

10141



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

Case Reference : LON/00BK/LDC/2014/0073

Property : 399/405 Oxford Street, London,
W1C 2BU

Applicant : Conegate Limited

Representative : Chainbow Ltd

Respondents : Gilbert Reversions
Lloyds TSB Bank PLC
Adjustbetter Ltd

Representative : Gurney-Champion & Co

Type of Application : To dispense with the statutory
consultation requirements

Tribunal Members : Mrs H Bowers, MRICS

**Date and venue of
Hearing** : 30th July 2014, 10 Alfred Place,
London WC1E 7LR

Date of Decision : 30th July 2014

DECISION

Decision of the tribunal

The Tribunal grants the application for dispensation from further statutory consultation in respect of the subject works.

REASONS

The Application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the Act") dispensing with statutory consultation in respect of major works.
2. The premises in question comprise four residential units situated above commercial premises on the corner of Gilbert Street and Binney Street, London, W1.
3. Directions were issued by the Tribunal on 6th June 2014 listing the matter for a paper determination for the week commencing 28th July 2014.
4. The application seeks dispensation in respect of work to seal the external balcony/flat perimeter roof and to make good fabric damage to flat 3 as a consequence of rain ingress. It appears that there has been water ingress into flat 3. The application states that it is the intention to commence the necessary works on 6th June 2014.
5. There were written submissions on behalf of the Applicant and on behalf of Gilbert Reversions Ltd and on behalf of one of the sub-leaseholders.
6. It was explained that 399/405 Oxford Street (the subject property) comprises of two commercial tenants on the lower floors, namely Lloyds TSB Bank PLC and Adjustbetter Limited and four residential units on the upper floors. The headlease for the four residential units is held by Gilbert Reversions Limited.
7. It was explained that there had been no consultation to date. It is acknowledged that the service charge contributions for each of the two commercial occupiers and for Gilbert Reversions Ltd would exceed the threshold under the residential consultation provisions of the Act. However, it was explained that the service charge contributions for each of the four residential sub-leaseholders would be below the £250 threshold.
8. It was submitted that if the full consultation process had progressed then the work could only commence at the end of the summer and there would be risks for the timing of the contract.
9. There is a witness statement from Chris Iles ABIFM of Cushman & Wakefield Site Services Limited (CWSSL) dated 1st July 2014. It was explained that in January 2014 CWSSL was notified of water ingress into flat 3. An inspection was carried out and an initial repair was carried out in March 2014 but this was unsuccessful. In May 2014 there were two further leaks to flat 3. A specification was prepared and two quotations for the roof repair and two quotations for the re-decoration works were obtained. The work will involve

the sealing of the whole of the roof area and it is anticipated that this will then resolve the water ingress problems.

10. Reference is made to *Heron Maple House Ltd v Central Estates Ltd* [2004] L. & T.R. 17 and *Ruddy v Oakfern Properties Ltd* [2006] EWCA Civ 1389 in that the head-lease is a tenancy within the definition of section 18 of the Act.

11. Attached to Mr Iles' statement were various enclosures relating to the work including two quotations from Axis dated 27th June 2014 for £2,340 plus VAT for the roof repair and £3,991 plus VAT for the internal decorative work and two quotations from CAM Specialist Support Limited dated 27th June 2014 for £912 plus VAT for the roof repairs and £1,972 for the internal decorative work.

12. There is a letter dated 18th June from Gurney- Champion & Co, solicitors, who appear to represent Gilbert Reversions Ltd. The letter to the Tribunal is in response to the application and states that it is a response in respect of the four residential flat owners. It is confirmed that the "clients" consent to the application, but reserves their position as to the reasonableness or otherwise of the costs of the work undertaken and that the consent is only limited to the works necessary for the urgent roof work.

13. There is a further letter from Seddons Solicitors dated 16th June 2014 who act for Mr Chysanthou, the sub-leaseholder of Flat 2, Gilbert Street. It acknowledges that Gurney Champion & Co has coordinated the response for the four residential leaseholders and that includes Mr Chysanthou, but his position is reserved as to the issue as to whether any service charge contribution are reasonable or payable. The position as to whether any dispensation granted by the Tribunal should be "on terms" is also reserved. It is noted that no communication has been received from the Applicant as to the nature of the urgent work, the names of any contractors or any costs budget.

Determination

14. Section 20ZA(1) of the Act provides:

"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."

15. The Tribunal has taken into account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14.

16. There has been no suggestion from any Respondent that the work is not necessary and/or ought to have been the subject of full statutory consultation. The only issues raised is that the residential tenants reserve their position as to whether any costs are payable and by would be reasonable (including

having been reasonably incurred) and any terms of any dispensation. The reasonableness and payability of the cost of the works is a matter that would fall within the jurisdiction of this Tribunal on an application under section 27A of the Act.

17. There is sufficient evidence before the Tribunal of the necessity to carry out the work urgently, and that it was prudent to contract the works without a full consultation process. The Tribunal is satisfied that delaying the works for such consultation would have been undesirable. No evidence has been put forward of prejudice to the tenants or other grounds on which the tribunal ought to consider refusing the application or granting it on terms.

18. In all the circumstances the Tribunal grants the application for dispensation from statutory consultation in respect of the works, considering it reasonable to do so. For clarity the works are to seal the external balcony/flat perimeter roof and to make good damage to the interior of flat 3 as a consequence of the water ingress from the defective roof.

19. This decision does not affect the Tribunal's jurisdiction upon any application to make a determination under section 27A of the Act in respect of the reasonable cost of the work.



Name: H C Bowers

Date: 30th July 2014