



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

Case Reference	:	LON/00BE/LDC/2016/0078
Property	:	63-71 Rye Hill Park, Peckham, London SE15 3JR
Applicant	:	Paxford Properties Ltd
Representative	:	Hindwoods
Respondents	:	(1) Mr M James & Miss M N McArthur (Flat 1); Ms D J Chappell (Flat 2); Miss G E Lazda (Flat 3); Mr J R Skinner (Flat 4); Mrs S Eva (Flat 5); Miss K H Brown-Felts (Flat 6).
Type of Application	:	Dispensation with Consultation Requirements
Tribunal Members	:	Judge Robert Latham
Date and venue of Hearing	:	5 September 2016 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	6 September 2016

DECISION

The Tribunal determines to allow this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985.

The Application

1. By an application made on 3 August 2016, the Applicant seeks dispensation with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
2. 63-71 Rye Hill Park (“the property”) comprises a two storey purpose-built block of six flats owned by the Applicant and subject to the six leases held by the Respondents. Hindwoods are instructed by the Applicant to manage the property. The proposed works involve the removal of the retaining wall between the property and 73 Rye Hill Park which is owned by Mrs S Boyd. The retaining wall has failed and is currently supported by timber struts fixed between the retaining wall and the external wall of Mrs Boyd’s property. Structural Engineers have advised that the following works be executed as a matter of urgency: the removal of the wall, install piles and rebuild the wall and make good the surrounding areas.
3. On 10 June, Hinwoods wrote to the tenants informing them of the proposal to carry out these emergency works. A Section 20 Notice had originally been served in November 2012 on the basis that the works would be executed jointly by the Applicant and Mrs Boyd. However, it was subsequently discovered that the Applicant is solely responsible for the wall. Martyn Long, a Structural Engineer, was instructed to prepare a Specification of Works. Temporary works were executed to shore up the wall. The letter describes the difficulties faced by the landlord in trying to obtain three competitive tenders. The lowest tender received in 2015 was withdrawn as a result of which the landlord had to restart the tendering process. In December 2015, Martyn Long advised that the remedial works should be undertaken urgently. The estimated cost of the works is £44,757.96, including fees and VAT. Details were given of the three tenders that had been obtained. The landlord was minded to accept the lowest tender from Underpin & Making (Contracting) Ltd in the sum of £33,609 (exc of VAT). There is £7,973.89 in the reserve fund. The tenants are likely to be liable for contributions ranging from £6,948 to £8,483.
4. On 4 August, the Tribunal gave Directions. On the same day, the Tribunal sent the Directions to the parties. By 18 August, any leaseholder who opposed the application was required to complete a reply form which was attached to the Directions. This was to be sent to the Tribunal and to the Applicant.
5. The following responses have been received:

(i) On 17 August, Mr Skinner (Flat 4) responded. He was content for the matter to be determined on the papers. Mr Skinner stated that he did not object to the dispensation of the consultation requirements as the works are now urgent. However, he is concerned that the delays have increased both the scope and the cost of the works.

(ii) On 18 August, Miss McArthur (Flat 1) responded. She indicated that she was not content for the matter to be determined on the papers. She subsequently confirmed that she had ticked the box in error and was content for the matter to be determined on the papers. However, she does not consider that it is acceptable for the landlord to seek dispensation. This is a long standing issue and she is unclear as to why the sudden need for urgency. She considered that the letter of 10 June did not provide sufficient information, with evidence or even a specification of works. The cost of the works would have a severe impact on her family. She believes that she is owed the courtesy of a proper, transparent consultation process.

6. On 24 August, Hindwoods provided the Tribunal with the required Bundle of Documents. The Applicant was also required to provide a copy of the Bundle to any party who opposes the application.

7. On 31 August, the Applicant copied the Tribunal into an e-mail sent to Miss McArthur. Mr Williams provided fuller details of the consultation process and the three tenders. He provided a copy of the engineer's specification. He noted that these particulars would not normally be sent out to tenants, but would be available for inspection at their offices. He noted that three of the lessees had now paid the service charge in full, a fourth had paid 50% with the balance to be paid imminently and the fifth had agreed to pay in full but was negotiating a payment plan. He invited Ms McArthur to withdraw her objection.

8. Section 20ZA(1) of the Act provides:

“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.”

9. The Bundle of Documents filed by the Applicant is extensive and indicates some of the causes of the delays. On 28 August 2012, the owner of the neighbouring property first complained that the wall is in danger of collapse (Item 1). On 7 November 2012, a report was obtained from Crofton Consulting Engineers (Item 29). On 6 November 2014, the Applicant accepted that they were obliged to bear the cost of the works with no contribution from the neighbouring property (Item 12). Hindwoods have sent various letters to the tenants, namely 9 July 2014

(Item 10); 6 November 2014 (Item 13) and 2 August 2016 (Item 25). In March 2015, Lawson Martin Long Consulting Engineers prepared a Specification of Works (Item 30). It is apparent that a significant cause of delay between December 2015 and June 2016 was a change of personnel at Hindwoods (see Item 21).

10. Three quotations have been obtained:
 - (i) On 12 August 2015, Underpin & Makegood (Contracting) Limited – quoted £33,609, exc VAT (Item 31);
 - (ii) On 16 May 2016, TMC Building Services (London) Limited quoted £35,000, exc VAT (Item 32); and
 - (iii) On 21 May 2016, CBS Kent Limited quoted £38,450, exc VAT (Item 33).
11. On 10 June, Hindwoods informed the tenants that the landlord was minded to accept the lowest tender. On 2 August, Hindwoods notified the tenants that even though some of the tenants had paid in full, the landlord had agreed to forward-fund the works and recover the costs from the tenants in due course (Item 25).
12. The Tribunal notes that the only issue which it is required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable. If any tenant is able to establish that the costs of the works has increased as a result of any unreasonable delays, this is a matter for a separate application.
13. Tribunal is satisfied that it is reasonable to grant dispensation from the consultation requirements. This is justified by the urgent need for the works. This removes the risk of structural damage to the neighbouring property. The Applicant has taken reasonable steps to bring their proposed action to the attention of the Respondents. No Respondent has questioned the need for the works. Miss McArthur rather questions the sudden need of urgency. The Tribunal notes that the landlord has obtained three estimates. It is satisfied that these works should now be put in hand as soon as possible, preferably before the winter sets in. The mere fact that there may have been undue delay in the past is not a sufficient reason for further delay.

Judge Robert Latham

6 September 2016