



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

Case Reference : **CHI/43UE/LDC/2014/0005**

Property : **Lyne House, Rusper Road, Capel, Surrey RH5
5HH**

Applicant : **Lyne House Management Company Ltd**
Representative : **M. Staples MRICS of Crickmay Asset
Management LLP**

Respondent : **Leaseholders Lyne House**

Attendance : **Mr R. Ward No. 1 The Mews**

Type of Application : **To dispense with the requirements to consult
lessees about major works.**

Tribunal Members : **Judge D. R. Whitney
R. A. Potter FRICS**

**Date and venue of
Hearing** : **10th March 2014
Horsham County Court**

Date of Decision : **17th March 2014**

DECISION

INTRODUCTION

1. This is an application by the management company of Lyne House, Rusper Road, Capel to dispense with the requirements to consult lessees in connection with major works.
2. The works for which dispensation is sought relate to works to the exterior and interior of Number 1 The Mews Lyne House ("the Property"). The application was made on 29th January 2014 with directions being given on 11th February 2014. No objections were received by the Tribunal

INSPECTION

3. The Tribunal inspected the property on the morning of the hearing. Lyne House is a Victorian mansion which appears to have been converted. There are to the rear additional properties which the Tribunal were told are known as the Mews.
4. The Tribunal inspected externally and the ground floor internally of Number 1 the Mews.
5. Externally works were being undertaken to create a gap between the car parking area to the South West elevation of the Property and to put in place a drain. Further drainage works were being undertaken to the South elevation of the Property. These works were being undertaken whilst the Tribunal inspected. Originally the external original ground level had been considerably higher than the internal level.
6. Internally the fitted kitchen had been removed as well as the flooring to the kitchen and hallway. The Tribunal were shown the flank wall which had been suffering from damp. It was evident that works had been undertaken to create some form of tanking system and damp proofing to the flank wall.

THE LAW

7. The relevant law can be found in section 20ZA of the Landlord and Tenant Act 1985:

20ZA Consultation requirements: supplementary

(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.

HEARING

8. The hearing was attended by Mr Staples, the managing agent, on behalf of the Applicant and Mr Ward the owner of the leasehold interest in the Property.
9. Mr Ward confirmed that he consented to the Application. The Tribunal had received written consents to the application from B. Willis (Mews House Six) and Victoria Chapple (4 The Mews).
10. Mr Staple advised he had received no further communications from any other leaseholder save that he had discussed and was authorised to make the application by two Directors of the Applicant who were also leaseholders.
11. Mr Staples relied upon his witness statement dated 4th March 2014.
12. In short Mr Ward had made an insurance claim as a result of a leaking tap at the Property in or about November 2013. these works had begun in January 2014 when it had become apparent that as well as the leaking tap the Property was also suffering from damp penetration to the flank wall adjacent to the car park.
13. Upon having obtained advice from a firm of structural engineers it was suggested that a trench should be created so that there was a gap between the car park and the wall of the Property. This would involve the creation of a drain to stop water running off the car park directly on to the wall of the Property.
14. A first stage consultation notice was served on behalf of the Applicants dated 29th January 2014 together with a covering letter indicating that an application was to be made to the Tribunal.
15. Mr Staples explained that Mr Ward co-ordinated getting quotes for the works and two contractors quoted for the works being R. J Markham and David Heath Building Services Limited ("David Heath"). Each contractor provided two quotes, one for the external works and one for the internal works. In both instances David Heath (who was already undertaking the insurance claim works) was the cheapest and he was appointed to undertake the works.
16. The specification of the works had to be amended following the discovery that the foundations to the Property were very shallow. The specification was

- amended in consultation with the structural engineers who originally advised on the works.
17. The works were due to be completed by 15th March 2014 to enable Mr Ward's tenant to move back in to the Property. The tenant had had to vacate when the insurance claim works commenced as the fitted kitchen was removed as part of those works. This was the reason why the works were urgent. The works needed to be undertaken whilst the kitchen was removed as works to damp proof the flank wall and repair the flooring had to be undertaken whilst the kitchen was removed. The Tribunal were informed that Mr Ward's tenant was not living at the property whilst these works were all being undertaken.
 18. Mr Staples confirmed that the quotes had not been given to the leaseholders in advance nor had any further notices or letters been sent to the leaseholders. He believed however that all were aware that the works were being undertaken.

DETERMINATION

19. At the conclusion of the hearing and following a short determination the Tribunal advised Mr Staples and Mr Ward of their decision as follows:
 - The Tribunal dispenses with the requirement to consult with the leaseholders of Lyne House over works being undertaken in accordance with David Heath's quotations dated 8th February 2014 and 14th February 2014.
 - Dispensation is conditional upon the Applicant serving upon every leaseholder copies of the quotations received from David Heath dated 8th and 14th February 2014 and R. J. Markham dated 11th and 14th February 2014.
20. The Tribunal was satisfied having inspected, read the witness statement of Mr Staples and heard from Mr Staples and Mr Ward that it was reasonable to dispense with the strict consultation requirements. The Tribunal noted that no objections had been received from any party to the application.
21. Further the Tribunal was satisfied that it was reasonable to undertake these works whilst the kitchen was removed (as part of the separate insurance claim). Whilst by the time the Tribunal inspected the trench had been created and much of the interior damp proofing work had been undertaken they were able to understand how and why damp penetration had occurred. It was obvious that if the car park abutted the wall then as water flowed across the car park (which sloped down to the Property) this would inevitably lead to the flank wall of the Property suffering from damp. Such works could best be undertaken whilst the kitchen was removed. The Tribunal took account of the fact that the occupant of the Property had vacated and so it was reasonable to have the works completed as quickly as possible. The Tribunal took account of the fact that Mr Ward and the Applicant had plainly moved quickly to deal with this problem, evidenced by the fact that the works were nearly complete by the date of the hearing.
22. The Tribunal did remind Mr Staples that in granting dispensation the Tribunal was not making any finding as to the reasonableness of the proposed cost or whether such costs were payable by the leaseholders. The application was simply to determine whether in the circumstances it was appropriate to allow the Applicant to proceed with works notwithstanding that they had not complied with the consultation requirements set out in the Landlord and Tenant Act 1985.

The Tribunal was so satisfied. The Tribunal did direct that Mr Staples should send to all leaseholders copies of the quotes obtained so that the leaseholders were aware of the amounts being spent.

Judge D. R. Whitney

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.