

12846



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

Case reference : **LON/00AY/LDC/2018/0087**

Property : **90 – 108, Streatham Hill, London
SW2 4RN**

Applicant : **Tradeleague Limited**

Representative : **Ms Doran – Counsel instructed by
Bude Nathan Iwanier LLP
Solicitors**

Respondent : **Creeoklyn Limited and the various
lessees of the property as set out in
the application**

Representative : **None**

Type of application : **To dispense with the requirement
to consult lessees about major
works/ a long-term agreement**

Tribunal member : **Tribunal Judge Dutton
Mr. W R Shaw FRICS**

Venue and date : **10 Alfred Place, London WC1E 7LR
on 27th June 2018**

Date of Decision : **27th June 2018**

DECISION

DECISION

The Tribunal determines that dispensation should be given from all the consultation requirements in respect of the works (the Works) to the property at 90 – 108 Streatham Hill London SW2 4RD (the Property) under the provisions of s20ZA of the Landlord and Tenant Act 1985 (the Act) for the reasons set out below.

Background

1. The applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
2. The applicant contends that as a result of a Community Protection Notice under section 43 of the Anti-Social Behaviour, Crime and Policing Act 2014 dated 7th October 2016 the Applicant requires dispensation from the requirement to consult in respect of the installation of security gates to the property at an apparent cost of £12,000 (excluding VAT) (the Works).
3. The reason for the application is set out in the application itself and the paperwork annexed thereto.
4. There are 24 leaseholders and all were sent copies of the application, directions and a questionnaire attached to the directions.
5. Prior to the hearing we were provided with a bundle of papers but events had overtaken these documents. In the Tribunal file we were able to follow email trails which appeared to indicate a settlement, at least between the Applicant and Creeklyn Limited, had been achieved. This was evidenced by a letter endorsed by a director for both companies dated 14th June 2018 and a letter from Creeklyn Limited to the Tribunal dated 18th June confirming that the company consented to the Applicant's claim.
6. For the lessees the Tribunal had received a letter on 26th June 2018 from Wyatt Park Mansions Committee which said as follows *"The Wyatt Park Mansions Committee on behalf of all the Leaseholders of Wyatt Park Mansions 90 – 108 Streatham Hill, London SW2 4RD write to inform you that we support the agreement made by the applicant and the headlessee in regards this case"*. The letter goes on to say that the opposition to the application is dropped and indicates that they will not be attending the hearing on 27th June 2018.
7. The matter came before us for consideration on 27th June 2018. Miss Doran of Counsel attended to represent the Applicant and to confirm the agreement reached between her client and the Respondent Creeklyn. No lessee attended.

8. The only issue for us to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the Works. This application does not concern the issue of whether any service charge costs are reasonable or payable.

THE LAW (SEE BELOW)

DECISION

9. We have considered the papers lodged, reviewed the Tribunal file and heard from Ms Doran. There appear to be no objection raised by any of the leaseholders, indeed the letter from the Wyatt Park Mansions Committee specifically says that all lessees are represented by that body and do not object to the application. The agreement in the form of the letter dated 14th June 2018 between Creekllyn Limited and Tradeleague Limited is attached to this decision.
10. It appears clear that the Works are required to comply with the Council's requirements and in truth to create a better environment for the residents.
11. We are satisfied that it is appropriate to dispense with the consultation requirements as set out in the Regulations. Our decision does not affect the right of any Respondent to challenge the costs should they so wish, it relates only to dispensation under the provisions of s20ZA of the Act.
12. We shall send a copy of the decision to the Applicant and Respondent as well as Wyatt Park Mansions Committee. As the Committee indicates it represents all leaseholders we would ask that the Committee disseminates the decision to its members. If any leaseholder requires an individual copy they must contact the Tribunal within 7 days, providing a stamped addressed envelope, and a copy will be sent to them.

Andrew Dutton

Tribunal Judge

Andrew Dutton

27th June 2018

The relevant law

Section 20 of the Act

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges)

to relevant costs incurred on carrying out the works or under the agreement.

- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Consultation requirements: supplementary
Section 20ZA

Where an application is made to the appropriate 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.

