

10879



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

Case Reference : LON/00AG/LDC/2015/0036

Property : 7, Wedderburn Road, London,
NW3 5QS

Applicant : The Executors of the Estate of Peter
Forthergill

Representative : David Clark & Co Solicitors

Respondents : (1) Executors of the Estate of Peter
Forthergill
(2) Keith and Sharon Glanville
(3) Caroline Samsonova
(4) Mark Alflatt

Representative : Darwin Law Ltd for Caroline
Samsonova

Type of Application : To dispense with the statutory
consultation requirements

Tribunal Members : Mrs H Bowers, MRICS

**Date and venue of
Hearing** : 28th April 2015, 10 Alfred Place,
London WC1E 7LR

Date of Decision : 28th April 2015

DECISION

Decision of the tribunal

The Tribunal grants the application for dispensation from further statutory consultation in respect of the subject works.

REASONS

The Application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) dispensing with statutory consultation in respect of major works.
2. 7 Wedderburn Road, London NW3 5QS (the subject property) is described as an end terrace house converted into providing four flats. These flats comprise the Garden Flat with accommodation on the ground floor and basement, the Ground Floor Flat, again with accommodation on the ground floor and basement, Flat 2, situated on the first floor and the Top Floor Flat, situated on the second floor and with rooms on the third floor.
3. The application was dated 9th and 10th March 2015. Directions were issued by the Tribunal on 19th March 2015 listing the matter for a paper determination for the week commencing 27th April 2015.
4. The application seeks dispensation in respect of work to repair masonry at high level to prevent water penetration to the first floor and top floor flats.
5. There were written submissions on behalf of the Applicant and on behalf of Caroline Samsonova, the leaseholder of the Top Floor Flat.

Applicant’s Case:

6. It was explained that the application had been made as there had been water ingress to the first floor flat, Flat 2, that was owned by Keith and Sharon Glanville. The water ingress is causing damage to the walls and ceiling of the flat and there is potential that the ceiling could collapse and cause further damage.
7. The Applicant’s representative had been informed of the problem in November 2014 and an inspection by the insurer was arranged for January 2015. The Respondents were contacted to seek their agreement to a dispensation of the consultation process. Included in the bundle were emails dated 17th December 2014 and 8th January 2015 to the leaseholders informing them of the problem and stating that the cost of the works would be between £4,500 - £5,000. These emails requested the leaseholders’ agreement to dispense with the full consultation process. It is suggested that agreement was obtained from Mr and Mrs Glanville, opposed by Ms Samsonova and not addressed by Mr Aflatt. It was further suggested that Ms Samsonova subsequently demanded repair to her flat as a consequence of the water ingress. As the Applicant held the leasehold interest in the Ground Floor Flat, there was agreement regarding that flat that there should be dispensation.

8. Mr and Mrs Granville threatened the landlord with legal action if emergency work was not pursued. In an email dated 16th January 2015 the insurers indicated that it was imperative that the external works were undertaken without delay. The email suggests that the work arises from “*general weathering, wear and tear and gradual deterioration*”, and would not be covered by insurance. The insurers required confirmation that the external work had been undertaken prior to the internal works being carried out.

9. In an email from Ms Samsonova dated 16th January 2015 a number of points were raised. It was indicated that the roof leaks were causing problems within the Top Floor Flat. It is stated that “buckets are required when it rains and the joinery is rotting in my flat”. Concerns were raised regarding an individual and it was suggested that he was unqualified. Ms Samsonova indicated that she would welcome a “neutral and competent” accredited builder. Addressing the damage to Flat 2, Ms Samsonova denied that water from her balcony was the cause of weight on the ceiling of Flat 2. It was suggested that the work was not urgent and that there were some long standing problems.

10. In an email dated 12th January 2015, Mr Aflatt raises a number of queries regarding the emergency work, but remained neutral regarding his position as to whether or not he agrees with the dispensation.

11. It was explained that due to historic issues there was a poor level of communication and co-operation between the leaseholders. The application for dispensation was made in an attempt to shorten the consultation time and to minimize any further damage, risk of injury and of legal action being taken. The Applicant has instructed for the works to be undertaken and the works have now been completed.

12. Included in the bundle was an email quote from Kevin Nye dated 14th January 2015. This described the work as re-positioning the existing faulty guttering to the rear of the property. The scaffolding, labour and material costs totaled £4,165.

