

9382

DECISION



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

Case Reference : **LON/00AG/LDC/2013/0114**

Property : **166 - 170 SHAFTESBURY AVENUE
LONDON WC2H**

Applicant : **ROSSMOREGATE PLC**

Representative : **RENDALL RITTNER HAMMOND
LIMITED (Miss Emma Utting –
Managing Agent)
(1) MRS N WONGSATAYANONT
(2) MR K CHIRAYUS
(3) MR S CHIRAYUS**

Respondents : **(Leaseholders of Flat 3)
Together with the other
Leaseholders as set out in the
Schedule to the Application**

Representative : **YVA SOLICITORS LLP
MR J DOWLMAN (Counsel)**

Date of Application : **11th October 2013**

Date of Directions : **23rd October 2013**

Tribunal Members : **Tribunal Judge S Shaw
Mr S A Manson FRICS**

Date of Hearing : **18th November 2013**

Date of Decision : **19th November 2013**

Introduction

- (1) This case involves an Application dated 11th October 2013, issued on 18th October 2013 and made pursuant to the provisions of section 20ZA of the Landlord and Tenant Act 1985 (“the Act”). The Application is made by Rossmoregate PLC (“the Applicant”) in respect of the property situate and known as 166-170 Shaftesbury Avenue, London WC2H (“the Property”). The property is a six storey building providing residential accommodation to floors 2 to 6 and a commercial unit on the ground floor. The Respondents to the Application are the leasehold owners of the six flats which are set out over the floors above the commercial unit on the ground floor. The Application is for an Order from the Tribunal made pursuant to the above statutory provisions, for a determination dispensing with all or any of the consultation requirements in relation to any qualifying works proposed in relation to the property. The Application is unopposed by the owners of five of the leasehold flats but is opposed by the owners of Flat 3, as identified by names in the heading of this Decision.

- (2) Directions were given swiftly after the issuing of the Application by the Tribunal on 23rd October 2013. Part of those Directions required the Applicant to prepare a bundle of documents, and send three copies to the Tribunal and one to any leaseholder who has indicated opposition to the Application by the 8th November 2013. Regrettably that Direction was not complied with by the Applicant who misread the Directions, apparently thinking that the time for service of its Statement of Case was 13th November 2013 (a date which in fact applied to the Respondents). This misunderstanding was compounded by the fact that the Applicant apparently assumed that the Tribunal would be serving its Statement of Case upon the other party or parties. This, as indicated in the Directions, is not the case, and as a result the Respondents resisting the Application (the leaseholders of Flat 3) only received the bundle of documents prepared by the Applicant on the morning of the hearing. The Respondents themselves, never having received a bundle of documents from the Applicant had not prepared their own Statement of Case

because, as far as they were concerned, there was nothing to which they could respond.

- (3) The brief background to the matter is that the managing agents for the freehold owner of the property took over management of this building in July 2013. There was apparently some historical issue over water penetration into the flats from the roof of the building and the new agents have acted promptly in an effort to remedy the situation. The full circumstances of the background insofar as is relevant to this Application are set out in the document headed "Date and Circumstances" included within the bundle prepared by the Applicant, which bundle, again in breach of the Directions, is unfortunately not numbered.
- (4) From that history it is apparent that a surveyor attended the property on the 1st August of this year, and discovered that there was significant water penetrating into the reception room of Flat 4. It appears that Flat 6 was also affected by the water penetration and some photographs illustrating the leakages have been included in the bundle prepared on behalf of the Applicant.
- (5) At or about the time of the issuing of this Application, the first of the statutory notices required to be served pursuant to section 20 of the Act was served upon the respective leaseholders. The date of that notice is 14th October 2013 and again copies are included in the bundle prepared on behalf of the Applicant. Some efforts had previously been made to obtain quotations from contractors to investigate the source of the water penetration. As set out in the supporting documentation, it appears that some initial work was carried out with the use of a cherry picker to clear the gutters at the front elevation of the building which had become blocked with leaves from a nearby tree and, perhaps some other material. This work was carried out on the 13th August and a gutter outlet was also sealed. This brought some relief in respect of the water penetration, but apparently the leaks continued consequent upon further heavy rainfall, and flats 5 and 6 were further affected, requiring more

work to be done on the 10th September. The Local Authority was also contacted to cut back the trees at the front of the building on Shaftesbury Avenue and this occurred in early October.

