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**HM COURTS & TRIBUNALS SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

**S. 20ZA of The Landlord and Tenant Act 1985 (as amended) ("the Act")
(Application to dispense with consultation requirements)**

Case Number:	CHI/21UG/LDC/2012/0016
Property:	Cranston Court 27 Sutherland Avenue Bexhill on Sea East Sussex TN39 3QR
Applicant:	Hattenholm Investments Limited
Appearing for the Applicant:	Mr Graeme John
Respondents:	The 5 lessees of the residential flats.
Date of Hearing:	28th August 2012
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr N Cleverton FRICS (Surveyor Member)
Date of the Tribunal's Decision:	7th September 2012

BACKGROUND

1. This is an Application made by the Applicant pursuant to S.20ZA of the Landlord and Tenant Act 1985 ("the Act") to dispense with the consultation requirements contained in S.20 of the Act.
2. The work covered by this Application comprises the rebuilding of the gable on the south elevation of the property and the replacement of the wall ties to the south elevation. ("the Works ")
3. On the 25th July 2012 the Tribunal gave directions for the Applicant to serve on the Respondents a statement of case with copies of documents in support. If any of the Respondents objected to the Application then they were directed to attend the hearing of the Application and they would be given the opportunity to be heard.
4. The Applicant filed a written statement of case together with a hearing bundle and they attended the hearing to develop their case.
5. None of the Respondents wrote to the Tribunal to oppose the Application and none of the lessees attended the hearing to voice any objections.

INSPECTION

6. The property comprises a large detached residential building standing in its own grounds dating from 1910. Originally it would have been in single residential occupation but over the years it has been converted to form five self contained flats. The property is built of brick walls with painted pebbledash elevation under a concrete tiled roof. The property was clad in scaffold and the Tribunal could see that the pebble dashing had been hacked off on the south elevation to reveal horizontal cracking to sections of the brickwork.

THE LAW

7. S.20 of the Act limits the service charge contribution that lessees have to make towards "qualifying works" if the relevant consultation requirements have not been complied with or dispensed with by a Leasehold Valuation Tribunal.
8. Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 1987 ("the Regulations") provide that if a lessee has to contribute more than £250 towards any qualifying works then if the landlord wishes to collect the entire costs of those works the landlord must either carry out consultation in accordance with S. 20 of the Act before those works are commenced, or obtain an order from the Tribunal dispensing with the consultation requirements.
9. The consultation requirements are set out in the Regulations and it is not proposed to recite these here. However in summary they include the need for the landlord to state why they consider the works necessary and for further statements setting out their response to observations received, and their reasons for the selection of the successful contractor. A tenant has the right to nominate an alternative contractor and the landlord must try to obtain an estimate from such a nominee.
10. Under S.20ZA (1) of the Act, the Tribunal is given discretion to dispense with the consultation requirements. This Section provides:

Where an Application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any 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 those requirements.

11. The test is one of reasonableness. Is it reasonable in the circumstances of the case to dispense with all or any of the requirements? The decided cases have established that it is not necessarily the conduct of the landlord that has to be reasonable rather it is the outcome of making the order which has to be reasonable taking into account all the circumstances of the case. The Tribunal should also have regard to any prejudice that a lessee might suffer in the event of dispensation being granted.

THE EVIDENCE

12. The relevant evidence submitted to the Tribunal on behalf of the Applicant consisted of the following documents:
 - i. The Application
 - ii. First stage consultation documents
 - iii. Estimate from Martin & Bowles
 - iv. Wall tie estimate from Cavity Tech
 - v. Wall tie estimate from Poulton
 - vi. Letter of advise from Atkinson Beeston Chartered Surveyors