Respondents' Case:

13. Darwin Law made submissions that the application should be dismissed. The initial submission was that the Applicant served their bundle including the statement of case on 20th April 2015. This was ten days later than the 10th April 2015 as required in the Tribunal's Directions. It was further suggested that on 24th March 2015, Nicholas Salkild, one of the executors of the Applicant stated in a telephone call to Mr and Mrs Glanville and to Ms Samsonova that the charges would be paid for by the Applicant. Finally it was submitted that it would be unreasonable for the costs to be applied to the service charge and paid for by the leaseholders.

14. In support of these contentions, a factual account was provided on behalf of Ms Samsonova. It was stated that the last external repairs to be carried out to the subject property were in February and March 2007. At that

time there were no re-decoration or that the re-decoration that was carried out was poor. The building has continued to deteriorate and is in need of significant work. Ms Samsonova has written requesting that work is undertaken and is considering seeking a court order for specific performance. Included in the papers are a number of emails suggesting that work is required to a number of elements including the windows, the guttering, faulty polychromatic brickwork, a defective chimney and work to the external brickwork and leadwork. In a letter from Darwin Law dated 19th March 2015 it is stated that the subject property is in disrepair. Of relevance, it was stated that there is water ingress to the Top Floor Flat and plans and provided to show the water ingress to the flat. It is suggested that all the works should be undertaken together, rather than piecemeal repairs. There is a response to this letter from the Applicant's representative dated 23rd March 2015 and in particular questioning Ms Samsonova's position in respect of the dispensation application. It is acknowledged that the relevant works have now been completed.

15. The terms of the lease relating to the lessor's obligations and the service charge provisions were identified.

16. In turning to the current application, it is suggested that Ms Samsonova has suffered prejudice on the failure to consult as she has lost the right to comment on the approximate costs of £4,500 that was to be incurred. There is no break down of the costs, so it is difficult to understand the full extent of what is being undertaken. The second issue raised is that there is only one quotation provided and as such Ms Samsonova is unable to determine whether the works are reasonably priced. It is finally submitted that the costs of the proposed works are unreasonable and should not be recoverable via the service charges. This is because major works should have been carried out to the property prior to 2014 and that more work is now needed as a consequence of the neglect.

Determination

17. Section 20ZA(1) of the Act 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."

18. The Tribunal has taken into account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14.

19. There has been no suggestion from any Respondent that the work is not necessary. The only Respondent to have opposed the application is Ms Samsonova and she raises a number of points. Dealing with the preliminary point made by Darwin Law regarding the late service of the Applicant's bundle, the Directions did not suggest that it was an unless order. The Respondents could have sought an extension for their deadlines under the

Directions. No request was made and there was no indication that the Respondents were prejudiced by the late delivery of the bundle. The next issues that were raised related to the suggestion that the Applicant stated that the charges would be paid for by them and that Ms Samsonova considered that it would be unreasonable for the costs of the works to be applied to the service charge and paid for by the leaseholders. These are aspects that may be relevant to whether and to what extent any service charges are payable and may be relevant to an application under section 27A of the Act. However, these factors are not relevant to the consideration of the current application.

20. The next issues that were raised was whether Ms Samsonova had suffered prejudice on the failure to consult as she has lost the right to comment on the approximate costs. Additionally, it is suggested that Ms Samsonova was unable to determine whether the works are reasonably priced and whether the costs should be recoverable from the service charges due to historic neglect. The purpose of the section 20 consultation process is to inform leaseholders of planned work and to facilitate their involvement in the procurement process. As mentioned above any aspects dealing with the costs of proposed works and whether those costs are reasonable would be subject to section 27A of the Act.

21. There is sufficient evidence before the Tribunal of the necessity to carry out the work urgently, and that it was prudent to contract the works without a full consultation process. The Tribunal is satisfied that delaying the works for full consultation would have been undesirable. The Tribunal is not persuaded that there has been any prejudice to the Respondents or other grounds on which the Tribunal ought to consider refusing the application or granting it on terms.

22. In all the circumstances the Tribunal grants the application for dispensation from statutory consultation in respect of the works, considering it reasonable to do so. For clarity the works are to repair masonry at high level to prevent water penetration to the first floor and top floor flats.

23. This decision does not affect the Tribunal's jurisdiction upon any application to make a determination under section 27A of the Act in respect of the reasonable cost of the work.

Name: H C Bowers

Date: 28th April 2015