

10365



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

Case reference : **LON/00BK/LDC/2014/0116**

Property : **14-20 Albany Court (South Block),
Palmer Street, London SW1H 0AB**

Applicant : **Questing Limited and those
leaseholders identified as joint
applicants on the application form**

Representative : **Sterling Estates Management
Limited**

Respondent : **Executrix of Miss M M De Zouche
(deceased) (Flat 24)
Jun Yu (Flat 16)**

Representative : **N/A**

Type of application : **To dispense with the requirement
to consult leaseholders under s.20
Landlord and Tenant Act 1985**

Tribunal members : **Miss A Seifert**

Determined at : **10 Alfred Place, London WC1E 7LR**

Date of decision : **21st October 2014**

DECISION

The application

1. Questing Limited (“The Applicant”) seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) to dispense with the consultation requirements provided for by s.20 of the 1985 Act, in relation to qualifying works carried out at 14-20 Albany Court (South Block), Palmer Street, London SW1H 0AB (“the premises”).
2. The application was received by the tribunal on 11th September 2014. The premises were described as a *Purpose built block of 7 flats above St James Park Tube Station*. It was stated that the qualifying works had been carried out.
3. The applicant requested an urgent paper determination. The reason for urgency was stated as follows:

This Dispensation Application is tied up with Case Reference LONB/00BK/LSC/2014/0355 as detailed above and on the enclosed cover correspondence to this application. As detailed in such cover correspondence a stay of proceedings is in the process of being agreed with the Applicant of the above Case Reference based on this Dispensation Application. As such it is requested this Dispensation Application is dealt with as a matter of urgency. Further details can be noted on the attachment to this Application. It is anticipated this Application can be dealt with by way of a paper hearing, however should a hearing be deemed necessary it is subsequently requested this be allocated to Fast Track as per the reasons given.

4. The Tribunal issued directions on 17th September 2014. The case was allocated to the paper track. Directions were made for the Applicant to provide a bundle of documents containing the items referred to in the directions. Also, directions were made for a bundle of documents to be served by any respondent who opposed the application on or before 14th October 2014.
5. In the directions it was noted that the application related to works that had been carried out to the communal boiler and heating systems of the premises (“the works”). At that stage, five of the seven leaseholders involved had consented to the works and / or consented to pay for those works. The tribunal has since been informed by the Applicant’s agents, Sterling Estates Management (“SEM”), that all of the leaseholders or their representatives have consented to the application.
6. The relevant legal provisions are set out in the Appendix to this decision.

The issue

7. The issue was whether it is reasonable for the tribunal to make a determination dispensing with the consultation requirements in respect of the works.

The tribunal's decision

8. The tribunal determines that it is reasonable to dispense with the consultation requirements in relation to the works which are the subject of the application.
9. The tribunal makes an order under s.20ZA of the 1985 Act, dispensing with the consultation requirements in respect of the works carried out to the communal boiler system serving the premises.

Reasons for the tribunal's decision

10. The Applicant is the sub-head leaseholder of the premises. A copy of the Applicant's title documents was provided.
11. SEM wrote a letter to the tribunal dated 5th September 2014 in respect of Case LON/00BK/LSC/2014/0355. That case related to an action being issued against the Applicant by Calsal Limited, the freehold owner of the North Block, Flats 1-12 Albany Court ("the North Block"). It was stated that the leaseholders of the North Block own all the shares in Calsal Limited.
12. Calsal Limited purchased the freehold interest in the North Block from BAA Plc, who are also the freehold owners of the premises. Calsal Limited took on the obligation to maintain service and keep in order the communal boiler system, which serves both the premises and the North Block with hot water and heating. It was stated that such obligations arose from a Transfer Deed dated 20th April 2001, a copy of which was provided.
13. It was stated in a letter dated 5th September 2014 on behalf of the Applicant, that there are defects in respect of the obligation or ability for Calsal Limited to recover a reasonable and proportionate amount towards the service, maintenance and up keep of the communal boiler system. The letter stated that it is understood that Calsal Limited have attempted to demand payment directly from BAA Plc towards such costs, but they have refused to pay. At the same time, Calsal Limited sought to recover such costs from the Applicant as service charges.
14. The Applicant purchased the head lease of the premises in a property auction. Following the purchase it raised queries with the managing

agents of the North Block submitting that there was no obligation on the Applicant to pay towards the costs in respect of the communal boiler system. Also, it was noted that the communal boiler system was not in good working order or performing efficiently. During the colder months this would often fail. However the managing agents for Calsal Limited continued to demand payment towards maintenance, service and upkeep of the communal boiler system. The Applicant made payments on account in respect of this whilst reserving their position.

15. It was submitted that Calsal Limited, or their agents failed to ensure that the communal boiler system was being kept in good and working order and maintained to a reasonable standard.
16. In the beginning to mid 2012, Calsal Limited recognised that the communal boiler system was in a poor state and proceeded to investigate this. New agents were appointed. A quote to carry out the work to the communal boiler system was obtained in about May 2012. However, Calsal Limited did not inform the Applicant or their agents of such works until two days before the works commenced in mid October 2012. It was stated that, if proper notification of such works had been given to the Applicant, the Applicant would have undertaken s. 20 consultation with its leaseholders.
17. Reference was made to a letter from SEM to the leaseholder's dated 21st March 2014. It was noted that the leaseholders are now in agreement that the current works undertaken to the communal boiler system have improved the same substantially, and agree to make payment towards such costs.
18. Although the works to the communal boiler system commenced in mid October 2012 and finished at the end of 2013, it was stated that it has taken Calsal Limited and their agents until the beginning of 2014 to present to the Applicant / SEM, a proper breakdown of the various costs incurred in respect of the communal boiler system. Once this was produced, and on investigation of the invoices, it was established that over charging had occurred as such invoices also contained works to the North Block. The sums demanded were reduced to reflect this.
19. In the leases between the Applicant and the leaseholders of the premises, there is provision for the leaseholders to discharge all costs and charges incurred by their landlord in the proper management of the premises. Such costs include the supply of hot water and heating. However, it was noted that the Applicant has no control over the manner in which such heating and hot water is supplied and the costs incurred, as the obligation lies with the Calsal Limited.
20. It was stated that the application for dispensation was made in order that the Applicant can demand, collect and discharge the costs incurred in improving the communal boiler system, given that there was no

consultation. It was stated that without such dispensation the Applicant cannot demand and collect and discharge such costs, as the Applicant feared that one of its leaseholders might challenge this, and that this would affect the other leaseholders.

21. SEM wrote a further detailed letter to the tribunal dated 10th September 2014 setting out the background to the application and reasons for seeking this, a copy of which was provided.
22. Various letters from leaseholders were included in the documents, generally in support of the application, including a letter from Solicitors representing the estate of Miss De Zouche and from Jun Yu.
23. Having considered the evidence as a whole including that referred to above, I am satisfied that it has been shown that it is reasonable in all the circumstances of this case that the consultation requirements be dispensed with in respect of the works to the communal boiler system.

Name: Judge Seifert

Date: 21st October 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20ZA

- (1) 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.
- (2) In section 20 and this section –
“qualifying works” means works on a building or any other premises...
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State...