

10794



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

Case reference : LON/00AW/LDC/2015/0051

Property : 23-25 Kensington High Street,
London W8 5NP

Applicant : Redwood Property & Trading
Company Limited

Representative : Hamilton King Management
Limited

Respondent :

1. Shahnaz Ahmed (Flat 1)
2. Daniel Borrego-Cubero (Flat 2)
3. Hoi Yuen Kan & Keong Ngo Ling (Flat 3)
4. Syed Y Z Ashan (Flat 4)

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
Valuer: A Flynn MA MRICS

Date of decision : 03 June 2015

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 the works specified in the letter dated 23 March 2015 from 1st Choice Contractors Ltd and invoiced under invoice number 1681 from 1st Choice Contractors Ltd in the sum of £1776.00 inclusive of VAT.

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 works to the main at the property required to prevent water ingress into the property.

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 four flats above shop premises in the upper parts of 23/25 Kensington High Street. The flats all follow a similar layout consisting of an open plan kitchen/ lounge, predominately over No25, and two bedrooms an ensuite bathroom and a bathroom. The property has timber sash windows with secondary glazing.
4. The Applicant is the landlord and is represented by the managing agent.
5. The managing agent claims that they were advised of various issues of water ingress at the end of November 2014 by a few of the lessees and they agreed to instruct a surveyor to attend with a contractor to carry out a full inspection of the property and arrange to carry out repairs to the communal leaks as per the surveyors instructions, the contractor attended and carried out repairs to the piping, reinstate and remove an area of plasterboard ceiling to give access to the underside of the rear box gutter and temporarily repair with plasterboard. Works were also undertaken to open the partition walls in flat 4 to give access to the drainage pipes serving the front gutter and replace the leaking section.

Directions:

6. The tribunal issued directions on the 29 April 2015 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:

9. 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 of proportionate to the issue.

The Applicant's Case:

10. The Applicant's case is fully set out in the application.
11. The Applicant produced a copy of the Headlease and a sample lease, a report from Lewis Berkeley Chartered Building Surveyors following an inspection on 17 December 2014 in relation to the damp and water ingress ("the report"), a copy of the invoice no.1681 dated 6 January 2015 in relation to the works and a letter dated 23 March 2015 from 1st Choice Contractors Limited.

The Respondent's Case:

12. The Application and the Directions as well as the hearing bundle were sent to the Respondents. The Directions invited representations from the Respondents but no representations have been received.

The Law:

13. 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."*

14. 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.

15. "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.
16. **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."
17. Under Section 20ZA(1) of the 1985 Act, "where an application is made to atribunal 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:

18. 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.
19. 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 they would be reasonable in the circumstances.
20. 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.
21. 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.

22. 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.
23. The tribunal is satisfied that the works are of an urgent nature given the damage caused due to water ingress.
24. 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.
25. The tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to the failure to consult. The tribunal noted that the managing agent had obtained an independent report from a building surveyor and the works were undertaken as per the instructions of the building surveyor. The tribunal does not consider that there would have been any significant saving in the cost of the works in the event that the statutory consultation had been fully complied with. The tribunal is not persuaded that the leaseholders have suffered any financial prejudice as a result of the failure to consult.
26. The tribunal has taken into consideration that the leaseholders have not had the full opportunity for consultation 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 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, suffered any relevant prejudice.
27. 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 in respect of the works specified in the letter dated 23 March 2015 from 1st Choice Contractors Ltd and invoiced under invoice no 1681 from 1st Choice Contractors Ltd in the sum of £1776.00 inclusive of VAT.
28. **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: 3 June 2015