



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

**Case Reference** : **LON/00AY/LDC/2017/0122**

**Property** : **Century House, 245 Streatham High Road, London SW16 6ER**

**Applicant** : **Century House (Freehold) Ltd**

**Representative** : **Houston Lawrence (Agent)**

**Respondent** : **33 leaseholders named in the list annexed to the Application**

**Representative** : **Angus French, Toby French, J Chelliah**

**Date of Application** : **16<sup>th</sup> October 2017**

**Type of Application** : **Dispensation with consultation**

**Tribunal** : **Mr I B Holdsworth MSc FRICS**

**Date and venue of hearing** : **29<sup>th</sup> November 2017  
10 Alfred Place London WC1E 7LR**

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**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 in respect of the works described in the Specification of Fire Safety Works dated August 2017 reference 2007/2912 in the sum of £78,030 plus VAT, provided these works fall under the Landlord's obligations contained in the leases of the flats.

The Tribunal directs the applicant to send a copy of this Decision to the leaseholders and to display a copy in the common parts of the building.

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## **The Application**

1. The applicant made an application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act (the “**Act**”). The application affects some 33 leaseholders at Century House, 245 Streatham High Road SW16 6ER (the “**Property**”) whose names are annexed to the application form. The applicant asserts that it is necessary for fire safety works to be carried out at this property to comply with an Enforcement Notice issued by London Fire Brigade on 26<sup>th</sup> October 2017.
2. The six-storey block built during the 1930’s as commercial premises, was converted to residential use in the early 1980’s. Several Fire Risk Assessments since 2013 had identified serious defects at the property that needed remedial work. The urgency of the fire safety works became a concern to the London Fire Brigade at an inspection in September 2017. They issued an Enforcement Notice that required all necessary fire safety works to be carried out immediately (the “**Notice works**”) and applied the supplementary condition that a waking fire watch be instigated and continue until works completion.
3. The applicant intends to charge the respondents their proportion of the cost of carrying out the necessary fire safety works to ensure compliance with the Enforcement Notice. The Tribunal notes that the only issue which we are required to determine is whether 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. The leaseholders will continue to enjoy the protection of Section 27a of the Act.**

## **Response to the Application**

4. On 24<sup>th</sup> October 2017 the Tribunal gave directions. A reply form was attached to the directions to be completed by the leaseholders who oppose the application. The Tribunal notified the parties that we would determine the application on the basis of written representations unless any party requested an oral hearing. There was a request from Angus French, leaseholder of Century House for an oral hearing and the Tribunal arranged a hearing on 29<sup>th</sup> November.
5. Three leaseholders have written to the Tribunal. In summary, their comments are as follows: -
  - I. On 7<sup>th</sup> November, Mr J Chelliah, Flat 22 Century House objected to the fire safety works because the likely costs of the Notice work will be greater than those demanded in June 2017. He also asked whether further enclosure work would be required to the electrical installation together with additional work to ensure compliance with the Notice.

- II. Mr Angus French objected to the fact that the Notice works do not comply with the requirements of the Fire Safety Order 2005 or the Enforcement Notice. It was also suggested that Houston Lawrence Property Management Ltd (HL), the managing agents may have a conflict of interest in providing both the fire risk assessment and management of the premises.
  - III. On 6<sup>th</sup> November 2017 Mr Toby French objected to the fire safety works as part of his wider dissatisfaction with the failure to consult on the safety patrols. Section 4 of his letter offers a chronology of relevant events. He relies upon this information to illustrate the delay in carrying out necessary works earlier.
- 6. The applicant has responded to each of these objections.
  - 7. The applicant has filed an extensive bundle of documents in support of its application. Counsel submitted a skeleton argument at the hearing to assist Tribunal in their deliberation of the application.

#### **Statutory Duties to Consult**

- 8. The obligation to consult is imposed by Section 20 of the Act. The proposed works are perceived as qualifying works. The consultation procedure is prescribed by Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the Consultation Regulations”). Leaseholders have a right to nominate a contractor under these consultation procedures.
- 9. The Landlord is obliged to serve leaseholders and any recognised tenants association with a notice of intention to carry out qualifying works. The notice of intention shall, (1) describe the proposed works, (2) state why the Landlord considers the works to be necessary, and (3) contain a statement of the estimated expenditure. Leaseholders are invited to make observations in writing in relation to the proposed works and expenditure within the relevant period of 30 days. The Landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The Landlord shall respond in writing to any person who makes written representations within 21 days of those observations having been received.
- 10. 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.”

