

113447



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

**Case Reference** : **CHI/43UL/LDC/2015/0047**

**Property** : **121 Upper Hale Road, Farnham,  
Surrey, GU9 0JG**

**Applicant** : **Southern Land Securities Ltd**

**Representative** : **Hamilton King (Managing  
Agent)**

**Respondent** : **The Lessees**

**Representative** : **None**

**Type of Application** : **Section 20ZA Landlord and Tenant  
Act 1985  
Application to dispense with  
consultation procedure  
covering proposed works**

**Tribunal Members** : **R Athow FRICS MIRPM**

**Date of Inspection** : **None**

**Date of Decision** : **11<sup>th</sup> December 2015**

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**DECISION**

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## **Decision**

1. The Tribunal made the following determinations:

A dispensation from the consultation provisions of Section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") is granted in respect of the repair to the communal balcony as specified in the e-mail from Jayne Thompson dated 4<sup>th</sup> November 2015 as follows:

- 1 Remove the 2No layers of ply, firings, 2no layers of ply soffit, PVC fascia and the 2no double trimmers on the balcony.
- 2 Fit new double 9x3 trimmers to replace the existing with staggered bolts connecting them together.
- 3 Bolt on 9x2 treated timber to the side of the existing joists and connect to the new double trimmer with new hangers.
- 4 Fit new 12mm Marine ply soffit to the underside of the joists including new ventilation strip to the front and back edge of the soffit.
- 5 Fit new 18mm Marine ply to the top of the joists.
- 6 Fit new treated timber firings on top of the ply to give a fall away from the building. The firings will also now extend out from the front edge a minimum of 60cm to create an overhang to help prevent future water damage.
- 7 Fit new 18mm Marine ply on top of the firings.
- 8 Fit new Fascia board to the side of the balcony and re-fit the loose couple of bricks.
- 9 Supports already put on hire from Jewsons at Steve's request.

No costs have been assessed for the above work by the Tribunal.

## **Background**

2. The subject property comprises six self-contained flats which are held on leases. The freehold is held by the Applicant.
3. The Applicant was in the process of carrying out external decorations and repairs to the property. During these works it came to light that the external communal first floor balcony decking had deteriorated and had let water through to the fabric of the floor, causing it to rot and become unsound. This needed to be repaired.
4. On 19<sup>th</sup> October 2015 the managing agent made an application for dispensation from the consultation provisions of Section 20 of the 1985 Act in respect of these works.
5. Directions were issued by the First-tier Tribunal Property Chamber (Residential Property) on 3<sup>rd</sup> November 2015, which stated that the application was to be determined on papers to be submitted without a hearing, in accordance with Rule 31 of the Tribunal Procedure Rules 2013, unless a party objected in writing to the Tribunal within 28 days of the

receipt of those directions. No written objection to dealing with the application in that way has been received.

6. The directions required the parties to supply statements of their cases and for the Applicant to prepare a bundle of relevant documents for consideration by the Tribunal. No bundles have been received.
7. The service charge costs are shared between the 6 flats. As a result, any works undertaken in excess of £1,500 including VAT need to go through the Section 20 consultation process if the landlord is to recover the full cost. Failure to do this will result in the landlord being able to recover a maximum of only £250 from each flat in this block for that work. There is within the Act and its Regulations a section which sets out a procedure for Dispensation under certain circumstances.

## **The Law**

8. The statutory provisions primarily relevant to these applications are to be found in Section 20ZA of the Landlord & Tenant Act 1985 as amended (the Act).
9. Section 20ZA (1) of the Act states:

‘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.’
10. In Section 20ZA (4) the consultation requirements are defined as being:

‘Requirements prescribed by regulations made by the Secretary of State’. These regulations are The Service Charges (Consultation Requirements) (England) Regulations 2003 (‘the Regulations’).
11. In Section 20ZA (2) of the Act ‘qualifying works’ in relation to a service charge, means works (whether on a building or on any other premises) to which the tenant may be required to contribute by the payment of a service charge in accordance with the terms of his lease.
12. If the cost of any tenant’s contribution exceed the sum set out in section 6 of the Regulations (which is currently £250) the Landlord must comply with the consultation requirements. The relevant requirements applicable to this application are those set out in Part 2 of Schedule 4 of the Regulations.
13. The Tribunal may make a determination to dispense with some or all of the consultation requirements but it must be satisfied it is reasonable to do so. The Tribunal has a complete discretion whether or not to grant the

application for dispensation and makes its determination having heard all the evidence and written and oral representations from all parties and in accordance with any legal precedent.

### **The Applicant's case**

14. A full Section 20 Consultation process had previously been undertaken by the managing agent and the main project was in hand. When the defect was found the contract's supervising surveyor advised on a course of action to replace the defective area and obtained a quote of £2,863.20 from the contractors who were already on site for the remedial work.
15. The Applicant's managing agent wrote to the lessees on 14<sup>th</sup> October 2015 informing them of the matter and the cost. The letter explained that by undertaking the works at that time they could use the scaffolding that was already in place, rather than enter into a new S20 Consultation process. The letter also stated that the managing agent would be applying for dispensation for these works in this instance.
16. The remedial works were started, but it was then found more works would be necessary than originally envisaged. On 5<sup>th</sup> November the supervising surveyors reported their findings and recommendations to the managing agents together with a revised quote of £4,796.40. The managing agents wrote to the lessees on 9<sup>th</sup> November 2015 telling them of the situation, enclosing a copy of the surveyors' report, explaining the effect on the likely additional cost to the overall works.
17. No objections to the proposals have been received. Three lessees have supported the Applicant's application for dispensation.

### **Consideration and Reasons for the Decision**

18. It is common for additional defects to be found during the course of major projects of this nature because the specification of works is usually prepared from an inspection from ground level only. Consequently defects of this nature are not usually found until scaffolding is erected and the building can then be inspected at close quarters.
19. In most cases of water penetration the correct procedure is to make temporary repairs and then prepare a specification of works. Tenders are then obtained and the normal Section 20 Consultation process takes place.
20. This situation is addressed in legislation by the inclusion of Section 20ZA of the Act and the landlord has promptly sought to regularise the situation appropriately. It does not cause significant prejudice to the Respondents as the work was needed to be undertaken to protect the integrity of the property.
21. Under the terms of the lease the landlord has an obligation to maintain the structure of the building.

22. The Tribunal was satisfied that once the work was under way, the correct action was taken to mitigate the inconvenience to the lessees and that there was no prejudice to them. The works found during the course of the contract are deemed to be necessary to comply with the Applicants obligations under the lease.

23. For the sake of clarity the Tribunal has not considered the matters of reasonableness, suitability or standard of the works undertaken to date. Any disputes on these aspects are dealt with by an application under Section 27a of the Landlord and Tenant Act 1985.

R Athow (Valuer Chairman)

Dated 11<sup>th</sup> December 2015

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## **Appeals**

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.

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.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include, together 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.

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.