FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BE/LDC/2019/0058**
Property	**:**	**Vogans Mill, 17 Mill Street, London SE1 2BZ**
Applicant	**:**	**Vogans Mill Management Company Ltd.**
Respondent	**:**	**Leaseholders of Vogans Mill**
Type of Application	**:**	**For the determination of an application for dispensation from the statutory consultation requirements**
Tribunal Members	**:**	**Tribunal Judge Stuart Walker**
Date and venue of Hearing	**:**	**Decided on the Papers**
Date of Decision	**:**	**21 May 2019**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that the statutory consultation requirements shall be dispensed with in respect of repairs to the broken building security gate at the property.

Reasons

The application

1. The Applicant seeks a determination pursuant to section 27ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") dispensing with the statutory consultation requirements which apply by virtue of section 20 of the 1985 Act in respect of repairs to a broken building security gate at the property.

2. The application was made on 4 April 2019. It stated that the automatic gate to the property's car park had been taken out of operation because it had failed a safety test. As a result, the building could be accessed internally through the car park and the building's security had been compromised as the car park opens directly out to street level. A night time security guard had been employed from 7pm to 7am each night until the gate is back in working order. Contractors had been appointed and works commenced on 25 March 2019.

3. Directions were issued on 23 April 2019. They provided that the Tribunal would determine the application on the papers in the week commencing 20 May 2019 unless either party made a request for an oral hearing within 7 days of the date of the directions. No such request has been received by the Tribunal and so this determination is made on the papers which have been provided by the parties.

4. The directions identified the Applicant as Rosehaugh Co-Partnership Developments Ltd. ("Rosehaugh"). However, the Application clearly states that the Applicant is Vogans Mill Management Company ("the Company"). The sample lease which has been provided is tri-partite. It shows that the freeholder is Rosehaugh but under the lease the relevant repairing obligations are to be met by the Company and the tenant covenants with the Company to pay the service charge. The Tribunal is satisfied that any consultation in respect of qualifying works would be the responsibility of the Company and not Rosehaugh and so, despite what is stated in the directions, the Tribunal determines that the Applicant in these proceedings is the Company.

5. The directions also required the Applicant to send to each of the leaseholders copies of the application form and the directions by 30 April 2019. They were also to display a copy of both in a prominent position in the common parts of the property.

6. The Applicant was also required to file with the Tribunal by 2 May 2019 a certificate to confirm that this had been done.

7. Under the terms of the directions any leaseholders who opposed the application were to complete a reply form and send it to the Tribunal by 7 May 2019 and, by the same date, to send to the landlord a copy of any documents on which they wished to rely.

8. No reply forms or other documents have been received from any leaseholders.

9. The relevant legal provisions are set out in the Appendix to this decision.

The background

10. The property which is the subject of this application consists of a block comprising 70 flats and 3 offices.

11. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The Lease

12. The sample lease provided clearly allows for the Applicant to seek to recover costs of the repair of the gate in question as a service charge. Clause 1.1(c) defines the "*common parts*" as including "*security systems plant machinery apparatus of every kind*" in various places including the internal roadways ramps and car parking areas. Clause 1.1(e) defines the service obligations as the obligations undertaken by the Applicant to provide the services specified and clause 1.1(f) defines the service charge as being the costs of the service obligations. The Applicant's obligations relating to service obligations are set out in clause 6 and include the obligation in clause 6(b) to keep the common parts and all other plant and machinery in the Block in repair. By clause 5(a)(ii) the tenant covenants to a pay a contribution towards meeting the service charge.

The Issues

13. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. The Tribunal is not concerned with the issue of whether any service charge costs will be reasonable or payable.

The Applicant's Case

14. The Applicant's case is that a stage 1 notice under section 20 of the 1985 Act was sent to the leaseholders on 13 December 2018 notifying them of works to be carried out to the gate in question. The maintenance contract for the gates is held by Fidelity Integrated Systems ("FIS"). In a letter dated 17 December 2018 they identified a number of necessary remedial works required in respect of the gate and observed that *"the current automated sliding gate system does not comply with the current European Machinery Directive*". They provided a quote for the necessary works of £10,495.31 plus VAT.

15. Quotes were also sought from 5 other contractors. Meanwhile, the gate was taken out of service in late February as it was considered to be unsafe.

16. Of the companies approached, a quote was only obtained from one company other than FIS, being a quote for £9,610 including VAT from Highgrove Control Systems ("HCS").

17. FIS had indicated a 5 to 6 week lead time from receiving instructions to starting work, whereas HCS required 2 weeks in which to complete.

18. Notification was sent to all leaseholders on 8 March 2019 advising them of the circumstances and the intention to instruct HCS. Comments were invited but none were received. HCS were subsequently instructed to carry out the repairs.

19. The Applicant's case is that continuing the section 20 consultation would have drawn out and extended the waiting time for the repair by at least a further 6 weeks. The works were urgent as the building's security was compromised and the necessary temporary measures of employing a security guard every night put the service charge payers to additional cost.

The Respondent's Case

20. As previously explained, no objections or comments have been received from any leaseholders.

The Tribunal's Decision

21. The Tribunal is satisfied that the consultation requirements should be dispensed with. It is satisfied that the sliding car park gate was unsafe as shown by the safety risk assessment and the letter from FIS dated 17 December 2018.

22. The Tribunal is also satisfied that the necessary works are urgent. It accepts that with the gate no longer functioning the security of the property was compromised and that additional costs were being incurred in the form of security guards employed at night.

23. The Applicant confirmed to the Tribunal on 29 April that it had complied with the directions relating to the provision of notice to the leaseholders. The Tribunal is satisfied that the leaseholders have been notified of the application and bears in mind that there has been no objection from any of them to it. It also bears in mind the limited scope of the issue before it.

24. In all the circumstances the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements.

Name: Tribunal Judge S.J. Walker **Date:** 21 May 2019

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

  and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, 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) the appropriate Tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20ZA

(1) Where an application is made to the appropriate 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.

(2) In section 20 and this section –
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements

(6) Regulations under section 20 or this section
(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.