## Background

11. The freehold of the property was transferred to the present owners in or around 2014. The freehold is owned by Century House (Freehold) Ltd. The Tribunal is told this company is wholly owned by the property leaseholders.
12. The managing agents, Houston Lawrence, were appointed in 2014. It had been recognised for some time that the property suffered from dilapidation and there was a need to carry out some substantive repairs to improve the fabric of the building. These works included fire safety works.
13. Watts Building Services (“Watts”) were instructed in December 2016 to carry out a condition survey and advise on necessary remedial works.
14. They reported later that month on necessary works. They submitted their report as two schemes; a comprehensive works programme, the other emergency works only. A detailed estimate for the works was obtained from Watts in April 2017 and this formed the basis of a Section 20 consultation in respect of the emergency works. On completion of the Section 20 consultation, a meeting was held with the leaseholders in July 2017. The Watts report was discussed, and it was decided that the tender returns were not acceptable, and the leaseholders sought to re-tender the scheme. As a result of this instruction to the managing agents a revised specification for improvements to fire control and compartmentation was prepared by H L Professional Services in August 2017.
15. A visit from London Fire Brigade was carried out on 19<sup>th</sup> September and this was followed by a subsequent visit to the premises by the Fire Brigade some ten days later. On the second visit, London Fire Brigade requested immediate emergency measures to be put in place in the form of a waking fire watch prior to completion of the fire safety works.
16. A letter dated 11<sup>th</sup> October 2017 summarised the position adopted by London Fire Brigade at that meeting. In summary, they told the Claimants that if a waking fire watch was not instigated then a prohibition notice would be served on the premises. This would require immediate evacuation of Century House. The alternative was the instigation of a waking fire watch which would commence immediately and continue until all the necessary fire safety works were satisfactorily completed.
17. The Claimants had initiated revision of the works specification following the comments on costs made by leaseholders in July 2017. After the visit of London Fire Brigade three contractors were invited to submit tenders to carry out the works specification. These are Gunfire Ltd, Peter Burton & Co Ltd, Checkmate Fire Solutions Ltd. Two contractors returned tenders.

18. A tender report dated 20<sup>th</sup> October prepared by HL Professional Services contained the results of the tender exercise. Gunfire Ltd submitted a total cost of £88,025 plus VAT. Peter Burton & Co Ltd returned a tender of £60,645 plus VAT. Both these estimates include an £2,500 contingency sum.
19. The tender report recommended the appointment of Peter Burton & Co Ltd to carry out works with an enhanced contingency of £12,500. The freeholders accepted this advice and formally appointed this contractor to carry out the tendered fire safety works (the “**Safety Works**”) by letter dated 30<sup>th</sup> October.
20. A start on the fire safety works was made on 26<sup>th</sup> October 2017 and the expected completion date is 8<sup>th</sup> December 2017.

### **Hearing**

21. In response to the request by Mr Angus French, leaseholder, a hearing was held on 29<sup>th</sup> November.
22. The applicants were represented by Counsel, Miss Polimac. Mr Turl, Chief Operating Officer of Houston Lawrence, managing agents for the property and three directors from the Century House (Freehold) Ltd also attended, namely Mr J Bradley, Mr M Gin and Mr Sharma.
23. The leaseholders were represented by Mr Angus French, Mr Toby French, Mr J Chelliah and Miss Lockyer. Representations were made by three leaseholders. Miss Lockyer attended but chose not to speak at the hearing.

### **Relevant Matters Raised by Parties at Hearing**

#### **Claimants**

24. Counsel for the Claimants argued that the fire safety works are required to make the property fire safe following the service of an Enforcement Notice by London Fire Brigade on 26<sup>th</sup> October 2017. The works that London Fire Brigade require are set out in the schedule to the Enforcement Notice. The Tribunal was advised that the required works in the schedule match closely those in the Specification of Works drawn up on 29<sup>th</sup> August 2017.
25. Counsel submitted that dispensation should be granted for the following reasons.

