



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

<b>Case Reference</b>	: CHI/00HP/LSC/2015/0058
<b>Property</b>	: Berkley Manor & Rutland Manor, 317-319 Poole Road, Branksome, Poole BH12 1AA
<b>Applicant</b>	: J M Harding & Partners Limited
<b>Representative</b>	: Preston Redman LLP (Solicitors)
<b>Respondent</b>	: The Lessees of the Property
<b>Type of Application</b>	: Application for dispensation from consultation requirements; Section 20ZA Landlord & Tenant Act 1985 (the Act)
<b>Tribunal Members</b>	: Judge Cindy A. Rai (Chairman)  Michael Woodrow MRICS (Chartered Surveyor)
<b>Date of Decision</b>	: 11 January 2016

**DECISION**

1. The Tribunal determines that the Applicant may dispense with all of the consultation requirements in relation to the "qualifying works" itemised in its Application dated 21 August 2015, which works have already been undertaken.
2. This decision does not imply that the cost of the works is reasonable. It has not been necessary for the Tribunal to consider the issue of reasonableness in making this decision.
3. The reasons for its decision are set out below.

## **Background**

4. The Application referred to in paragraph 1 was made by the Applicant's Representative, on behalf of the Applicant, on 21 August 2015 for dispensation from all the consultation requirements in section 20 of the Act.
5. Directions were issued by the Tribunal on the 10 September 2015 in which the Tribunal directed that it intended to determine the Application without an oral hearing but which invited responses from the Respondent.
6. Following the receipt of responses from the Lessees of nine Flats within Berkley Manor and two Flats within Rutland Manor it was confirmed in Further Directions, dated 20 October 2015, that the Application would be determined without an oral hearing as none of the parties to the Application had objected to its determination on this basis.
7. The Applicant's have prepared a bundle of documents to enable the Tribunal to make its determination. The Further Directions stated that it was not necessary, in the circumstances, for the Applicant to provide each Lessee with a copy of the bundle of documents.

## **Applicant's evidence**

8. The Application was made because, on 17 April 2014, the balcony of a third floor flat at Berkley Manor, (Flat 15), had collapsed taking with it the balconies of Flat 10, (second floor) and Flat 6 (first floor) which resulted in debris piling up outside Flat 2, a ground floor flat.
9. As a consequence of the collapse concerns were raised regarding the structural stability of the balcony of Flat 32 Berkley Manor so this was subsequently dismantled.
10. Emergency works were required to make the site safe immediately following the collapse and to prop all the remaining balconies. These works are itemised in a letter dated 29 April 2014 from Bennington Green, (a copy of which was attached to the Application), a consultancy working within the construction, property and civil engineering fields who prepared a defects report for the Applicant in December 2013.
11. In addition to the "emergency works" ongoing costs have been incurred in respect of site safety, scaffolding hire, fencing, site inspections and accompanied access.
12. Prior to the collapse the Applicant had been monitoring the balcony of Flat 32. In August 2013, it was informed of an increased gap and instructed Bennington Green to carry out a full inspection. The report which they prepared recommended further investigation by a Structural Engineer. Goh consult, Consulting Civil and Structural Engineers, provided a report dated 11 February 2014, which recommended that the balconies be taken out of use and other remedial works be undertaken.

13. The Applicant thereafter commenced a section 20 consultation with the Lessees in respect of a proposed scheme of works to implement the goh consult recommendations and keep the surrounding areas safe pending remedial works.
14. However following the collapse of the balcony at Flat 15 it became necessary to make the Application.
15. The Applicant states that it did not make the Application earlier because of a pending insurance claim. It wanted to ascertain what costs already incurred might be met by its insurers. It had anticipated making a claim under section 27A of the Act (for a determination as to reasonableness of the costs) at the same time as the Application. The Tribunal is unaware that any other application has hitherto been submitted to it.
16. The Applicant has supplied as part of its bundle, copies of the consultation documents and ancillary documents already distributed to the Lessees, copies of the responses of the Respondents who have submitted written responses or observations to the Application, a letter from Bennington Green commenting on the Lessee responses, the Bennington Green defect report, (December 2013), and invoices for the works already carried out.
17. It has also provided photographs showing the collapsed balconies before and after the implantation of the emergency works.

#### **The Respondent's case**

18. The Respondent has not submitted any written statements, either from individual lessees or collectively on behalf of some or all of the Lessees in relation to the Application.
19. The pro forma response forms within the bundle indicate that none of those Lessees who have responded objects to the Application. Various comments have been made by individual Lessees regarding the proposed remedial works.

#### **The Law**

20. Section 20 of the Act provides that where the section applies to any qualifying works, or a qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsections 6 or 7 (or both) unless the consultation requirements have either been complied with or dispensed with. Dispensation has to be obtained from the Tribunal following an application to it.
21. The works which have been undertaken by the Applicant are set out in some detail in the Application and are qualifying works the relevant costs of which exceed an appropriate amount, which is the amount set by regulations made by the Secretary of State.
22. Section 20ZA of the Act provides that where an application is made to the Tribunal for a determination to dispense with all or any of the

consultation requirements it may make the determination if satisfied it is reasonable to dispense with the requirements.

23. The Service Charges (Consultation Requirements) (England) Regulations 2003 set out the consultation requirements which require a landlord to consult with lessees over a defined period prior to carrying out qualifying works. The time limits are such that such consultation is unlikely to be completed in less than three months and generally would be likely to take considerably longer.

### **Reasons for the Decision**

24. Given the nature of emergency which gave rise to the costs of the works already undertaken by the Applicant it was clearly essential that the works undertaken were carried out as quickly as possible. The copies of photographs provided in the "determination bundle" showed evidence of the damage which had resulted from the balcony collapse. The Tribunal accepted that the works subsequently undertaken are appropriately described by the Applicant as "emergency works".
25. The Tribunal, on the basis of the Applicant's case, finds it reasonable to grant dispensation from consultation in respect of the qualifying works itemised in the Application.
26. As was stated in its Directions such a determination has no relevance to any future discussions or a further application as to the reasonableness of the costs of the works or the liability of the Respondents to pay for the works.

Judge C A Rai

### **Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.