(6) The leaks however have continued and it has become apparent that closer investigation of the box gutter and roof will be necessary in order to bring a longer lasting resolution of the problems relating to the water penetration. A report has been prepared by chartered surveyors, namely Hallas & Co, dated November 2013 and that report confirms the initial work which was carried out, and makes further reference to a limited inspection which was possible from the cherry picker, during which it was noted that there is a split to an inaccessible small flat roof which is continuing to leak into Flat 6. Apparently other various patch repairs were noted as having been carried out in the past and it was also noted that the parapet walls were in poor condition. The surveyors concerned have obtained quotations for the erection of scaffolding to enable a full and safe inspection of the front gutter and front pitch of the roof, with a view to drawing up a specification of remedial works and a provision for reducing the leaf and debris build-up in the gutters. The most economic of those quotations has been given by a company called MNM Limited, and an overall costing of £13,240.80p inclusive of VAT has been arrived at. The percentage contribution of the opposing Respondents of Flat 3 to these works would be according to their lease 11.4300%, in other words approximately £1,500.

(7) The position of the leaseholders of Flat 3, who are the only opposing flat owners, is set out in a letter dated 6th November 2013 which appears in the bundle prepared on behalf of the Applicant. It is perhaps sensible to quote the relevant paragraph verbatim:

“We have today sent to the Tribunal the reply form indicating our client’s present position to oppose the application for dispensation. Our client’s position to oppose the application is on the basis that you have provided no evidence to support the

application. Our clients may be willing to reconsider their position should you provide sufficient evidence supporting the urgency of the works.”

- (8) It seems apparent from that letter, and the position was confirmed by Counsel on behalf of the leaseholders of Flat 3 at the hearing before the Tribunal, that solicitors acting for the Respondents had not at that time received a copy of the report of Hallas & Co. Mr Dowlman, Counsel on behalf of the Respondents opposing the Application, indicated to the Tribunal that it is possible (albeit no more than possible) that had a sight of that report been given prior to the hearing, the opposition to the Application may not have been maintained. This remained speculative, however, because the leaseholders concerned are resident in the Far East and it was not possible at the hearing to obtain confirmation either way from them, within such a short time scale.
- (9) The Tribunal was shown photographs of the areas concerned both externally and the effected areas internally. The Tribunal has given careful consideration to the position in the light of the expert evidence produced confirming that this work is required and the photographic evidence. The Tribunal ventilated with Counsel on behalf of the leaseholders of Flat 3 what the consequences of the Tribunal not granting dispensation at this stage would be, and also the same proposition with Ms Utting who appeared on behalf of the Applicant. It seems that there is a possible dispute as to the efficacy of the first statutory notice served on or about the 14th October as set out in the letter of the Respondent’s Solicitors dated 6th November 2013. If it is indeed the position that a further notice is required to comply with the Act, this would mean an hiatus of 30 days followed by a further period of consultation of a similar kind required after service of the second notice. Of course there is the Christmas and New Year period which falls during this period of time.

(10) It is not seriously disputed that this water penetration is indeed taking place, nor that some work is required in order to bring the position under control. On the evidence before the Tribunal the Tribunal is satisfied that this is a case in respect of which it is reasonable to grant dispensation from the obligation which would otherwise exist to serve further notices under section 20 of the Act. The reason for the Tribunal coming to this conclusion is that there is subsisting water penetration of a serious kind into at least two of the flats concerned, we are about to enter the most severe period of the winter when the weather can hardly be expected to improve, and in the interim there will be substantial damage and discomfort to the leaseholders concerned if these works do not take place. There is no other expert or alternative evidence put before the Tribunal to suggest that it would be inappropriate to grant dispensation, and indeed the position taken by and on behalf of the opposing Respondents is in the nature of a “holding” position pending the viewing of expert evidence – which expert evidence was never in fact supplied in the circumstances already explained above.

Decision

(11) For the reasons indicated above, the Tribunal is satisfied that this work is sufficiently urgent to justify dispensation being granted pursuant to the Act and to enable these works to continue. It should be stressed and understood that the Tribunal is making no finding in the context of this dispensation order as to the reasonableness of these works either generally or specifically in relation to their cost. It is an order given exclusively in respect of the dispensation requirements, and it is entirely open to the Respondents or any of them to revert to the Tribunal for a further determination, if so required, as to reasonableness and payability pursuant to the provisions of section 27A.

(12) Counsel for the opposing Respondents made an application for a wasted costs order against the Applicant at the hearing before the Tribunal, on the basis that, as understood by the Tribunal, the documents were not served upon those acting for the opposing leaseholders prior to the

hearing, and had there been proper compliance with the Directions it may be that a hearing would have been obviated. Counsel did not have with him a costs schedule, and the parties were informed that if further applications either generally or specifically were to be made these should be made by way of application in the context of the main Application. It may be that if there is an application for a costs award, this can be conveniently dealt with by way of a paper determination without the requirement and cost of the parties or their representatives attending.

Conclusion

(13) For the reasons indicated above, the Tribunal grants the Application made in this case, and dispenses with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 insofar as they relate to the works referred to in this Application. As already indicated above, such dispensation does not in any way preclude any further application under section 27A on the part of the Respondents or any of them if so advised.

TRIBUNAL JUDGE S SHAW

Dated: 19th November 2013