



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

Case reference : LON/00AL/LDC/2019/0019

Property : Babbage Point, 20 Norman Road,
London SE10 9FA

Applicant : Glenageary Estates LLP

Representative : Vanderpump & Sykes LLP

Respondents : The lessees of Babbage Point (see list
attached to application)

Type of application : To dispense with the requirement to consult
lessees about major works

Tribunal : Judge Nicol

Date of decision : 18th March 2019

DECISION

The Tribunal has determined that the Applicant shall be granted dispensation from the statutory consultation requirements in relation to works to replace the cladding to the top two storeys of the subject building.

Reasons

1. The Applicant is the freeholder of the subject property, a modern building constructed early this century, with commercial units and a car park on the ground floor and seven floors of residential units above. London Block Management manage the building on the Applicant's behalf. The Respondents are the lessees of the residential units, around 20% of which are owner-occupied, the rest being owned by non-UK-based investors.

2. On 24th November 2017 Mr Paul Brown Eng Tech MIFireE SIIRSM of RPS Consultants carried out a Fire Risk Assessment of the subject building. He recommended 32 specific actions but priority attention was recommended for removing or replacing the cladding due to deficiencies in the light of the Grenfell Tower disaster. On the recommendation of the Fire Brigade, the Applicant implemented a waking watch – staff were recruited from Abbatt Property Recruitment at a cost of around £5,000 per week.
3. On 17th September 2018 the Applicant informed the lessees that they had applied for planning permission to replace the cladding (which was granted on 12th November 2018). On 17th October 2018 LBM sent each lessee a letter intended as the first stage required under the statutory consultation provisions of section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003, together with a second letter providing some more detailed information, including an early estimate for the cost of £700,000 plus VAT.
4. The section 20 letter warned that the Applicant intended to seek dispensation from the Tribunal for the balance of the statutory consultation requirements. Of the 5 comments received from lessees in response to the letters of 17th October 2018, two expressly objected to the seeking of dispensation. They and another of the comments suggested that the works arose from the way the building was originally constructed so that the cost should be met by the original developers and/or the NHBC scheme. As of 14th February 2019 LBM indicated that the NHBC had rejected a claim but that they were still hoping to persuade them to make a contribution.
5. On 30th January 2019, the Tribunal received the Applicant's application for dispensation from the statutory consultation requirements. The Tribunal then made directions on 4th February 2019. The directions required the Applicant to provide all lessees with their application, the directions, the lease and the letter of 17th October 2018 and they confirmed they had done so by letter dated 13th February 2019.
6. The directions further required any lessee who opposed the application to complete a reply form and send a statement of their case. No lessee responded, despite the aforementioned objections sent in response to the letter of 17th October 2018.
7. The Tribunal was provided with the lease for one of the flats which, it is assumed, is standard. Under that lease, the Applicant is obliged to maintain the property, including under paragraph 9 of the Fifth Schedule by maintaining, repairing, renewing or rebuilding the envelope of the building, and the lessees are obliged to pay a proportionate share of the costs incurred.
8. In accordance with the Supreme Court's decision in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854, the primary issue when considering dispensation is whether any lessee would suffer any financial prejudice as a result of the lack of compliance with the full consultation process.
9. There was clearly a significant issue which needed to be addressed and, in the meantime, significant costs are being incurred with the employment of the

waking watch. The Applicant did keep the lessees informed and it is telling that none of the lessees have sought to respond to the Tribunal application. As pointed out in paragraph (4) of the directions order, whether the resulting service charges are reasonable or payable is a separate issue from that being considered in this decision.

10. The cladding problem has been known about for around 18 months. The Applicant started the consultation process 6 months ago. On that timescale, it is somewhat surprising that they have not been able to complete it in full compliance with the statutory requirements by now. If any lessee had challenged the application, this apparent delay would have carried significant weight. However, given the lack of objection or any proven prejudice, the Tribunal is satisfied that it is reasonable to dispense with the statutory consultation requirements.

Name: NK Nicol

Date: 18th March 2019