

12302



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

Case reference : LON/00BG/LDC/2017/0064

Property : Steam Mills, 12 Fairclough Street,
London E1 1PT

Applicant : Steam Mills Management Co Ltd

Representative : Strangford Management Ltd

Respondent : Lessees of 24 flats

Type of application : To dispense with the requirement to
consult lessees about major works

Tribunal : Judge Nicol

Date of decision : 3rd July 2017

DECISION

The Tribunal has determined that the Applicant shall be granted dispensation from the statutory consultation requirements in relation to the works proposed to repair the lift.

Reasons

1. The Applicant is the landlord of the subject property, a 5-storey warehouse conversion with 24 flats in three buildings. In May 2017 the lift broke down. The Tribunal was provided with the lease for one of the flats which, it is assumed, is standard. Under that lease, the Applicant is obliged to keep the lift in repair and the lessees are obliged to pay a proportionate share of the costs incurred.

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|  | | FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY) |
| Case reference | : | LON/00BE/LDC/2017/0043 |
| Property | : | 117 Queen's Road, London SE15 2EZ |
| Applicant | : | SQA Development Ltd |
| Representative | : | Mr N Broome |
| Respondents | : | Mr B Patel Mr P Patel Mr M Patel |
| Representative | : | |
| Type of application | : | For dispensation of all or any of the consultation requirements |
| Tribunal members | : | Mr S Brilliant |
| Date and Venue of hearing | : | 5 July 2017, 10 Alfred Place, London WC1E 7LR |
| Date of decision: | : | 6 July 2017 |

Decision of the Tribunal

The Tribunal determines that those parts of the consultation requirements provided for by Section 20 of the 1985 Act which have not been complied with are to be dispensed with.

The application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for the dispensation of all or any of the consultation requirements provided for by Section 20 of the Act. The application for the dispensation was dated 12 April 2017.

2. On 8 June 2017, Mr Brijesh Patel, on behalf of the Respondents, returned the form to be used by leaseholders who wish to oppose an application for dispensation. He said on the form that he did not agree to the application being determined without an oral hearing. The case was listed for an oral hearing.

The hearing

3. Mr Broome, a director of the Applicant, appeared on behalf of the Applicant. None of the Respondents attended and no explanation was provided as to their absence. Neither side requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

Background

4. In November 2015, 117 Queen's Road, London SE15 2EZ ("the property"), which is the subject of this application, comprised a shop with two flats above, one at first floor level and one at second floor level.
5. The Respondents own the flat at first floor level. It is not occupied by them, but is an investment property let out to short term tenants.
6. The roof of the property at the time, above the second floor level, was what is known as a London or butterfly roof. Such a roof is usually hidden by a front parapet wall, and has two separate shallow slopes - they can often look almost flat from the back. The two parts of the roof (which may be covered either in slate or lead/felt if very shallow) slope down from the party walls to a "valley gutter" running along the centre of the building parallel to the party walls, and feeding into a rainwater hopper in the middle of the back wall.
7. The Applicant obtained planning permission to build two floors of flats above the second floor level. During the course of preparing for this work ("the improvement work"), it was discovered that the front parapet wall on the London roof was leaning forwards and was at the point of collapsing onto the main road. Work was started almost straight away as a matter of urgency on removing and replacing the parapet wall. The Respondents were notified about this by email on 16 November 2015. This email attached photographs of the state of the parapet wall. No objection to the work was received from the Respondents.
8. The work was done without complying with the consultation requirements of the Act as there was no time to do so. The cost of the work is £8,500 as set out in an invoice at page 43 of the bundle.
9. The Respondents' lease requires the Applicant to provide services and the Respondents to contribute towards the costs by way of a variable service charge. Mr Broome has calculated [page 35 of the bundle] that the Respondents' share of the £8,500 is £459. If the consultation

requirements are not dispensed with, the Applicant will only be able to recover £250.

The Applicant's submissions

10. The Applicant's case is very simple. It was reasonable not to comply with the consultation requirements because of the imminent danger to the public in the road below which required a very speedy response.

The Respondents' submissions

11. The Respondents claim in their statement of case that the replacement of the parapet wall was part of the improvement work, and that the Applicant is trying to recover costs as service charges which should properly be borne entirely by the Applicant.
12. I do not accept that. I am satisfied from the evidence in the Applicant's response [pages 33-35 of the bundle] that reconstruction of the parapet wall was not part of the improvement work.
13. The Respondents have not suggested, and have not adduced any evidence to suggest, that they were financially prejudiced by the lack of consultation. They have not provided any alternative cheaper quotations for the work done to the parapet wall.

The Tribunal's Determination

14. Section 20 of the Act 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.
15. Dispensation is dealt with by section 20ZA of the Act which provides:-

"Where an application is made to a [the 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".
16. Since the decision of the Supreme Court in Daejan Investments Ltd v Benson [2013] UKSC 14, a tenant needs to identify what financial prejudice has been suffered by the failure to consult.
17. No financial prejudice has been identified. It was in the interest of public safety that the parapet wall was repaired at very short notice. This application succeeds.

18. **It should be noted that in making its determination, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees.**

Costs

19. The Respondents are to reimburse the Applicant the fee of £200 by 4.0pm 19 July 2017, pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”).
20. Rule 13(1)(b)(iii) of the Rules provides that costs may be awarded if a person has acted unreasonably in bringing, defending or conducting proceedings: see the decision of the Upper Tribunal in Willow Court Management (1985) Ltd v Alexander [2016] UKUT 290 (LC) which explains the meaning of this provision.
21. If the Applicant wishes to apply to recover any further costs on the grounds that the Respondents’ failure to appear was unreasonable within the meaning of rule 13(1)(b)(iii), it must write to the Tribunal within 14 days enclosing a solicitors’ bill and a schedule of hours spent by any employee/director of the Applicant.

Simon Brilliant
6 July 2017