



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

Case reference : **LON/00BG/LDC/2017/0047**

Property : **Elton House Candy Street London
E3 2LJ**

Applicant : **Old Ford Housing Association**

Representative : **Rosalind Tennekoon (Commercial
and Leasehold Officer of Clarion
Housing Group)**

Respondent : **Leaseholders at Elton House as per
attached Appendix**

Representative : **None**

Type of application : **Section 20ZA Landlord and Tenant
Act 1985- To dispense with the
requirement to consult
leaseholders about the works.**

Tribunal member(s) : **Judge: N Haria
Member: R Shaw FRICS**

Date of decision : **06 June 2017**

DECISION

Decision of the Tribunal:

The Tribunal grants an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of urgent repair works to the concrete and brick defects detailed in the repeat safety survey of the building undertaken by Martech dated 22/03/2017 at the Property including the provision of any necessary access scaffolding.

NB: This dispensation in relation to the scaffolding is granted only in so far as the scaffolding is required to undertake these urgent repair works and not for any extended period after the urgent repair works are completed should the scaffolding continue to remain in place.

The application:

1. The applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for a dispensation of the consultation requirements imposed under s.20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations") in respect of repair works to the Property required to the brick and concrete defects and the necessary access scaffolding.

Hearing

2. The parties did not request a hearing and so the matter was dealt with on the papers.

Background:

3. The property comprises of purpose built residential block comprising 62 mixed tenure flats 11 of which are let on long leases to leaseholders listed in the Appendix.
4. The Applicant is the freeholder and landlord and is represented by Ms Rosalind Tennekoon the Commercial and Leasehold Officer of Clarion Housing Group.
5. Ms Tennekoon relies on a structural engineers report dated 22/03/2017 undertaken by Martech.

Directions:

6. The tribunal issued directions on the 09/05/2017 providing for the lessees to be notified of the application and given an opportunity to respond to the application. The tribunal received no responses from the lessees.

Inspection:

7. The Directions issued did not provide for an inspection of the property and no request for an inspection was made by either party. The tribunal did not consider an inspection to be necessary or proportionate to the issue.

The Applicant's Case:

8. The Applicant's case is fully set out in the application and supporting documents.
9. The Applicant has produced a copy of the leases relating to flats in the property. They are not identical but in a similar form and provide for the landlord to maintain in good and substantial repair and condition the main structure of the building and for the leaseholders to contribute towards the cost of such works by way of a service charge as per the provisions of their respective leases.

The Respondent's Case:

10. The Application and the Directions were sent to the Respondents. The Directions invited representations from the Respondents but no representations have been received.

The Law:

11. s. 20 of the 1985 Act provides that:

“(1) Where this section applies to any qualifying works....., the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

- (a) complied with in relation to the works or agreement, or*
- (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.”*

12. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) the tribunal.

13. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

14. **s. 20ZA** of the 1985 Act provides:

"(1) 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."

15. Under Section 20ZA(1) of the 1985 Act, "where an application is made to a ...tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements". The basis on which this discretion is to be exercised is not specified.

The consultation requirements for qualifying works are set out in Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003.

The Tribunal's decision:

16. 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.

17. The scheme of the provisions is designed to protect the interests of leaseholders, 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. 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.

18. 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 as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.

19. 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 as a result of the lack of consultation.

20. The tribunal having considered the evidence is satisfied that the works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply.
21. The tribunal is satisfied that the works were of an urgent nature given that if the works were not undertaken there was a potential of a health and safety risk to members of the public.
22. The tribunal is satisfied that the works are for the benefit of and in the interests of both landlord and leaseholders in the Property. The tribunal noted that none of the leaseholders had objected to the grant of dispensation.
23. The tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to the failure to consult. The tribunal noted that the Applicant landlord has obtained a report from an expert, the leaseholders have not had the chance to nominate a contractor of their choice and the works had not been put out to tender so the tribunal cannot be sure that the cost of the works are reasonable.
24. 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 urgent and the Applicant has taken reasonable steps in the circumstances and time available, to provide the leaseholders with relevant information. In view of the urgent nature of the works and 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, have suffered any significant relevant prejudice.
25. 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 with respect of the brick and concrete repairs at the Property identified and detailed in the Martech report dated 22/03/2017 including the provision of any necessary access scaffolding. This dispensation in relation to the scaffolding is granted only in so far as the scaffolding is required to undertake these urgent repair works and not for any extended period after the urgent repair works are completed should the scaffolding continue to remain in place.
26. It should be noted that in making its determination, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees. The tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.

Name: N Haria

Date: 06 June 2017

APPENDIX

Name: Ms C Langley

Address: Flat 10 Elton House Candy Street London E3 2LJ

Name: Mr I & Mrs R Chowdhury

Address: Flat 17 Elton House Candy Street London E3 2LJ

Name: Mr Pearson

Address: Flat 22 Elton House Candy Street London E3 2LJ

Name: Mrs S Akhtar

Address: Flat 25 Elton House Candy Street London E3 2LJ

Name: Mr B & Mr R Townshend

Address: Flat 39 Elton House Candy Street London E3 2LJ

Name: Mr D Juddah & Ms Srimuang

Address: Flat 40 Elton House Candy Street London E3 2LJ

Name: Ms O Klyputa

Address: Flat 41 Elton House Candy Street London E3 2LJ

Name: Mr MA & Mr S Farrow

Address: Flat 42 Elton House Candy Street London E3 2LJ

Name: Mr M Crawley

Address: Flat 44 Elton House Candy Street London E3 2LJ

Name: Mr C Alexander

Address: Flat 58 Elton House Candy Street London E3 2LJ

Name: Ms M Lim & Mr H Ahn

Address: Flat 61 Elton House Candy Street London E3 2LJ

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.