HEARING

13. Mr John began his evidence on behalf of the Applicant by summarising the background to the application. He told the Tribunal that his firm had been commissioned by the freeholders to organise a planned programme of external decoration works to the building. During the course of this program it had been discovered that the gable to the south elevation of the building was rotten and required rebuilding. When the pebbledash has been partially hacked off to reveal the extent of work required to the gable it had been noticed that the wall ties to this elevation had also failed causing horizontal cracking to the bricks. The freeholders had organised a site meeting with a surveyor who in turn had advised that two specialist wall tie companies be asked to inspect and report on their findings.
14. The two wall tie companies had inspected and both reported that the existing ties were rotten and required replacing. Both companies had quoted the cost of replacing the ties to be approximately £1,300. The cost of the making good after the installation of the new ties was in the region of £6,500 which meant that the threshold for consultation would be exceeded as the cost to each lessee would be in excess of £250.
15. Mr John told the Tribunal that the Applicant had commenced formal consultation with the Respondents in that on the 1st August 2012 the Applicant had issued a notice of intention to all the lessees with a return date of the 31st August 2012. No observations from the lessees had been received.
16. Mr John told the Tribunal that the Applicant wished to abandon the second stage of consultation and move on straight away to commissioning the Works using the existing

team of contractors, professionals and scaffolding. In this way cost savings could be achieved and the work could be completed before the advent of winter.

17. Mr John argued that it was in the best interests of the Respondent lessees for the Works to be carried out now rather than in three months time and that the lessees would suffer no prejudice if the consultation process was curtailed.

CONSIDERATION

18. In the opinion of the Tribunal the Works do constitute "qualifying works" within the meaning of the Act. As the contribution required from each Respondent pursuant to the service charge provisions in their leases will exceed the threshold of £250, there is an obligation on the Applicant under Regulation 6 to consult in accordance with the procedures set out in the Regulations.
19. The evidence put before us establishes: -
- (i) The wall ties are rusty and require replacement.
 - (ii) The gable on the south side of the property needs to be rebuilt.
 - (iii) Under the leases of the properties the Applicant is responsible for this work.
 - (iv) Savings should be available if the Works are carried out by the same contractors as are instructed for the external decoration work. For example the same scaffolding can be used for both jobs.
 - (v) The savings that are available by using the existing team and infrastructure are time critical.
 - (vi) Partial consultation has already been undertaken in relation to the Works and no lessee has made any observations.
20. The Tribunal noted that no lessee was on notice as opposing the Application and no lessee had attended the hearing as provided for in the Tribunals directions. Therefore in arriving at its determination the Tribunal proceeded on the basis that the lessees supported the application. At the inspection the lessee of Flat 2 assisted the Tribunal in identifying the defects and he had made it clear that he supported the application and wished the Works to be carried out as soon as possible.
21. The Tribunal noted that the Applicant has obtained two wall tie reports from specialist companies and the Tribunal takes no issue with the content of these reports and neither apparently do any of the Respondents. The expert's evidence concludes that the existing walls ties have failed.
22. The Applicant seeks dispensation on the grounds that the delay that will ensue if the Applicant has to complete the second stage of the consultation process is not in the interests of the Respondents and that dispensation is reasonable in all the circumstances of the case.
23. The Tribunal has carefully considered the evidence presented to it and has concluded that the Respondents will not be prejudiced if the second stage of the consultation exercise is dispensed with. The pebbledash has been removed and as a result the south flank wall is now exposed to the elements and in this state the building will suffer from water ingress. There is therefore a clear need for the Works to be commenced at the earliest possible opportunity and certainly before the winter. The Tribunal considers that

any further delay in rectifying the existing defects may result in the costs of the Works increasing.

24. Having regard to the above the Tribunal is persuaded that it is in the best interests of the Respondents that the Works are commenced without further consultation.
25. Accordingly taking all the circumstances into account and for the reasons stated above, the Tribunal is satisfied that it is reasonable for it to grant dispensation from all the requirements of S.20 (1) of the Act in respect of the Works and it so determines.
26. The Tribunal makes it clear that this dispensation relates solely to the requirement that would otherwise exist to carry out the procedures in accordance with S. 20 of the Act. It does not prevent an Application being made by the Respondents under S.27A of the Act to deal with the resultant service charges. It simply removes the cap on the recoverable service charges that S. 20 would otherwise have placed upon them.

Signed _____
Mr. RTA Wilson LLB

Dated 7th September 2012