



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

Case Reference : **LON/00AP/LDC/2014/0089**

Property : **1-12, 43 Burlington Road, London
N17 9UF**

Applicant : **Burlington Road (Tottenham)
Management Company Limited**

Representatives : **Warwick Estates PML**

Respondents : **Mrs Ruby Gilkes and other lessees**

Representative : **Imperial Law Practitioners trading
as Amity Lawyers**

Type of Application : **To dispense with consultation
requirements under s.20 Landlord
and Tenant Act 1985**

Tribunal Members : **Judge W Hansen (chairman)
Mrs J Hawkins**

**Date and venue of
Hearing** : **7th August 2014 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **11th August 2014**

DECISION

Decision of the Tribunal

The Tribunal determines that the consultation requirements prescribed by the Service Charges (Consultation Requirements) (England) Regulations 2003 should be dispensed with on condition that the Applicant shall not include in the service charge its costs of this application for dispensation made to the First Tier Tribunal on 9 July 2014.

Background

1. By an application dated 9/7/14 the Applicant seeks an order under section 20ZA of the Landlord and Tenant Act 1985 ("LTA") dispensing with the consultation requirements provided for by section 20 LTA and the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) on the basis that urgent works are required to repair a section of collapsed pipework carrying foul sewerage ("the Works") away from premises known as 1-12, 43 Burlington Road, London N17 ("the Premises").
2. The only issue currently before the Tribunal is whether dispensation from the requirements to consult should be given. This application does not deal with the reasonableness of, or liability for the charges.
3. On 16/7/14 Judge Hamilton-Farey gave directions inviting the various leaseholders in the Premises to indicate whether they agreed to the application and if not to provide a statement in opposition. In the event, only one lessee responded, Mrs Ruby Gilkes of Flat 3, who indicated that she opposed the application and set out the basis of her opposition in a solicitors letter from Amity Lawyers dated 30/7/14 which included various attachments.

Grounds for Application

4. The grounds for seeking dispensation are set out in the application and details of the Works were set out in an estimate dated 7/7/14 attached to the application. The basis of the application is that there is a collapsed communal sewerage drain containing foul sewerage and a consequential health and safety and environmental risk if the Works are not attended to urgently. At that stage the Works were estimated to cost

£3,800 + VAT. The application attaches a variety of photographs illustrating the problem. Subsequently the Applicant produced a bundle of documentation as directed explaining how the problem came to light, on 30/6/14, and subsequent attempts to investigate the problem with the assistance of drainage contractors, London Drainage Facilities Limited (“LDF”).

5. The various estimates, invoices, e-mails and photographs in the bundle illustrate the nature of the problem and the proposed remedial works. An e-mail dated 6/7/14 from LDF to the managing agents explained the difficulty in surveying the drain “*due to severity of collapse*”. It would appear that the main 12” clay sewer pipe has collapsed and the area requires excavation to effect the necessary repairs to include a section of new pipework.
6. On 6/8/14 the managing agents e-mailed the Tribunal to confirm that “*all lines which connect to 43 Burlington Road are clear*” and that the total cost of the Works was £3,764.40 (£313.70 per flat), the lion’s share of which was accounted for by invoice No. 21813 which confirms that the works quoted for in PO No. 58288 (“... *to include Combi Unit to jet lines and remove debris, CCTV survey and repairs to the upstream section of pipework...*”) have been completed.

