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

Case Reference : CHI/40UB/LDC/2013/0045

Property : 20A & 21A Christchurch Street West, Frome
Somerset, BA11 1EG

Applicant : Anchorgrove Limited [Landlord]

Representative : -

Respondents : Mr. & Mrs. P. Kovacs [Flat 20A] [Lessees]
Mr. R. Candy [Flat 21A] [Lessee]

Representative :-

Type of Application : Under Section 20ZA of the Landlord &
Tenant Act 1985

Tribunal Members : Mr. J.S. McAllister F.R.I.C.S.
Mr. S. Hodges F.R.I.C.S.

**Date and venue
of Hearing** : 23rd. September 2013 at
Combe Grove Manor Hotel, Monkton
Combe, Bath, BA2 7HU

Date of Decision : 23rd. September 2013

DECISION

SUMMARY DECISION

1. For the reasons set out below, the Tribunal determines that it is satisfied that it is reasonable to dispense with consultation requirements of section 20 of the Act in respect of the specific qualifying works which are the subject of this application.

REASONS

THE APPLICATION

2. The Applicant made an application dated 17th. August 2013 to the Tribunal, under section 20ZA of the Act for the dispensation of all of the consultation requirements in section 20 of the Act and in the Service Charges [Consultation Requirements] [England] Regulations 2003 [“the Regulations”] in respect of proposed qualifying works being specified repairs to the property.
3. The Tribunal issued Directions dated 4th. September 2013 for the matter to be the subject of an oral hearing on 23rd. September 2013, following its inspection of the property.

THE LAW

4. Subsection 1 of section 20 of the Act, as amended provides:
“Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection [6] or [7] or both unless the consultation requirements have been either –
[a] complied with in relation to the works or agreement, or
[b]dispensed with in relation to the works or agreement by, [or on appeal from] a leasehold valuation tribunal.”
5. The effect of subsections 2 and 6 of section 20 is that the consultation requirements apply where the contribution which each tenant/lessee has to pay towards the cost of qualifying works by way of service charge exceeds £250.
6. Subsection 1 of section 20ZA of the Act provides:
“Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the qualifying works or qualifying agreement, the tribunal may make the determination if satisfied that it is satisfied that it is reasonable to dispense with the requirements.”
7. Subsection [2] of section 20ZA of the Act states –
“In section 20 and this section-
“qualifying works” means works on a building or any other premises...”

8. The legal transfer of the functions of the former leasehold valuation tribunal to the above First Tier Tribunal with effect from 1st. July 2013 was achieved by the combined effect of several statutory instruments viz. The Amendments to Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 Order 2013 SI 2013/1034, The Transfer of Tribunal Functions Order 2013 SI 2013/1036. From 1st. July 2013 the procedure for the Property Chamber is governed by The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169(L.8).

INSPECTION

9. The Tribunal inspected the property on 23rd. September 2013 in the presence of Mrs. J. Parker and Mr. M. Wilson the Applicant's directors. The Respondent lessees did not attend.
10. Briefly the property comprises a terraced 3 storey building comprised of ground floor retail units and 2 flats or maisonettes above. It is mainly of natural stone construction with slate and concrete tile covered roof slopes and a section of flat roof at the rear. Apparently it is a Listed Building and is about 300-400 years old. The Tribunal was shown the inside of 20A, in particular the former damage to the ceiling etc. of the kitchen and front bedroom due to the previous defects in the roof above. It was not possible to completely inspect the rear roof itself externally. The Applicant's directors pointed out to the Tribunal that the qualifying works had now been completed.

LEASES

11. The Tribunal received with the application papers a copy of the lease of 20A dated 9th. February 1998. The applicant's directors informed the Tribunal at the hearing that the lease of 21A was identical with regard to the repairing covenants, and that the responsibility for the repair of the main structure, including the roof of the property, was the landlord's.

THE HEARING

12. Those persons that attended the inspection also attended the hearing. The Respondent lessees did not attend nor were they represented.