The fire safety works are necessary and required as evidenced by the London Fire Brigade Notice. It is the assertion of the Claimants that the statutory purpose of Section 20 is not undermined by the grant of dispensation for the following reasons, namely:

- 1) The Claimants had attempted consultation on fire safety works on two occasions. On these occasions leaseholders had made observations, the Claimants had responded and as a consequence, revised fire safety works proposals were agreed.
- 2) The safety works were competitively tendered before being carried out.
- 3) The Enforcement Notice and the fact that the property is not fire safe as evidenced by several fire assessment risks means that the works are urgent.
- 4) The London Fire Brigade has demanded a waking watch until the works are completed. This increases costs and early completion of the fire safety works is of financial benefit to the leaseholders.
- 5) There is no evidence to support the respondent's assertion that the leaseholders have suffered prejudice by a failure to consult.

### **Respondents**

26. Mr Chelliah expressed dissatisfaction with the managing agent in their failure to engage with the leaseholders. He claimed that they had failed to listen on numerous occasions to advice provided by leaseholders on the type and programming of the fire safety works. He also expressed concern about the adequacy and scope of the proposed works.
27. Mr Toby French identified necessary works to timber cladding. He claimed that the safety works did not include removal of cladding or alternative fire attenuation. He said without appropriate safety work they would remain a fire hazard.
28. Mr Angus French referred the Tribunal to the delays in preparation of the specification after the meeting held with leaseholders in July 2017. He argued that these delays had contributed to the requirement imposed by the London Fire Brigade to instigate fire safety patrols.
29. Mr A French also commented on the consultation process. It was his opinion that it was not transparent, sufficiently comprehensive or effective. He said that there was no opportunity for him to suggest alternative fire safety works contractors. He reminded the Tribunal that this was a provision of Section 20 consultation.

### **Determination**

30. The Supreme Court's decision in the case of *Daejan Investments Ltd v Benson and Ors* [2013] 1 W.L.R. 854 clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.

31. The scheme of consultation provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.
32. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder because of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
33. The burden is on the landlord in seeking a dispensation from the consultation requirements. However, the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered because of the lack of consultation.
34. The Tribunal asked Mr Turl, operating manager of the managing agents, to confirm that the specified works will satisfy the Enforcement Notice issued by London Fire Brigade. He affirmed on two occasions, that the fire safety works on satisfactory completion will be sufficient to comply in all respects with the Notice works. The Tribunal is aware this statement contradicts the belief of the leaseholders but will rely on his statement as both authoritative as managing agent and referenceable.
35. The Tribunal is satisfied that the works are of an urgent nature given the ultimatum made by the London Fire Brigade that waking fire watches must continue until the fire safety works are completed. This imposes a financial imperative to complete the works quickly and adequately to remove the burden of the cost of these fire safety watches.
36. The Tribunal is satisfied that the works are for the benefit of and in the interests of both landlord and leaseholders in the Property.
37. The bundle contains five fire safety risk assessments, some dating from 2013. Each of these fire safety assessments identify urgent and essential works necessary to mitigate fire risk. It is accepted by Claimants and respondents that there is a need to carry out these works and all parties will benefit.
38. The Tribunal noted that only 3 of 33 leaseholders had objected to the grant of dispensation. This suggests that the benefit of carrying out these works urgently is recognised by the majority of the residents of the premises.

39. The Tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to the failure to consult. The Tribunal noted that the managing agent had taken more than 2 months to produce a revised safety works specification after the leaseholders meeting on 12<sup>th</sup> July 2017. This is a disappointing delay, but the Tribunal does not consider that there would have been any significant saving in the cost of the fire safety works if the statutory consultation had been carried out. The Tribunal is not persuaded that the leaseholders have suffered any financial prejudice because of the failure to consult.
40. The Tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted under the 2003 Regulations. However, the works were necessary and urgent to comply with the London Fire Brigade Enforcement Notice. The additional burden of being required to instigate the fire safety patrols has only heightened the urgency of carrying out the safety works. The Tribunal notes that there had been a Section 20 consultation on fire safety works and other works earlier in the year. It is recognised that prior to carrying out the works for which dispensation is sought three contractors were invited to tender. Only two contractors returned the tenders, but it does represent an attempt to achieve best value for these works. In view of the circumstances under which the works became necessary the Tribunal does not consider that the leaseholders, in losing an opportunity to make observations and to comment on the works or to nominate a contractor, suffered any relevant prejudice.
41. The Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are dispensed in respect of the works described in Specification of Fire Safety Works dated August 2017 reference 2007/2912 in the sum of £78,030 plus VAT subject to these works falling under the Landlord's obligations under the leases of the flats.

**Chairman: Ian B Holdsworth Valuer Chairman**

Dated: 12<sup>th</sup> December 2017