

12024



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

Case Reference : LON/00BE/LDC/2016/0147

Property : Tanners Yard, 239 Long Lane,
London SE1 4PT

Applicant : Tyra Limited

Respondent : The Leaseholders

Type of Application : Dispensation from consultation
requirements under Landlord and
Tenant Act 1985 section 20ZA

Tribunal Members : Judge Richard Percival

Venue of Deliberations : 10 Alfred Place, London WC1E 7LR

Date of Decision : 15 February 2016

DECISION

Decisions of the tribunal

- (1) The Tribunal pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) grants# dispensation from the consultation requirements in respect of the works the subject of the application.

Procedural

1. The applicant landlord applies for a dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 and the regulations thereunder in respect of works to replace vehicular access gates and access controls. The application was allocated to the paper track.
2. The Tribunal gave directions on 19 December 2016, which provided for a form to be distributed to the tenants to allow them to object to or agree with the application, and, if objecting, to provide such further material as they sought to rely on. The deadline for return of the forms was 16 January 2017. No forms have been received. The application is accordingly unopposed.

The property and the works

3. The property is a converted warehouse, with newer extensions. It forms three wings, and in total contains 57 flats. The instant application relates to two of those wings, Saddlers House and Market House.
4. In November 2016, the car park access gate under Saddlers House failed and it became apparent to the Applicant that the access controls were no longer working. It appears that it was not possible to source spare parts to repair the equipment, as it was obsolete and the parts were unobtainable.
5. The result was that the car park gate was left open, to allow access. However, this presented a clear security risk, and the Applicant states that a theft and an attempted break-in had been reported at the time of the application. In addition, it was reported that non-residents had been frequently observed in the car park. The Applicant therefore concluded that a new vehicle gate, with associated access control, was necessary as a matter of urgency.
6. The Applicant undertook informal consultation in the form of a circular issued to tenants on 2 November, and the matter was discussed at an AGM on 22 November.

7. The necessary works were completed, as a matter of urgency, before Christmas 2016.

Determination

8. I remind myself that the sole issue for my determination is whether it is reasonable to dispense with the consultation requirements imposed by section 20 of the 1985 Act. In my judgment it is. I have not been provided with evidence of the cost of the works, but assume for the purposes of this determination that they were indeed such as to require a dispensation.
9. The failure of the gate, and the landlord's inability to repair it and the associated access equipment, created a clear and serious security risk to the property. The landlord was right to conclude that rectification was urgent, and to proceed to undertake the work in advance of this application. The application is unopposed.
10. Nonetheless, the cost of the works is excessive or if the quality of the workmanship poor, or if costs sought to be recovered through the service charge are otherwise not reasonably incurred, then it is open to the tenants to apply to the Tribunal for a determination of those issues under section 27A of the 1985 Act.

Name: Judge Richard Percival **Date:** 15 February 2016

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, and
 - “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.