

12013



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

Case Reference : **LON/00AZ/LDC/2017/0007**

Property : **Flats A – G, 26 Duncombe Hill,
London SE23 1QB**

Applicant : **Orchidbase Limited**

Representative : **Michael Richards & Co**

Respondents : **Various leaseholders as set out in
the application**

Representative : **None**

Type of Application : **For dispensation of the
consultation requirements under
section 20ZA**

Tribunal Member : **Judge O’Sullivan
Mrs H Gyselynck MRICS**

Date of Decision : **27 February 2017**

DECISION

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the dispensation of any or all of the consultation requirements. The property concerned is described in the application as large converted 3 storey (ground floor/first floor and upper floor level) residential building constructed in the 1900s and converted in the 1990s into 7 self contained flats known as Flats A-G, 26 Duncombe Hill, London SE23 1QB (the “Property”) and the application is made against the various leaseholders in the schedule attached to the application form (the “Respondents”).
2. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with.
3. The Applicant seeks dispensation in respect of qualifying works to repair and/or rebuild the front boundary wall to the premises. The landlord says it was not possible to carry out full consultation with the leaseholders concerned due to the urgent nature of the works. The works have been carried out.

The background

4. The application was received on 20 January 2017. Directions were made dated 27 January 2017 which provided for the Applicant to serve a copy of the directions on all Respondents and for them to then indicate whether they consented to the application or not and wished to have a hearing. The Applicant has confirmed that the directions and application form were sent to all leaseholders on 1 February 2017 and displayed in the common parts on 2 February 2017.
5. The directions provided that this matter would be considered by way of a paper determination unless a hearing was requested. A hearing was not requested and accordingly the application was considered on the papers on 27 February 2017.
6. The Tribunal did not consider that an inspection was necessary given the works have already been carried out, nor would it have been proportionate to the issues in dispute.
7. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act.

The Applicant's case

8. The Applicant filed a bundle of documents containing a statement of case. Ms Awan became the property manager in August 2016 and had monitored the wall since that date. It had previously been monitored by the previous property manager. On 18 October 2016 Ms Awan inspected the property and noted the movement of the wall and that it needed monitoring and that some work may be required. On 2 November 2016 Ms Awan was informed by the contract gardeners that the wall had moved since they last inspected. On 17 November 2016 contractors on site advised that they were concerned about the state of the front boundary wall and that it was leaning towards a public footpath. It was at this stage considered that the wall was in a dangerous state and posing a Health and Safety risk. Advice was then sought from Lewisham Council Public Highways Department. The Council confirmed that if a wall leaned around 50% of its width it would need attention. On 24 November 2017 the freeholder took the decision to take down the wall as emergency works as the risk to users of the busy public footpath was sufficiently high to require immediate action. It was hoped that the rebuilding of the wall would be the subject of consultation. However the soil behind the wall began to move and a further danger arose as the soil and substantial shrubs could also fall onto the public highway. The freeholder made the decision to rebuild the wall immediately. During the works it became clear that the footings were only 100mm in depth and new footings were required to a depth of 500mm. Photographs were provided.

9. In response to the leaseholders the Applicant says the works were an emergency and not a failure to maintain as the wall deteriorated significantly towards the end of 2016. Routine inspections had been carried out regularly every six months or more frequently if matters dictate. Surveyors' reports in 2014 reported that the wall was in a stable condition although it was identified that it would need rebuilding at some point. In any event given the inadequate foundations any amount of maintenance would not have prevented the need to ultimately replace the wall.

The Respondents' position

10. The directions provided for any Respondent who wished to oppose the application for dispensation to serve a statement of case. The application was contested by the leaseholders of Flats A, B, C, E and F who were represented by Ms De Villiers of Flat A. The leaseholders relied on a statement of case dated 13 February 2017. The application was not contested by the leaseholders of D and G.

11. The grounds for the challenge were that the work was not emergency work because it was said to be due to a lack of maintenance over several years. They relied on a survey dated 6 February 2014 commissioned by

the leaseholder of Flat C in which it was stated that *“the front boundary wall is out of plumb and has been pushed over by the retained soil etc and it will be important to monitor this. Currently this wall appears to be in a stable condition but it is likely it will require rebuilding in the next ten years or so”*. This was said to have been highlighted to Michael Richards & Co. It is also said that Michael Richards & Co does not carry out regular property inspections.

12. As far as prejudice is concerned they say that Michael Richards & Co did not attempt to carry out any consultation, that only one quotation was obtained rather than multiple quotations, no copy of the quotation had been provided at that point (although it was in the bundle) and no explanation was given as to why the cost had increased so dramatically from that projected in December 2016, there had been an increase from a projected cost of £4,000 to a final cost of £5190. The leaseholders obtained a quotation from a local contractor of £3867.50. This is criticised by the landlord on the basis that it does not make clear whether the foundations were to be built as existing or to a new depth, the quotation appears to assume that 100% of the original bricks could be reused when this wasn't the case, the provision for materials of £500 was inadequate and the project took 184 man hours when an allowance of only 88 hours was made.

The Tribunal's decision

13. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the repair and rebuilding of the front boundary wall.

Reasons for the Tribunal's decision

14. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act *“if satisfied that it is reasonable to dispense with the requirements”*.
15. The application was opposed by five of the seven leaseholders.
16. The leaseholders relied on a survey dated 6 February 2014. This survey identified the need to monitor the wall and stated that it would be likely to need to be replaced within the next 10 years. The tribunal accepts Ms Awan's evidence as to her inspections and the sudden deterioration in the wall's condition which in our experience can occur. The tribunal is satisfied that the works were urgently required and that it is appropriate to grant an order for dispensation in these circumstances.
17. The leaseholders say they have been prejudiced and point to the fact that the landlord did not attempt to carry out any consultation, that

only one quotation was obtained rather than multiple quotations, that the wall could have been made safe pending consultation, no copy of the quotation had been provided at that point (although it was in the bundle) and no explanation was given as to why the cost had increased so dramatically from that projected in December 2016, there had been an increase from a projected cost of £4,000 to a final cost of £5190.

18. We are satisfied on the evidence, in particular the inspection note dated 18 October 2016 and the file note of the telephone call on 17 November 2016, that the wall had deteriorated suddenly. In such circumstances given the obvious danger to public safety we are satisfied that it was not possible to carry out any consultation, especially in the light of the second danger of the falling shrubbery. As far as the failure to obtain more than one quotation is concerned we note that it can be difficult to obtain multiple quotations in emergency situations although it would be preferable if the landlord had done so. We accept the landlord's explanation as to why the wall could not have been made safe due to the size of the gap between the brick storage units and the wall. We also accept the landlord's explanation for the increase in the costs due to the inadequate foundations. We are not satisfied that the leaseholders have suffered any prejudice in these circumstances given the right to challenge the cost of the works remains live (see below)
19. We would point out however that the in granting the dispensation we are not making any order in relation to the reasonableness of the costs incurred. The leaseholders have the right to challenge the reasonableness of the costs should they be so advised by making a separate application under section 27A of the Act.
20. The tribunal hereby orders that the Applicant shall serve a copy of this decision on each leaseholder.

Application under s.20C

21. There was no application for any order under section 20C before the tribunal.

Name: S O'Sullivan

Date: 27 February 2017