



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

**Case Reference** : **LON/00BK/LDC/2014/0143**

**Property** : **225-235 (ODDS) SUSSEX  
GARDENS, LONDON W2 2RL**

**Applicants** : **(1) CHURCH COMMISSIONERS  
FOR ENGLAND  
(2) 225 -227 SUSSEX GARDENS  
RTM CO LTD  
(3) 231 SUSSEX GARDENS  
FREEHOLD LTD**

**Representative** : **KNIGHT FRANK LLP**

**Respondent** : **THE LONG LEASEHOLDERS  
LISTED IN THE APPLICATION  
FORM**

**Representative** : **N/A**

**Type of Application** : **Dispensation from consultation  
requirements**

**Tribunal Members** : **Ms L Smith (Tribunal Judge)**

**Venue of Deliberations** : **10 Alfred Place, London WC1E 7LR  
Decision on papers**

**Date of Decision** : **16 December 2014**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal pursuant to section 20ZA of the Landlord and Tenant Act 1985 grants dispensation from the consultation requirements in respect of the works the subject of the application.

## **Procedural**

1. The applicant landlord applies for a dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 and the regulations thereunder in respect of works proposed to replace a communal boiler ("the Works") to 3 converted properties collectively known as 225-235 (odds) Sussex Gardens, Loondon W2 2RL ("the Property"). The Property is comprised of 3 developments which are period conversions into a total of 31 apartments. The freehold of 235 Sussex Gardens is vested in the Church Commissioners. The freehold of 225-227 Sussex Gardens is vested in the Church Commissioners but subject to a right to manage company ("RTM"). 229-233 Sussex Gardens has a separate freeholder. The RTM and the freeholder of 229-233 Sussex Gardens have given their consent via their managing agents, Granvilles, to be joined as Applicants to this application.
2. The Tribunal gave directions on 29 October 2014, which provided for the Respondent tenants to write to the Tribunal by 28 November, stating whether or not they agreed to dispensation being given and whether they were content for the Tribunal to determine the matter on the papers. The directions provided for the Applicants to send the application and direction to each of the Respondents and display a copy of the application and directions in a prominent position in the common parts of all 3 developments forming part of the Property by 10 November 2014 and confirm to the Tribunal that this had been done.
3. The bundle contains confirmation from Knight Frank that this has been done in respect of 235 Sussex Gardens and from Granvilles that this been done in respect of 225-227 and 229-233 Sussex Gardens. No objection has been received from any of the Respondents.
4. The Tribunal also gave directions for the Applicant to compile a bundle for the Tribunal's use at any hearing and for that to be served on any Respondent who had indicated that they opposed the application by 5 December 2014. The Tribunal has before it a bundle of documents containing:-
  - (1) The application;

- (2) The directions;
  - (3) Applicant's statement of case to which are annexed the quotations for the Works and correspondence with Granvilles.
5. Since none of the Respondents had objected to the application and had in any event been served with the application, there was no requirement on the Applicant to serve them with any documents under the terms of the directions.

### **Determination**

6. The application provided that consultation could not be carried out before the Works were carried out because one of the two communal boilers had broken down and if there had been consultation it would not have been possible to turn on the boilers for heating and hot water by 1 October in order to comply with the lease. Both boilers were required in order for heating and hot water to be provided; further if only one of the boilers was functioning then there would be no back up. The company which services the boilers confirmed that the failed boiler required extensive works to repair it and it was not economically viable to do so. Accordingly, a decision was taken to replace it. Two quotations were provided. One was provided by Cambridge Maintenance Services (the current maintenance contractor) in the sum of £8257 plus VAT. The other was provided by Westway Services Ltd in the sum of £9825 plus VAT. The contract was awarded and the Works carried out by Cambridge Maintenance Services on the basis that the quotation was cheaper and they are the current maintenance contractor.
7. I remind myself that the sole issue for my determination is whether the landlord should be required to carry a full section 20 consultation in respect of the works. In my judgment the urgency of the problem is such that dispensation should be granted.
8. This does not leave the tenants without a remedy. If the cost of the works is excessive or if the quality of the workmanship poor, then it is open to the landlord or the tenants to apply to the Tribunal for a determination of those issues. That, however, would be the subject matter of a separate application.
9. The order for directions provides that the Tribunal may consider whether the Respondents should reimburse the Applicants with the whole or part of the fees paid in this application. No request for reimbursement is sought in the Applicants' statement of case and accordingly the Tribunal makes no order in that regard.

**Name:** Ms L Smith

**Date:** 16 December 2014

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 20**

- (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) the appropriate 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.]

### **Section 20ZA**

- (1) 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.
- (2) 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.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
  - (a) if it is an agreement of a description prescribed by the regulations, or
  - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
  - (a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
  - (b) to obtain estimates for proposed works or agreements,
  - (c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
  - (d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
  - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
  - (a) may make provision generally or only in relation to specific cases, and
  - (b) may make different provision for different purposes.
- (7) 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.