



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

Case Reference : CHI/00HH/LDC/2021/0008

Property : Ronceval, Higher Erith Road, Torquay,
Devon TQ1 2NH

Applicant : Codesurf Limited

Representative : Blenheims Estate & Asset Management
(SW) Limited

Respondent : Mark Harris
Mrs Chrissa Amuhah

Representative :

Type of Application : To dispense with the requirement to
consult

Tribunal Member(s) : Judge D. R. Whitney

Date of determination : 18th March 2021

DECISION

Background

1. The Applicant is the freeholder and seeks dispensation from the requirement to consult pursuant to Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”).
2. The application explained that Flat 2 was currently uninhabitable as a result of water ingress and damp. Whilst a Notice of Intention to conduct works had been sent to all leaseholders the Applicant intended to proceed with the works without completing the consultation.
3. The Tribunal issued directions dated 28th January 2021. These provided that the matter would be determined on the papers and the Applicant was to supply a bundle. Pages in [] are to pages within that bundle.

Determination

4. Firstly, I have considered whether or not this matter remains suitable for determination on the papers. No party has requested a hearing. I am satisfied that it does remain suitable for a paper determination on the basis of the information and evidence filed.
5. The directions [13-17] required the Applicant to serve a copy of the Application and directions on all leaseholders.
6. The Property consists of 20 flats and 1 leasehold cottage. Flat 2 reported that it was suffering from damp. An inspection was conducted by Croft Surveyors on 17th July 2020 who produced a report [57-63]. Croft Surveyors inspected again after some preliminary works and reported on 17th September 2020 [65 & 66]. This recommend further works and a further email detailing the findings is included within the bundle dated 22nd October 2020 [68].
7. Ms Hitching, the leaseholder of Flat 2 replied to the Tribunal indicating she supported the application. In her reply email dated 8th February 2021 [132] she explains as a result of the exploratory works undertaken her flat has been uninhabitable since October 2020.
8. In the Applicants statement of case [48 & 49] the Applicants explain that a Notice of Intention was served on 29th December 2020. No observations were received in respect of the same. A Statement of Estimates detailing the two estimates received from Brixham Damp Proofing and Dampco was served on 5th February 2021.

9. Two leaseholders have objected to the Application: Mark Harris and Chrissa Amuhah. Both are named as a Respondent to this application. The only other response was from Ms Hitching referred to above.
10. Mr Harris objected on 11th February 2021 [137] and Ms Amuhah on 18th February 2021 [142]. Both have objected in identical terms.
11. Essentially the objection is that in their opinion the works are not an emergency as the basement flat has suffered with the same problem for some time. They dispute the scope of the works and whether or not these are works which are recoverable as a service charge cost. Finally, they suggest further time for discussion is required before the works are undertaken.
12. I have considered carefully all of the documents within the bundle including the Applicants replies to the objectors (an example is at [144 & 145]). I remind all parties that in determining this application I make no finding as to whether the costs of the works are recoverable under the terms of the lease or whether the same are reasonable. I am simply considering whether dispensation from consultation should be granted.
13. The Applicants representative has undertaken careful review of what works are required as provided for in the various communications received from Croft Surveyors. I note they have also served notices notwithstanding this application. I consider this to be a proper course of action. The period for observations in respect of the statement of estimates ends on 28th March 2021.
14. I am satisfied that there is urgency for works to be undertaken. Leaseholders have been afforded opportunity to make observations and any comments they wish to make. Whilst acknowledging that in the current national situation it can be more difficult for leaseholders, I am conscious that the flat owner is currently unable to occupy her flat. The Applicant appears satisfied the works are such that should be funded by the service charge. The Applicants representative has taken advice from an expert surveyor and obtained two quotes. This is what I would expect as a matter of good practice.
15. I note the leaseholders objecting refer to the service charge already this year having increased prior to these works. I understand the concerns they rightly have over increasing costs but sadly if works are required it is for the freeholder and their managing agent to determine how and when works are undertaken. As I have said I am satisfied on the facts of this case that there is urgency in the need for the works to be undertaken.

16. On balance I am satisfied given the steps already undertaken to consult with the leaseholders it is reasonable to dispense with any further consultation as required under the Act.
17. I confirm that I grant dispensation from the requirement to conduct consultation pursuant to Section 20ZA of the Act with regard to the works as recommended by Croft Surveyors in respect of damp proofing to the basement areas of the Property.
18. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1968 would have to be made.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking