



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

Case Reference : **BIR/00CN/LDC/2019/0005**

Property : **Queensway House
57 Livery Street
Birmingham
B3 1HA**

Applicant : **Queensway House (Birmingham) Ltd**

**Applicant's
Representative** : **Scanlans Property Management LLP**

Respondents : **Thomas Gabriel (Flat 1)
Richard Beverly (Flat 2)
Marc Northover (Flat 3)
Nicola Fleet-Milne (Flat 4)
Karenjit Kaur Mann (Flat 5)
Philip Whetstone (Flat6)**

Type of Application : **Application for the dispensation of all
or any of the consultation
requirements provided for by section
20ZA of the Landlord and Tenant Act
1985**

Tribunal Members : **Mr G S Freckelton FRICS (Chairman)
Mr I D Humphries FRICS**

Date of Inspection : **2nd October 2019**

Hearing : **Paper Determination**

Date of Decision : **1 November 2019**

DECISION

Background

1. By Application dated 25th July 2019, received by the Tribunal on 31st July 2019, the Applicant, through its Managing Agents, Scanlans Property Management LLP, applied to the Tribunal for dispensation from the consultation requirements imposed by section 20 of the Landlord & Tenant Act 1985 ('the Act') and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the property known as Queensway House, 57 Livery Street, Birmingham, B3 1HA.
2. The Application requested that the matter be dealt with on the Fast Track. The Tribunal issued Directions on 1st August 2019.

The Facts

3. The property at Queensway House comprises of six self-contained flats originally converted from a single commercial property. Based on the date of the Lease, the Tribunal assumes that the conversion was completed around 2017.
4. The Applicant in this case is the Management Company and the Respondents are the various long leaseholders of the flats whose details are given in the Schedule attached to this decision. Although it is not material to the Decision, it is worth noting that all the Respondents are Directors of the Applicant Management Company and jointly own the freehold of the property. As such, they are therefore, both Applicant and Respondents in this matter.
5. Clause 4 of the lease provides for the Management Company to be responsible for the repairs which are required under this Application and for which the Respondents pay a maintenance charge.
6. The Tribunal carried out an external inspection on 2nd October 2019. Neither the Applicant, the Applicant's representative or any of the Respondents attended the inspection.
7. The property comprises six flats. It appears from the plans provided that there are five floors in total including the ground floor which, based on the plans provided, also accommodates a bin store and cycle store. The property has facing brickwork to all visible elevations.
8. According to the Application, work is required to install gates and railings to the front elevation.
9. The Application confirms that the Applicant seeks dispensation from all of the consultation requirements as it considers the work to be urgent. The Applicant also confirms that it has carried out some consultation with the leaseholders who are all Directors of the Management Company and support the application. No evidence of support (or otherwise) was given to the Tribunal prior to the inspection.
10. According to the Application, briefly the timeline is as follows:
 - a) The leaseholders approached the Applicant's representative with a request to install gates and railings to the front elevation.

- b) The leaseholders of all six flats obtained quotations for the work and have chosen a contractor.
 - c) The leaseholders of all six flats have agreed in writing to jointly pay the cost of £4900.00.
 - d) That agreement to undertake the works was completed on 8th August 2019 and it is anticipated that works will proceed shortly. At the time of the Tribunal's inspection works had not commenced.
11. The Applicant submits in its Application that it cannot carry out consultation in accordance with section 20 of the Act because:
- 1) The Installation of the gates and railings has been requested by the leaseholders of all six flats.
 - 2) Notice 2 of the consultation process could not be sent out as the leaseholders had already tendered for the works.
 - 3) Notice 3 of the consultation process could not be sent out as the leaseholders had already chosen a contractor and given instructions for the work to be carried out.
12. The Tribunal infers from the submissions that the full consultation process cannot therefore be undertaken.
13. The Tribunal notes from the Application that the leaseholders have all been informed of this Application and had an opportunity to comment on the proposed works and costs and have not made any observations.
14. The Tribunal would normally have expected that the Applicant or its representative would attend at the time of the inspection of which ample notice had been given. This would have assisted the Tribunal to understand exactly what works were proposed and to obtain confirmation of the Respondent's consent. Unfortunately, as neither the Applicant, the Applicant's representative or any of the Respondents were present at the inspection the Tribunal was unable to make a determination at that time.
15. Following the inspection, the Tribunal wrote to the Applicant's representative requiring details of the proposed works and, more importantly written confirmation from each of the Respondents that they were agreeable to the work proceeding.
16. The Tribunal subsequently received copy emails from the Respondents confirming agreement to the erection of the gates and railings to the front of the property together with drawings of alternative proposed designs.

The Law

17. Where a landlord proposes to carry out qualifying works, which will result in a charge being levied upon a leaseholder of more than £250, the landlord is required to comply with the provisions of Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.

18. Failure to comply with the Regulations will result in the landlord being restricted to recovery of £250 from each of the leaseholders unless he obtains a dispensation from a Leasehold Valuation Tribunal under Section 20ZA of the Act, (now the (First-tier Tribunal) (Property Chamber)).
19. In deciding whether or not to grant dispensation, the Tribunal is entitled to take into account all the circumstances in deciding whether or not it would be reasonable to grant dispensation. An Application to grant dispensation may be made before or after the commencement of the works.

The Tribunal's Decision

20. It is evident to the Tribunal that the work is not urgent and essentially of a cosmetic nature although it will hopefully improve the security of the building.
21. It is also evident to the Tribunal that the leaseholders have been proactive in obtaining quotations and arranging for the work to be carried out.
22. The Tribunal is satisfied on the information provided that it is reasonable to dispense with the consultation requirements in this case. The Tribunal is satisfied that leaseholders will not suffer (or have not suffered) any prejudice by the failure to consult.
23. The Tribunal is satisfied that the works appear comprehensive and that if properly completed should add to the appearance of the building and improve general security.
24. The Tribunal is also influenced by the fact that none of the Respondents have made any submission to the Applicant or, more importantly, to the Tribunal either opposing or commenting on the Application and have actually jointly arranged for the works to be completed.
25. Accordingly, the Tribunal grants the dispensation requested under section 20ZA and determines accordingly.
26. This Determination does not give or imply any judgement about the reasonableness of the works to be undertaken or the cost of such works.

APPEAL

27. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

G S Freckelton FRICS.
Chairman.
First-tier Tribunal Property Chamber (Residential Property)

SCHEDULE OF RESPONDENT LEASEHOLDERS

FLAT NUMBER	NAME OF OWNER	ADDRESS
1	Thomas Gabriel	Flat 1, Queensway House, 57 Livery Street, Birmingham, B3 1HA
2	Richard Beverley	Flat 2, Queensway House, 57 Livery Street, Birmingham, B3 1HA
3	Marc Northover	Flat 3, Queensway House, 57 Livery Street, Birmingham, B3 1HA
4	Nicola Fleet-Milne	Flat 4, Queensway House, 57 Livery Street, Birmingham, B3 1HA
5	Karenjit Kaur Mann	72 Knightlow Road, Harbourne, Birmingham, B17 8QB
6	Philip Whetstone	Flat 6, Queensway House, 57 Livery Street, Birmingham, B3 1HA