Grounds of opposition

7. As indicated above, Mrs Gilkes opposed the application. She did so on the basis that the problem is of long-standing and due to the Applicant’s historic neglect of its repairing obligations in relation to the drains, notwithstanding its collection of service charges in respect of the repair and maintenance of, inter alia, the drains.
8. The tenant contends that the Applicant has had more than enough time to consult and in the circumstances the consultation requirements should not be dispensed with. The letter reads: “... *yes there is a need for the work to be done*” but “*that need has been there since 2002...*” The letter makes it clear that the tenant is not persuaded that there are any genuine health and safety concerns and that the problem should have been rectified years earlier.
9. The letter then goes on to allege prejudice “*because the Respondent and others have paid for the repair of this drain problem in 2002*” and “*further, the Respondent would be denied the opportunity to participate in [the] process of selecting the appropriate tender and at what costs to her*”. The letter goes on to make the point

that the Respondent would be able to make observations such as “*why the Applicant could not carry out the work from the yearly service charge for the drain collected from her so far...*”

10. Finally, the letter suggested that if dispensation were granted, it should be on terms “*with conditions such as to costs...*”

Discussion and Conclusion

11. Section 20 of the 1985 Act, which is supplemented by section 20ZA, provides for mandatory consultation with tenants, and limits the sum recoverable by a landlord to “*the appropriate amount*” in the event of non-compliance. The appropriate amount is currently £250 for each tenant, irrespective of the cost of the work or services, but that limit is avoided if the statutory consultation requirements are dispensed with by a leasehold valuation tribunal. Provision for dispensation is made by section 20ZA(1), as follows:

“Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any part 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.”

12. The purpose of the consultation requirements is to ensure that tenants are protected from (1) paying for inappropriate works or (2) paying more than would be appropriate, and the issue which should be focussed on when an application for dispensation is received “*must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements*”: see *Daejan Investments Ltd v. Benson* [2013] UKSC 14 at [44].
13. The burden of identifying some relevant prejudice falls on the tenants seeking to resist the application for dispensation.
14. The Tribunal may grant dispensation unconditionally, grant it on terms or refuse it: *Daejan Investments Ltd v. Benson* [2013] UKSC 14 at [54].

15. In the circumstances the Tribunal is satisfied that this was an urgent problem which required an urgent response, having regard to the fact that it involved the collapse of pipework carrying foul sewerage. This is precisely the sort of problem where it is reasonable to dispense with consultation and we duly dispense with the consultation requirements in relation to the works undertaken and referred to in the managing agents' e-mail dated 6/8/14. The Tribunal has carefully considered the tenant's allegations of prejudice but in the circumstances we are not persuaded that the Works were inappropriate or that the cost of the Works was more than would be appropriate. The tenant appears to have accepted that the Works needed to be done (see paragraph 8 above) and has not adduced any evidence to show that the Works have cost more than would be appropriate or more as a result of the Applicant's failure to consult. However, we do wish to emphasise the fact that, as Judge Hamilton-Farey made clear in her directions, this application relates only to the issue of dispensation, not the reasonableness of, or liability for the charges. The issue of reasonableness can be investigated if any of the lessees choose to apply to the Tribunal under section 27A of the LTA.
16. Notwithstanding our conclusion that it is reasonable to dispense with the consultation requirements in relation to the works undertaken, the Tribunal has carefully considered whether the dispensation should be unconditional or upon terms and has decided that the dispensation granted should not be unconditional.
17. Whilst it would have been impractical in the circumstances to comply with each stage of the consultation requirements having regard to the timescales involved, it does seem to the Tribunal that the Applicant and/or its agents could and should have done more in terms of communicating with the tenants.
18. There is a letter dated 22/7/14 to Mrs Gilkes which explains that works have been commenced on the drains but it contains very little detailed information. That letter appears to have enclosed an earlier letter dated 9/7/14 explaining the nature of the problem, the urgency of the problem and the anticipated cost of remedial works. However, there is an issue as to whether that earlier letter was sent and/or received by Mrs Gilkes before 22/7/14.
19. Whether it was or was not sent earlier, the Tribunal is of the view that there could and should have been more communication from the Applicant or its agents with a view to ensuring that tenants were kept in the picture as to what was going on, notwithstanding that the work needed to be attended to quickly.

20. In the circumstances the Tribunal concludes that dispensation should be granted but on terms the Applicant shall not include in the service charge its costs of this application for dispensation made to the First Tier Tribunal on 9 July 2014.

Name: Judge W Hansen

Date: 11th August 2014