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

**Case Reference** : **LON/00BE/LSC/2013/0230**

**Property** : **Flats at One Tree Close London  
SE23 3QZ**

**Applicant** : **One Tree Close Management  
Limited**

**Representative** : **Ms A De Klerk**

**Respondent** : **Various Leaseholders**

**Representative** : **n/a**

**Type of Application** : **For dispensation from the  
consultation requirements  
required by section 20 of the  
Landlord and Tenant Act 1985**

**Tribunal Members** : **Dr Helen Carr**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **13<sup>th</sup> November 2013**

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**DECISION**

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## **Decision of the Tribunal**

1. The Tribunal determines to exercise its discretion to dispense with the consultation requirements contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) England) Regulations 2003.

## **The Application**

2. The Applicant applied on 18<sup>th</sup> September 2013 under section 20ZA for dispensation from the consultation requirements contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) England) Regulations 2003.

## **Procedure**

3. The Tribunal reviewed this application on 26<sup>th</sup> September 2013 and decided to issue directions on the same date. In those directions it was decided that in view of the urgency of the application the matter should be determined on the basis of written representations and without an oral hearing.
4. The Directions gave an opportunity for any party to request an oral hearing. They also gave an opportunity for any leaseholder who wishes to oppose the application from the landlord to provide a statement to the Tribunal setting out his or her reasons for so doing. No request for an oral hearing has been received by the Tribunal.
5. This matter is therefore being determined on the basis of the papers alone.
6. A statement of objection has been received from one leaseholder, Jane Weller which is considered below.

## **Determination**

### **The Evidence**

7. The documents provided to the Tribunal indicate as follows:
  - a. The external steps which provide the only access to Flat 2 of the property, the handrail to those steps and the supporting wall were considered to be in a hazardous condition by the lessee to Flat 2. Cracks to the wall and stairs had been previously identified in a routing health and safety inspection in 2011 and 2012.

- b. In a comprehensive report by Keith Godsave of Pyle Consulting Structural Engineers, commissioned by the Applicant and dated 20<sup>th</sup> April 2013 the defects to the external stairs, handrail and supporting wall are identified and remedial works described.
  - c. Mr Godsave indicated that he considered the present state of the steps, adjoining wall and handrail to be dangerous to the occupiers and visitors to Flat 2.
  - d. Following a complaint by the lessee of Flat 2 to Southwark council's environmental health department, Mr David Hollett, Principal Environmental Health Officer, wrote to the Applicant on the 9<sup>th</sup> July 2013, stating his concern that pedestrians accessing the area may be exposed to the danger of falls on the level, and on the stairs and between levels. He was also concerned that the supporting wall appeared to have a retaining function and movement in it is said to be progressive. His concerns were expressed in an email dated 6<sup>th</sup> September 2013.
  - e. Mr Godsave obtained quotations from reliable contractors known to his firm and recommended acceptance of the tender in the sum of £6996.00 from R.Weller Building which he considered to be comprehensively priced and reasonable. He also recommended that an allowance sum of £1500 plus VAT be added to the tendered sum, in order to include a provision to supply and fix a new steel handrail. He also advised supervision of the works by a structural engineer and indicated that his fee for any such supervision would be £875 plus VAT, plus £120 for any subsequent visit.
  - f. The Applicant argues that no prejudice has been suffered by the leaseholders by failing to carry out the consultation.
8. It is on this basis that the freeholder has made the application for dispensation.
9. Seven out of fifteen leaseholders have given their written consent to dispensation. There has been one objection from Mrs Jane Weller of Flat 5. There has been no response from the remaining seven leaseholders.
10. Mrs Weller's objections can be summarised as follows:
- a. The condition of the steps and pathways to Flat 2 have been of some concern for some time and it is therefore not appropriate to omit the consultation process.

- b. The recent deterioration to the handrail has been caused by tenants locking bicycles to it.
- c. The responsibility for much of the repair work lies with the individual leaseholder and should not be charged to the service charge account.
- d. Mistakes have been made with regard to liabilities set out in the lease and the lease should be rectified before works are carried out.
- e. There was an agreement between the lessees that works to those parts of the property which provided individual access to the properties would be the responsibility of the individual lessees.
- f. The costs of the works are too expensive

### **The Law**

- 11. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) provides:
- 12. “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**” (emphasis added).
- 13. Mrs Weller clearly has serious concerns about the proposed works. The Tribunal agrees that the lack of clarity about individual rights and responsibilities is causing difficulties in the effective management of the property. Moreover if the consultation process had been commenced as soon as the report was obtained from Mr Godsave, full compliance would have been achieved. However, the Tribunal has sympathy with the position that the Applicant has found itself, in which the issue of liability is disputed, thus delaying commencing the works. Moreover the substance of Mrs Weller’s objections relate to the payability and reasonableness of costs of the works which are not relevant to the application in hand.
- 14. In light of the evidence provided to the Tribunal by the applicant, and because Mrs Weller’s objections can be dealt with via an application under s.27A of the Landlord and Tenant Act 1985, the clear urgency of the matter and the patent necessity of the works the Tribunal determines to exercise its discretion to dispense with the consultation requirements

**The parties should note that this determination does not concern the issue of whether any service charge costs will be reasonable or indeed payable. The Respondents are able, if it appears to them to be appropriate, to make an application under s.27A of the Landlord and Tenant Act 1985 as to reasonableness and payability.**

Signed

Dr Helen Carr

Dated 13<sup>th</sup> November 2013