



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

Case Reference : LON/00BJ/LDC/2014/0096

Property : Thurleigh Court
Nightingale Lane
London SW12 8AP

Applicant : Thurleigh Court Management
Company

Representative : Mr Stuart Armstrong of Counsel

Respondent : All lessees as per application

Representative : n/a

Type of Application : For dispensation from the
consultation requirements
required by section 20 of the
Landlord and Tenant Act 1985

Tribunal Members : Judge Carr
Mr H. Geddes

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 8th October 2014

DECISION

Decision of the Tribunal

1. The Tribunal determines to exercise its discretion to dispense with the consultation requirements contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) England) Regulations 2003.
2. The full reasons for this determination are set out below.

The Application

3. The landlord of the premises, Thurleigh Court Management Company, a lessee owned company, applied on 31st July 2014 under section 20ZA of the Landlord and Tenant Act 1985 for dispensation from the consultation requirements contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) England) Regulations 2003.
4. The basis of the application is that urgent works were required to make safe and then to replace a concrete ceiling within Flat 37 of the property. The works were completed by 11th August 2014.

Procedure

5. The Tribunal held a pre-trial review of this matter on 5th August 2014 and issued Directions on the same date. In those Directions it was decided that the matter could be determined on the basis of written representations and without an oral hearing.
6. The Directions gave an opportunity for any party to request an oral hearing. They also gave an opportunity for any leaseholder who wishes to oppose the application from the landlord to provide a statement to the Tribunal setting out his or her reasons for so doing.
7. The following lessees objected to the application for dispensation and requested an oral hearing:

Susan Palmer of Flat 6

Ms Palvi Martin and Mr Peter Martin of Flat 43

8. The following lessees requested an oral hearing:

opening up. Following the further investigation Mr Johnston formed the opinion that the defects in the structure of the balcony put at risk the safety of the occupiers and others.

- c. He subsequently issued a specification for repairs to the steel work and concrete at a total cost in the region of £20,000. This sum falls above the statutory consultation threshold for most of the 54 leaseholders in the block.
 - d. The structural engineer also specified emergency propping to the existing structure. These initial works were completed by 23rd June 2014.
 - e. The on-site builders, HF Duncan, provided a quote for £12,500 to carry out the recommended works. A further quote of £17,358 inclusive of VAT was obtained from another builder. The Applicant decided to proceed with the first quote.
 - f. Instructions were given to HF Duncan to carry out the works on 28th July 2014. There were further inspections carried out on 8th August by Mr Johnston and 21st August by which time the work was almost complete, other than interior decoration at the back of Flat 37.
 - g. In the opinion of the Applicant's expert, it would have been uneconomic, impractical and irresponsible to have delayed the works whilst carrying out the statutory consultation procedure.
14. It is on this basis that the freeholder has made the application for dispensation.
15. Ms Palmer and Mr and Mrs Martin object to the application. Their argument, which was put by Mr Doohan, can be summarised as follows:
- a. They disputed the urgency of the works and the assertion that the defects posed a danger to residents and passers-by.
 - b. They considered that the works could have been delayed as major works were planned for the near future, albeit for a different part of the building, and these works could have been subsumed into that contract at a substantial saving to the lessees.
 - c. The balcony is 'blind' and therefore there is no danger to anyone inadvertently walking on it

- d. The ceiling/roof is not load bearing and consequently of no danger to anyone below it.
- e. The only evidential picture supplied by the Applicant is from after the opening up and therefore adds nothing to the application.

The Law

16. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) 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**” (emphasis added).

The Tribunal’s decision.

17. The Tribunal determines to grant the application.

The reasons for the Tribunal’s decision.

18. The Tribunal determines that that the evidence of Mr Johnston, the structural engineer, that the works were necessary and urgent and that any failure to carry them out would have put people in danger, was persuasive. Although it notes Mr Doohan’s arguments he had no evidence to support his assertions.
19. The Tribunal also considers that any delay in carrying out the works may well have resulted in additional costs and may have caused inconvenience to the Applicant and the residents.
20. Mr Doohan, for Ms Palmer and Mr and Mrs Martin, was not able to point to any prejudice that they had suffered by the failure to consult. Nor could the Tribunal identify any prejudice. It is not sufficient to assert that the works could have been carried out more economically by subsuming them into a later unrelated contract. Moreover failure to carry out the works following Mr Johnston’s recommendation would have been irresponsible and potentially actionable.

The parties should note that this determination does not concern the issue of whether any service charge costs will be reasonable or indeed payable. The Respondents are able, if it appears to them to

be appropriate, to make an application under s.27A of the Landlord and Tenant Act 1985 as to reasonableness and payability.

Signed Judge Carr

Dated 8th October 2014