



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

Case Reference : **LON/00AW/LDC/2017/0038**

Property : **49, 51 and 53 Drayton Gardens,
London SW10 9RX**

Applicant : **Delbycrest Limited**

Representative : **Gordon Dadds LLP**

Respondents : **Various leaseholders as set out in
the application**

Representative : **None**

Type of Application : **For dispensation of the
consultation requirements under
section 20ZA**

Tribunal Member : **Mrs O'Sullivan
Mr R Shaw FRICS**

Date of Decision : **7 June 2017**

DECISION

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the dispensation of any or all of the consultation requirements. The property concerned is described in the application as a Victorian purpose built block of flats known as 49, 51 and 53 Drayton Gardens London SW10 9RX (the “Property”) and the application is made against the various leaseholders in the schedule attached to the application form (the “Respondents”). There are a total of 42 flats. The Applicant is a leasehold management company.
2. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with.
3. The Applicant seeks dispensation in respect of the following two major works contracts;
 - (a) Cyclical works in 2016 to the front elevation of 51 and 53 Drayton Gardens (snagging currently ongoing); and
 - (b) TV Aerial and Access Safety Works (completed April 2017)

The background

4. The application was received on 6 April 2017 and directions were made dated 13 April 2017 which provided for the Applicant to serve a copy of the directions on all Respondents and for them to then indicate whether they consented to the application or not and wished to have a hearing. The Applicant confirmed by letter dated 18 April 2017 that it had served all the leaseholders in accordance with the directions.
5. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.
6. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act.

The hearing

7. The application was considered at a hearing on 7 June 2017. The Applicant was represented by Mr Dymond of Arden Chambers. Ms Low, a former director, and Mr Snellings, the Applicant’s surveyor also attended the hearing to give evidence. None of the Respondents attended nor were they represented.

The Applicant's case

8. The Applicant had lodged a bundle in support of the application.
9. The application concerns two sets of major works projects; external repairs and redecorations to the front façade and roofs of 51 and 53 Drayton Gardens including necessary repairs to the balconies along with other associated works and Health and Safety works relating to the relocation/upgrade of the TV serial system along with associated works.
10. The Applicant served a notice of intention under section 20 in respect of both sets of works. However it is said that as a result of a change of property management agents and the handover with the agents coinciding with the second stage of the consultation there was an oversight in serving the second notices.
11. In the application it is said that dispensation should be granted as
 - Both sets of works have been discussed and agreed with the Respondents at an AGM as part of a maintenance plan proposed by the Applicant's surveyors and the works were deemed of an urgent nature;
 - Where requested, the Applicant sent invitations to tender to contractors who were proposed by other leaseholders;
 - The Applicant was advised by its surveyor that ceasing the works at this stage would not only cause undue delay and result in an increase in costs but also certain balconies which were in bad disrepair/structurally unsound could not be left in their current state;
 - The works to the balconies were deemed necessary given the dangerous condition that some of them were in, which was seen to be even more dire than anticipated by Bentley Snellings and Partners in a report dated 18 December 2014. The Applicant was advised that to delay in undertaking the works to the balconies could have put the residents and other including passers-by and workmen in danger, from loose debris from the balconies falling off, as well as cause further damage to the building; and
 - The Applicants maintain the Respondents have not suffered any prejudice of financial loss.
12. Mr Low, a former director who resigned in March 2017, gave oral evidence. She explained the background to the works and says that the failure to serve the second notice was simply an oversight due to the

change of agents and their handover period from 26 September to end 2016. We heard that leaseholders were aware at all times of the overall maintenance plan which has been produced at two residents meetings in 2015 and modified in response to leaseholders' comments. Where leaseholders made suggestions as to contractors these were said to have been followed up. When the oversight in the section 20 process became apparent the surveyor advised the Applicant that ceasing works would cause delay and result in increased costs as well as leaving structurally unsound balconies in need of repair. It was therefore agreed the work would be continued pending application to the tribunal. It is said that the Applicant has otherwise acted reasonably in taking professional advice on the maintenance programme, going through a thorough tender project and awarding the contracts to the lowest bidder.

13. Mr Snellings also gave oral evidence and confirmed that Bentley Snellings and Partners ("BSP") were appointed by the Applicant as its surveyor for the property on 1 January 2014. This included a requirement to provide a planned property maintenance programme, report on defects, producing where necessary specifications of work and inviting tenders and contract administration, advising the landlord on any leasehold proposed alterations and preparing an annual specification of works for the cyclical repair maintenance and redecoration. His evidence on the two major works contracts was as follows;

(a) Cyclical works in 2016 to the front elevation of 51 and 53 Drayton Gardens (executed 2017)

Instructions to prepare a specification of works were received on 11 March 2016 and tenders were invited and received on 23 March 2016 and 21 April 2016 respectively. The works included anticipated repairs to balconies which were of immediate concern. Tenders were invited again following the service of the notice of intention and included invitations to tender from contractors nominated by leaseholders. A tender report was prepared dated 21 September 2016 and Bastows were selected.

We also heard that works to ensure the balconies at 49 were in good repair were in hand.

(b) TV Aerial and Access Safety Works (executed 2017)

Issues with the signals first arose in June 2016 along with issues relating to safe access at roof level. In relation to 51 Drayton safe access was an issue as it was noted to be dangerous to access the roof gangways and two out of four of the receiver cabinets could only be

accessed by either scaffolders or abseilers. It was therefore agreed that it would be prudent to move the receiver cabinets to a safe location. There were further concerns relating to signage warning of the dangers of accessing the roof gangways which arose from easy access for the leaseholders on to the roof, the excessive pitch of the roof, open sections to the guarding to the gangway where people could fall through onto the pitched roof and then down to the courtyard and decayed timber which caused similar safety issues. In relation to 53 Drayton an unacceptable access was said to require people to gain entry over an unguarded walkway and then onto a flat roof. The works were tendered and we were referred to the tender report and confirmation that Bastows were selected. These works were completed in April 2017 at under the original estimated cost.

14. During BSP's appointment there have been three forms of managing agents, Geo Joslyn until September 2015, Principia Estate and Asset Management from September 2015 to 31 December 2016 and Kinleigh Folkard and Heywood from 1 January 2017 to date.
15. As far as prejudice was concerned Counsel submitted that following the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 the evidential burden falls on the leaseholders to show that they have been prejudiced by any non-compliance with the consultation requirements. In this case no leaseholders had opposed the application, this was a leasehold management company and all leaseholders had been kept fully appraised of the works. Further a fully competitive tender process had been followed which had been supervised by BSP. There was no suggestion by any leaseholders that prejudice had been suffered.

The Respondents' position

16. The directions provided for any Respondent who wished to oppose the application for dispensation to serve a statement of case. None of the leaseholders served any statements of case and thus the tribunal concluded that the application was unopposed.

The Tribunal's decision

17. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the two major works contracts set out above.

Reasons for the Tribunal's decision

18. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
19. The application was not opposed by the leaseholders. The tribunal has heard oral evidence from Ms Low and Mr Snellings. It has been provided with copies of the stage one notice, the tenders and minutes of meetings with leaseholders.
20. The tribunal is satisfied that the works were required and that it is appropriate to grant an order for dispensation in these circumstances. We are further satisfied that there is no evidence that the leaseholders have been prejudiced by the failure to comply with the consultation requirements.
21. We would point out that this decision makes no finding in relation to the reasonableness of the costs themselves.
22. The tribunal hereby orders that the Applicant shall serve a copy of this decision on each leaseholder.

Application under s.20C

23. There was no application for any order under section 20C before the tribunal.

Name: S O'Sullivan

Date: 7 June 2017