

12404



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

**Case reference** : LON/00AZ/LDC/2017/0099

**Property** : Woodlands Court, 13-17 Breakspears  
Road, London SE4 1XW

**Applicant** : Southern Land Securities Ltd

**Representative** : Together Property Management

**Respondents** : Various leaseholders as per the  
application

**Type of application** : To dispense with the requirement to  
consult lessees about major works

**Tribunal** : Judge Nicol  
Mr KM Cartwright JP FRICS

**Date of decision** : 20<sup>th</sup> September 2017

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**DECISION**

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The Tribunal has determined that the Applicant shall be granted dispensation from the statutory consultation requirements in relation to works carried out to address dry rot which were additional to those originally consulted on and the need for which was only discovered after the works had commenced.

**Reasons**

1. The Applicant is the landlord of the subject property, three detached Victorian houses which have been converted into one structure containing 26 flats. The property is managed on their behalf by Together Property Management.
2. In February 2014 the Applicant's agents began the process of addressing the discovery of dry rot. Consultation letters were sent to the lessees in

accordance with the statutory consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. The remedial works began in 2015 based on the cheapest tender of £22,750 plus VAT from Oakrest Builders Ltd.

3. However, after the commencement of the works, it was discovered that the dry rot was more extensive than had originally been anticipated. The total cost of the works increased to over £75,000. They were carried out and completed in 2016 without further consultation under the statutory requirements. The Applicant has now applied for dispensation from the statutory consultation requirements.
4. The Tribunal made directions on 25<sup>th</sup> August 2017 requiring the Applicant to display and send to each lessee both the application and the directions. In response, replies were received from:
  - Mr Richard Oliphant (Flat 1) who submitted several pages of written representations.
  - Ms Michaela Heller (Flat 2)
  - Mr Nigel Mellor and Ms Allison Mellor (Flat 3)
5. The Tribunal was provided with the lease for one of the flats which, it is assumed, is standard. Under that lease, the Applicant is obliged to maintain the property and keep it insured and the lessees are obliged to pay a proportionate share of the costs incurred.
6. In accordance with the Supreme Court's decision in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854, the primary issue when considering dispensation is whether any lessee would suffer any financial prejudice as a result of the lack of compliance with the full consultation process. Unfortunately, there has been some confusion and most of the representations address other issues.
7. The property has been covered by an NHBC guarantee. The NHBC has been unwilling to cover more than around £32,000 of the total cost. Allegations have been made that the dry rot was caused by a failure of the Applicant or their agents to maintain the property to an appropriate standard. Further, it has been suggested that the Applicant or their agents have been negligent, either in relation to the maintenance or in relation to dealing with the NHBC. The NHBC complained that the works went ahead without their consent, before they could assess for themselves the need for the additional works to address the additional dry rot.
8. To the extent that these points are proved, they may constitute a basis for saying that the service charges arising from the works are, at least in part, unreasonable and so not payable. However, as has been pointed out in correspondence, this is not the subject of the current application.
9. The Applicant may have confused matters by asking for dispensation from the consultation requirements in relation to any work not covered by

NHBC's contribution. That is not the correct issue. The Applicant complied with the requirements for the original works but not for the additional works. The NHBC's contribution takes both sets of works into account. The only part the Tribunal has the power to give dispensation for is that part for which consultation did not take place.

10. The fact is that the Tribunal has no evidence that any lessee has suffered or would suffer any financial prejudice specifically as a result of the Applicant's failure to consult on the additional works. The allegations referred to above suggest that there may have been financial prejudice arising for other reasons but that is irrelevant to the determination of this application.
11. There appears to be no dispute that the work had to be done. There has been a suggestion that the works could have been delayed to allow the NHBC to assess them but that is an entirely separate issue from whether they should have been delayed to allow consultation to take place. Indeed, it is not even clear that an NHBC assessment would have necessitated any delay to the commencement of the works. It is in the nature of dry rot that it should be addressed quickly in order to minimise the risk that it might spread. Therefore, there is every reason to think that the Applicant acted appropriately in proceeding with the additional works.
12. Given the lack of proven prejudice, the Tribunal is satisfied that it is reasonable to dispense with the statutory consultation requirements.

**Name:** NK Nicol

**Date:** 20<sup>th</sup> September 2017