



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

Case Reference : **LON/OOAG/LDC/2019/0082**

Property : **1 Holly Terrace Highgate London
N6 6 LX**

Applicant : **The Freeholders of Holly Terrace**

Representative : **Patricia Barham (D&G BM)**

Respondents : **The Leaseholders of Holly Terrace**

Representative : **n/a**

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

Tribunal : **Judge F J Silverman LLM
Mrs S Redmond MRICS**

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

Date of Decision : **29 July 2019**

DECISION

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 Applicants, through their representative, have 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 16 May 2019. It concerns emergency replacement of a terrace to the building, to eradicate and prevent further substantial water ingress to two of the flats in the building. The necessary works have already been carried out and no objections have been made by any of the leaseholders.

Directions

4. Directions dated 4 June 2019 were issued by the Tribunal. As amended they provided for the Tribunal to determine the application during the seven days commencing 29 July 2018 by written representations and that if an oral hearing were requested by a party, it take place on 31 July 2019. They provided that the Applicant must by 27 June 2019, send to each Respondent/ leaseholder copies of the application and the 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 04 July 2019.
5. The Respondent leaseholders of the various flats were those set out in the schedule to the application.
6. 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. The Directions were complied with.

The Applicant’s case

7. The Building is described in the application as a converted house comprising 6 flats on 5 levels.

8. A copy of the lease for Flat 3 has been supplied to the Tribunal. With no evidence to the contrary, it is assumed that all the residential leases are in essentially the same form.
9. The application stated that urgent works were required to remedy a leak from the terrace of Flat 3 into Flat 1A and that the only suitable remedial action was to replace the terrace. Works were undertaken between January and March 2019 at a total cost of £17,979.60 which sum was divided between Flat 3 and the service charge.

The Respondents' case

10. There were no individual responses from any of the Respondents .

The Tribunal's determination

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 the landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S20 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.

Dispensation is dealt with by S 20ZA 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”

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.

15. 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.

16. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately foot the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.

17. No evidence has been produced that any of the Respondents have challenged the proposal and the need for prompt action.

18. 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.

19. It should be noted that in making its determination, and as stated in paragraph 3 of the Tribunal's Directions, this application 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.

Name: Judge F J Silverman Date: 29 July 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).