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

Case Reference : LON/00BE/LDC/2014/0071

Property : Butlers Wharf West, Shad Thames,
London SE1 2YA

Applicant : Butlers Wharf West Limited

Representative : D & G Block Management Limited

Respondents : Various Lessees as per the
application

Representative :

Type of Application : To dispense with the requirement
to consult lessees about major
works – S20ZA Landlord and
Tenant Act 1985

Tribunal Members : Mr P M J Casey MRICS

**Date and venue of
Hearing** : Paper determination on 22 July
2014 10 Alfred Place, London
WC1E 7LR

Date of Decision :

DECISION

Decision of the tribunal

- (1) The tribunal determines that it is satisfied that it is reasonable to dispense with all of the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations)

The application

1. The applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the Act") that the consultation requirements of the Act may be dispensed with in respect of certain works at Butlers Wharf West, Shad Thames, London SE1 2YA ("the property").
2. The applicant requested a "paper determination" and the Tribunal accepted that this was appropriate although the Directions for the management and progression of the application gave the respondent lessees of the flats at the property the opportunity to request an oral hearing; none did so.
3. The Directions further required the applicant to serve a copy on each lessee together with a pro forma response slip which they were asked to complete showing their support of or opposition to the application. None of the leaseholders responded.
4. The bundle of documents produced by the Applicant in accordance with the directions was considered by the Tribunal on 22 July 2014.

The background

5. The property which is the subject of this application comprises a former warehouse building refurbished in the mid 1980s to provide two commercial units on the ground floor and 18 flats on the upper floors including penthouses created by way of additional space built at 8th and 9th floor levels.
6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues.
7. The Respondents hold long leases of the flats at the property which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The application was accompanied by a copy of the lease of Flat 14 at the property. This was originally granted on 14 February 1986 for a term of 125 years from

1st January 1985 but was subsequently surrendered and regranted on 18 May 1998 for a term of 999 years from 29 September 1997 on predominantly the same terms including the landlord's repairing obligation at Clause 5(5)(A). The works for which dispensation is sought however related to a leak from the 9th floor terrace of Flat 16, a duplex apartment, into the lower floor of that flat and the Tribunal is unable to say that the works undertaken fell within the landlord's repairing obligation in respect of that flat though this does not affect the question of dispensation.

The issues

8. The relevant issue for determination had been identified in the directions as whether or not it would be reasonable for the Tribunal to grant the Applicant dispensation from all or any of the consultation requirements set out in the Act and the Regulations in respect of certain major works carried out at the property.
9. Having read the evidence and submissions from the Applicant and considered all of the documents provided, the tribunal has made the determination applied for.

The tribunal's decision

10. The tribunal determines that it is reasonable to dispense with all of the consultation requirements of the Act and the Regulations in respect of the works referred to in the application dated 19 August 2013.

Reasons for the tribunal's decision

11. In the applicant's statement of case it is said that the managing agents were advised in early March 2014 by the leaseholder of Flat 16 that water was leaking into the lower floor of the apartment from the 9th floor roof terrace above. They instructed a contractor, Uxbridge Commercial Services Ltd, to attend and investigate the leak which entailed removing paving to access the membranes and upstands. On 14 March the contractor reported on the cause of the problem, the repairs required and quoted the sum of £4,329 plus VAT as the cost of carrying out the works if they were to be instructed.
12. On 28 March the managing agents sought insurers advice on the problem but on 9 April were advised that the policy would not cover the works. As the cost of the repairs would exceed the limit set out in S20 of the Act and the Regulations they then served, on 17 April, a Notice of Intent on all the leaseholders describing the works to be carried out under the agreement they proposed to enter into as:

“Repair of 9th floor terrace (serving flat 16) to include removal of lights, repair flashings, refix lead under capping stones as necessary, re-mastic joints, refix lights and rewire. Reform falls to rain water channels, repair asphalt, lay epoxy based roofing system. Replace damaged panel under door, fit flashings. Any other associated works.”

The covering letter made clear that to prevent further damage the works would be instructed immediately, there would be no further consultation and dispensation would be applied for. None of the lessees responded.

13. In the Statement of Case the managing agents say that the weather at the time was particularly bad and that by exposing the area to investigate the cause of the leaks the rainwater ingress was exacerbated to the extent that it was feared that it would adversely impact on the occupant of the flat as well causing further damage. Whilst it would have been preferable to have fully consulted on the works they and the freeholder applicant were of the view the works should be undertaken as soon as possible. The works were completed by the end of April and appear to have resolved the problem. The cost was met from the service charge reserves.
14. At all stages the managing agents have kept lessees informed by letter of the actions being taken.
15. It is difficult to see how the managing agents could have discovered the problem earlier; the building was last externally decorated in 2011 and no works appeared needed in this area. The problem once it arose clearly presented a considerable inconvenience to the flat occupant and risked causing further damage unless dealt with urgently.
16. There is no evidence before the Tribunal that any of the lessees has suffered any prejudice by the lack of full formal consultation and the Tribunal is of the opinion that it is reasonable in all the circumstances to grant the dispensation sought which is the sole matter before the Tribunal; the reasonableness of the cost of the works or the standard to which they were carried out have not been considered by the Tribunal.

Name: P M J Casey

Date: 5 August 2014