APPLICANT'S EVIDENCE

13. Mrs. Parker spoke for the Applicant. She had also submitted a letter to the Tribunal and Respondents dated 9th. September 2013 with a file or binder of Supporting Documents. The salient points of her evidence were that the application was made as urgent repairs were needed to

the roof due to water penetration into Flat 20A. She referred to the fact that she had explained to the lessees their right to be consulted about the proposed repairs under section 20 of the Act and had sent to the lessees a Notice Of Intention To Carry Out Works dated 5th. August 2013. She said that she had sent this and subsequent letters to Mr. Candy by recorded delivery. She produced copies of letters and emails between her and the lessees and their agents over the period from 1st August 2013 and to 3rd. September 2013. She also produced a copy of 3 quotations or estimates of repairs to the roof etc. from Toop Building and Roofing dated 31st May 2011, [£12,840 including vat], Bath and Wilts Roofing dated 15th. August 2013, [£2,250 apparently no vat to be added] and ParkerWilliamRose Building Contractors dated 17th. August 2013, [£3,954 including vat]. Only the Bath and Wilts Roofing estimate related solely to the qualifying works and it was also the cheapest. She stated that this contractor had been recommended by the Kovacs' agents and that it had warned the landlord that, "this work to the chimney and ridge tiles is very urgent and needs immediate repairs as if they come off this property is on the main road and is dangerous". She said that only Mr. and Mrs Kovacs' agents had responded to her about the matter and that she had no response at all from Mr. Candy. She said that the terms of the leases were that 20A was responsible for 14% and 21A for 28% of the cost of the works. She stated that Anchorgrove were responsible for the remaining 58% and that this was, in effect, included in the rents of the retail units. Mrs. Parker then explained that the landlord had decided to take a risk and carry out the works prior to the Tribunal's consideration of the case. This was due to the urgent nature of the works, that the lessees of 20A had tenants due to move in on the 13th. September and that the contractor could do the job on the 2nd. September. If that date was not suitable then Bath and Wilts Roofing could not start until weeks later. She also said that the contractor chosen would provide a 20 year guarantee of its works on the roof. She stated that she had carried out much research on the matter with LEASE and that she followed the relevant R.I.C.S. code with regard to the management of the property, not having appointed managing agents as she considered this not cost effective for all the parties.

Mrs. Parker concluded by showing the Tribunal a copy of the contractor's invoice dated 3rd. September 2013 for £2,250. The Tribunal noted that the works referred to in the invoice were identical to those specified in the estimate. Mrs. Parker confirmed that the qualifying works were exactly as stated in the quotation and that no specification of repairs had been prepared by or on behalf of the landlord.

These repairs or qualifying works are:-

1. Remove roofing tiles to damaged chimney and take away roofing felt and battens.
2. Refit new timbers and re-felt and battens and re-tile.
3. Cut out chimney and re-fit new lead soakers and lead flashing.
4. Take away ridge tiles and clean off.

5. Re-set and re-point all ridge tiles.
6. Replace damaged roofing tiles and roofing felt from main roof.
7. Repair p.v.c. guttering and fit downpipes.

RESPONDENTS' EVIDENCE

14. Mr. and Mrs. Kovacs had submitted a letter dated 9th September [assumed by the Tribunal to be 2013], in which they stated that they supported this application and that they had requested Mrs. Parker to commence the dispensation process immediately to protect their interests and to ensure that their tenants are not impacted. Mr. Candy did not make any representations to the Tribunal about the case.

CONSIDERATION AND DECISION

15. The Tribunal carefully considered all the written and verbal evidence submitted to it by the parties. It fully accepted the Applicant's evidence. It decided that the proposed repairs had been urgently required and fully understood why the landlord felt the need to carry them out prior to the Tribunal's consideration. It noted the Kovacs' total agreement to this application and the fact that the proposed contractor had been recommended by them. It decided that there was no prejudice to the lessees if the full consultation process had not been undertaken. It noted the potential danger to the public of falling debris from the chimney and roof, that the lowest quotation had been accepted and that there was a small window of opportunity open for the chosen contractor to carry out the repairs. Taking all factors into account the Tribunal concluded that it is reasonable to dispense with the consultation requirements of section 20 of the Act in relation to the qualifying works set out in paragraph 13 above.
16. The Tribunal gave its decision verbally to the Parties at the end of the hearing, indicating that this written decision and reasons would follow.

RIGHT OF APPEAL

17. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 231C of the Housing Act 2004 or section 11 of the Tribunals Courts & Enforcement Act 2007.
18. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a 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 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 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.

19. The parties are also directed to Regulation 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L.8). Any application to the Upper Tribunal must be made in accordance with The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 S.I. 2010 2600

J.S. McAllister F.R.I.C.S.
Chairman

Dated: 27th. September 2013