

12025



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

Case Reference : **LON/OOBG/LDC/2016/0132**

Property : **Masters Lodges Johnson Street,
London, E1 OBE**

Applicant : **Masters Lodges RTM Company
Limited**

Representative : **Warwick Estates, Managing Agent,**

Respondents : **Leaseholders of flats within
Masters Lodges Johnson Street**

Representative : **None**

Type of Application : **S20ZA of the Landlord and Tenant
Act 1985 - dispensation of
consultation requirements**

Tribunal : **Mr. N. Martindale**

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

Date of Decision : **15 February 2017**

DECISION

LON/OOBG/LDC/2016/0132

Decision

1. The Tribunal grants dispensation from the requirements on the Applicant to consult the Respondents under S.20ZA of the Landlord and Tenant Act 1985, in respect of the application.

Background

2. The Applicant, Masters Lodges RTM Company Limited has through its agent Warwick Estates, applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the dispensation from all or any of the consultation requirements contained in S20 of the Act.
3. The application was dated 18 November 2016, acknowledged in a letter dated 23 November 2016 to the agent. The proposal is for the emergency demolition and re-instatement of a front garden wall, pillar and gate.

Directions

4. Directions dated 13 January 2017 were issued by the Tribunal without any oral hearing. They provided for the Tribunal to determine the applications during the week commencing 13 February 2017 and that if an oral hearing were requested by a party, it take place on 15 February 2017. They provided that the Applicant must by 20 January 2017, send to each leaseholder and the landlord copies of the application and directions whilst displaying a copy of same in a prominent position in the common parts of the property. Confirmation to the Tribunal, of compliance by the Applicant, was required by 23 January 2017.
5. Any leaseholders who opposed the application had, by 27 January 2017 to notify the Tribunal with any statement and supporting documentation.
6. The Respondent leaseholders of were those set out in the schedule to the application.

Applicants Case

7. The property appears to be a block of 17 flats, located in Masters Lodge, Johnson Street. A copy of the lease for Flat 1 Masters Lodge, was provided by the Applicant as representative of all others. There being no evidence to the contrary, The Tribunal assumed that all the residential leases are in essentially the same form.
8. The application was marked ‘standard track’ at box 10.

9. The application stated at box 7 that the application concerned qualifying works and that these had been carried out. Further details included: *“The vehicle gate for masters lodge is attached to a brick wall which a car had crashed into.... This then created cracks running straight through the bricks which had bulged the wall and was leaning due to excessive loading from the gate. As the wall is right by a school walkway, remedial works needed to be actioned ASAP. The gate needed to be removed, the wall needed to be rebuilt as it was a extremely high health and safety risk.”* And *“We are seeking dispensation as the wall leading to a public school walkway area needed to be re built immediately...movement was causing further damage and was at risk of falling.”*
10. The Applicant confirmed by a letter dated 18 January 2017 to the Tribunal that all leaseholders had been informed of the application and invited to make representation if they objected.
11. The Tribunal did not receive any objections from any of the Respondents.
12. The Applicant had requested a paper determination. No application had been made for on behalf of any of the Respondents for an oral hearing. This matter was therefore determined by the Tribunal by way of a paper hearing which took place on 15 February 2017. A decision was made the same day.
13. The Tribunal did not consider that an inspection of the property would be of assistance and would be a disproportionate burden on the public purse.

Respondents Case

14. The Tribunal did not receive representations or objections from any of the Respondents.

The Law

15. S.18 (1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S.20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

16. Dispensation is dealt with by S.20 ZA of the Act which 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.”

17. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

**(a) to each tenant; and
(b) where a recognised tenants’ association represents some or all of the tenants, to the association.**

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
- (b) state the landlord’s reasons for considering it necessary to carry out the proposed works;**
- (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord’s estimated expenditure**
- (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period; and**
 - (iii) the period on which the relevant period ends.**

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

**(a) the place and hours so specified must be reasonable; and
(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

Tribunal's Determination

18. The scheme of the provisions is designed to protect the interests of tenants, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
19. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately pay the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
20. No evidence has been produced that any of the Respondents have challenged the consultation process and no written submissions have been received.
21. The single contractor's price and indeed invoice dated 27 October 2016 totalling £11,520 (including VAT) was provided. It was the billed cost for the removal of the former brick wall, pillar and gate to the boundary and driveway gate and their re-instatement to a higher standard, incorporating a foundation and double thickness wall. The work required the permanent diversion of a nearby ventilation pipe to the back of the pavement edge.
22. The Tribunal is satisfied that it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with on both applications.
- 23. It should be noted that in making its determination of this application, it does not concern the issue of whether any service charge costs are reasonable or indeed payable by the leaseholders. The Tribunal's determination is limited to this**

**application for dispensation of consultation requirements
under S20ZA of the Act.**

N Martindale

15 February 2017