In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
if it is an agreement of a description prescribed by the regulations, or
in any circumstances so prescribed.
In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
Regulations under subsection (4) may in particular include provision requiring the landlord—
to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
to obtain estimates for proposed works or agreements,
to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
to give reasons in prescribed circumstances for carrying out works or entering into agreements.
Regulations under section 20 or this section—
may make provision generally or only in relation to specific cases, and
may make different provision for different purposes.
Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Creekiynn Limited

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Mr. Jonathan Kandler
Bude Nathan Iwanier Solicitors LLP
1-2 Temple Fortune Parade
Bridge Lane
London NW11 0QN

14th June 2018

By post and email - JKandler@bnilaw.co.uk

Dear Mr. Kandler

Tradeleague Limited ("the Applicant") - Creekiynn Limited ("the Respondent")
90-108 Streatham Hill, London SW2 4RN ("the Property")
Case Reference LON/00AY/LDC/2018/0087

I have had the opportunity to consider the matter further and to discuss it with the directors of the Management Company on behalf of the Long Lessees of the Flats. I would confirm that the Respondent will approve the Application made by the Applicant and consent to the Applicant carrying out the works referred to in the attached quotation and plan from Satech and will use all reasonable endeavours to procure the consent of the long lessees of the Flats at Wyatt Park Mansions to the Application subject as mentioned below:-

1. The proportion, if any, of the cost of the works referred to in the Application and particularly the attached quotation to be paid by the Respondent and the proportion of any subsequent maintenance/repairs etc. relating to the works are an issue which will be dealt with subsequently by negotiation. It is accepted by the Applicant that, by consenting to the Application, the Respondent does not accept that it has any lawful obligation to make any contribution but this shall in no way prejudice any claim which the Applicant may have against the Respondent for any contribution. If the contribution and future percentages are not agreed by the 15th July 2018, both the Applicant and the Respondent shall be at liberty to seek a determination by the First Tier Tribunal or the courts.

2. No later than the date when the works, including the pedestrian gate, referred to in the Application are completed but in any event before the gates become operational, the Applicant will provide to the Respondent the necessary code to enable the lessees of the Flats at Wyatt Park Mansions to use the pedestrian access to the Rear Area and will deliver to the Respondent 7 key fobs to enable the Respondent to provide vehicular access to the 7 garages demised by the Respondent's headlease and four further key fobs to enable the Respondent to provide vehicular access to those parties who may lawfully park on the area coloured yellow on the headlease plan. The quote provided by Satech provides for a cost of £5.50 plus VAT per key fob. The Respondent will reimburse the Applicant for £60.50 plus VAT for the 11 fobs. It is accepted by the Applicant that the delivery of the code and the 11 key fobs is not conditional upon any other payment or any agreement relating to the proportion referred to 1. above.
3. The Respondent will use all reasonable endeavours to persuade the directors of Wyatt Park Flats Management Company Limited and, through the directors, the long lessees of the Flats to approve the Applicant's Application on the terms set out in this letter. For clarity it is accepted by the Respondent that the liability to pay to the Applicant any contribution which may be lawfully due and payable is that of the Respondent not the Long Lessees of the Flats and Garages. The Respondent's ability to recover from the lessees through the Management Company is a separate issue.
4. The Respondent and, the Respondent understands, the long lessees of the Flats, will only agree to the Application made by the Applicant provided that the Applicant undertakes to comply with point 2. above and agrees point 1 above.
5. Both the Applicant and the Respondent will act in good faith and use all reasonable endeavours to reach an agreement relating to the contribution to be made by the Respondent as soon as possible, and in any event by the 15th July 2018.

If the terms set out in this letter are agreed, please sign and return a copy to me as solicitor duly authorised on behalf of the Applicant and also undertake on behalf of the Applicant but without attaching personal liability that the Applicant will comply with the obligations set out in Point 2 above.

This offer is open for acceptance until midday on Monday the 18th June 2018.

Yours sincerely


Michael S P Garvin Director
Creeklynn Limited

CC: The Directors – Wyatt Park Flats Management Company Limited
Mr. Simon Stern, Tradeleague Limited


