £191,820.
 12. In early December 2016, ABS, as agent, made an application to the tribunal in the name of the Freehold Company, pursuant to section 20ZA of the Act seeking dispensation with the need to consult in respect of the Additional Works [47].
 13. Directions were given on 15 December 2016 [60]. Those directions required the applicant to serve a series of documents on the respondents, including a set of the directions and a reply form for any respondent to send in if he or she opposed the application. At [184] is a letter from ABS confirming compliance with the direction to mail the series of documents to the respondents.
 14. That mailing prompted Mr Michael Spencer who is the lessee of flats 21 and 22 and who is also a director of the Freehold Company to write to the tribunal (and to ABS) drawing attention to the separate and distinct roles of the RTM Company and the Freehold Company [169 & 170] Mr Spencer lodged an objection to the application on the footing that the Freehold was undertaking the major works and had no standing to make the application.
 15. Evidently those responsible for the stewardship of the affairs of the Freehold Company and the RTM Company looked into the issue and it appears now to be accepted that the works are being conducted at the behest of the RTM Company. That is confirmed in an email from Mr Mescall to ABS dated 23 December 2016 [185].

16. The tribunal has subsequently received a completed application form in the name of the RTM Company.
17. In these circumstances and in accordance with the overriding objective we exercise the power set out in rule 10 and we give a direction that the RTM Company shall be substituted as applicant in place of the Freehold Company.
18. At [177] is a letter dated 5 January 2017 sent to the tribunal by Ms Kavita Rana of 15 St Michaels Court. Some issues are raised as to the extent to which some of the Additional Works might have been catered for in the costings and specification of the original works. That letter states that:

“I am content for the application to be dealt with on the papers on the basis that my written representations above are given proper consideration when the position is thoroughly reviewed.”
19. ABS responded to that letter on 11 January 2017 [181]. We cannot, on this application make any proper determination on the matters raised by Ms Rana, but for the reasons mentioned in paragraph 25 below Ms Rana will have full opportunity to question and challenge the amount claimed for the Additional Works in due course when the full details and costings of those works are provided to the respondents.

General background

20. We are satisfied on the evidence presented to us that the nature and extent of the Additional Works could only really be discovered once scaffold access was in place and opening up works had been carried out.
21. The independent advice given to the applicant both as regards the economical use of the scaffolding and the risks associated with loose and slipping slates was, in our view, sufficiently cogent to support the decision to proceed with the Additional Works without further consultation.

The law

22. The starting point is that by section 20 of the Act a landlord is obliged to consult with lessees where the contribution to works by a lessee will exceed £250.
23. Section 20ZA of the Act provides that a tribunal may make a determination that all or any of the consultation requirements imposed by section 20 shall be dispensed with if it is satisfied that it is reasonable to dispense with those requirements.

Reasons

24. In the circumstances of this case we find that it is reasonable to dispense with all of the requirements of section 20 in relation to the Additional Works. The case for urgency to proceed is made out.

25. In these circumstances, we have made a determination to dispense with the consultation requirements in respect of the Additional Works. We make it plain that in doing so we only determine that the applicant need not consult in relation to those Works. We make no determination on the reasonableness of the scope or cost or quality of the Additional Works. These are all matters which may be challenged by any of the respondents in due course and at the appropriate time; should they wish to do so.

Judge John Hewitt
30 January 2017