

10453



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

Case reference : **LON/00AW/LDC/2014/0133**

Property : **10 Elvaston Place London SW7 5QG**

Applicant : **10 Elvaston Place Limited**

Representative : **Granville & Company**

Respondents : **Ms Y Diaz
Mr M Lomas
Ms N Gates
Mr S Spencer
Mr S Drummond
Mrs M Thompson-Grinter
Mr T Mahmud**

Representative : **None**

Type of application : **Dispensation of consultation
requirements under section 20ZA
Landlord and Tenant Act 1985**

Tribunal members : **Mr Charles Norman FRICS
(Valuer Chairman)**

Date of decision : **4 December 2014**

**DETERMINATION BASED ON WRITTEN REPRESENTATIONS
WITHOUT A HEARING**

DECISION

Decisions of the tribunal

1. The tribunal **GRANTS** dispensation from compliance with consultation requirements in respect of the following works:
 - (i) The estimate "ELVTEN001" dated 8 August 2014 from J H Property Services Limited for a total of £14,604 (including VAT) concerning repairs to balcony wall, balcony floor French doors and provisional sum for further works that may be required and
 - (ii) The estimate "ELVTEN002" dated 8 August 2014 from J H Property Services Limited for a total of £9876 (including VAT) concerning external balcony redecoration and works to the basement vault area.

Reasons

The application

1. This matter concerns an application for dispensation of the service charge consultation requirements in respect of seven leasehold flats in a converted period house in Kensington.
2. The Applicant appears to be a management company jointly owned by the leaseholders. The company is represented by Granville & Company, managing agents.
3. Directions were given on 17 October 2014 setting the matter down for a determination without a hearing unless one was requested. No such request was received.
4. The tribunal did not consider that an inspection was necessary or proportionate.

The Applicant's Case

5. The applicant's case is that certain external areas are in a very poor condition with masonry crumbling with the asphalt flooring worn through and unstable. In addition, ventilation and pipework repairs were need to the bin store. The applicant asserts that these areas are within the common parts of the building for which the landlord is liable for repairs.
6. The applicant asserted that the matter was urgent because masonry was falling. It was clear from email correspondence that there was a real and immediate danger and photographs supporting this were included in the bundle.

7. The applicant also requested urgent works to the basement. This area was described by Mrs Thompson Grinter in an email of 11 August 2014 as being “unusable due to the terrible state of repair.”
8. The managing agents recommended that the work be carried out as soon as possible.

The Respondents’ Cases

9. One respondent (by form) has objected to the grant of dispensation. One respondent signed a form in favour of the grant. Correspondence indicated that two other lessees were in favour of the dispensation.
10. In any event the tribunal has to form its own judgment as to whether it is reasonable to grant the dispensation sought.

The Leases

11. The applicant provided a copy of the lease for flat 1, by way of a sample. The lease dates from 1976 and is not well drafted compared with modern leases. However, the tribunal considers that the areas of the building which are the subject of this application fall within the definition of “external areas” under clause 5 (5) and are therefore the landlord’s responsibility to repair. The lessees are then required to contribute to such costs under Para 1 of the Fifth Schedule which sets out the service charge mechanism.

The Law

12. Section 20ZA(1) of the Act is in these terms :

“Where an application is made to [the First-tier 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.”

Findings

13. The tribunal considers that the clear weight of evidence is in favour of granting dispensation for the following reasons:
 - (i) The tribunal is satisfied that the works are urgent and in part the disrepair was causing danger to occupiers and visitors.
 - (ii) It would be impracticable to pursue a full statutory consultation.

(iii) Some extra-statutory informal consultation has taken place with the lessees.

(iv) The weight of responses and correspondence from lessees is in favour of dispensation being granted.

(v) The applicant is a management company that appears to be owned jointly by the lessees.

14. The tribunal therefore finds that it is reasonable to grant dispensation in this case.

Rights of Appeal

15. The tribunal is required to set out rights of appeal against its decisions and these are appended on the attached guidance note.

Informative

16. This decision does not affect the rights of the lessees to challenge the reasonableness and/or costs of the work in subsequent proceedings. It is concerned only with dispensation from the consultation requirements.

Name: Charles Norman FRICS **Date:** 4 December 2014