



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

Case Reference : CAM/11UE/LDC/2015/0009

Property : 1 – 15 (excluding 13) Maxwell Place,
Beaconsfield, HP91AQ

Applicants : Maxwell Place Management Limited

Respondents : The Long Leaseholders listed in the
Application

Date of Application : 9th July 2015 (received 13th July 2015)

Type of Application : To dispense with the consultation
requirements referred to in Section 20 of the
Landlord and Tenant Act 1985 pursuant to
Section 20ZA

Tribunal : Judge JR Morris
Mr David S brown FRICS

Date of Hearing : 6th August 2015

**Date of Decision
and Reasons** : 12th August 2015

DECISION

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Decision

The Tribunal determines that it is reasonable to dispense with the consultation requirements referred to in Section 20 of the Landlord and Tenant Act 1985 as set out in Schedule 4 Part 2 Paragraph 11 of the Service Charges (Consultation requirements) (England) Regulations 2003 in

respect of the “relevant period” which shall be reduced from 30 days to 14 days. The Applicants must comply with all other requirements.

[NOTE: This decision only relates to the section 20 consultation requirements for the above works. The Tribunal has not considered and makes no determination in respect of the original consultation process or of the reasonableness or costs of the additional works.]

Reasons

The Application

1. An Application for dispensation from the section 20 consultation requirements in respect of repair works to the roof of the Property was made on the 9th July 2015. Directions were issued on 13th July 2015.

The Inspection

2. The Tribunal inspected the property prior to the Hearing in the presence of Mr. Lewis Green and Mr. Nick Ephgrave of the Managing Agents, Gem Estate Management Ltd. The Property comprises two blocks of purpose built flats. One block has 9 flats and the other has 5. Although numbered 1 – 15 there is no number 13. The Tribunal was informed that under the Leases all 14 flats contribute to repair work which includes the proposed roof repairs to the larger block of flats numbered 6 – 15, which are the subject of this Application. Both blocks are of brick and were believed to have been constructed around 2000. The larger block has a roof that has pitched sides but instead of coming to an apex there is a flat roof which is leaking and so requires repair.
3. The Tribunal viewed Flat 14 in the presence of Mr Peter Manning, the Leaseholder; because it was said in the Application that water ingress was apparent. The flat has a hallway off which are two bedrooms, one of which has an en suite shower room, a bathroom and a living room incorporating a kitchen area. The Tribunal noted water staining on the ceiling at the entrance to the bedroom with the en suite shower room and over the window. There were also signs of significant water ingress in the en suite shower room. There was some water staining in the living room. The stains corresponded with the photographs that had been provided in the Hearing Bundle.

The Law

4. Section 20 of the Act limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements)(England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the

works exceed an amount which results in the relevant contribution of any tenant being more than £250.

5. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and may be summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the "relevant period" and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord's Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the "relevant period" and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

6. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –

- (1) 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.

- (2) In section 20 and this section –
"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
 - b) to obtain estimates for proposed works or agreements,
 - c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) and (7)... not relevant to this application.

The Evidence

7. The Applicant has submitted written grounds for the application. It is stated that the initial failure of the roof was due to storm damage which caused a section of fibre glass boarding to fall and allowed water to enter the building through the roof and into the loft space subsequently causing water ingress into Flat 14.
8. Repairs including the application of a waterproof coating to the whole of the flat roof area were carried out by The Complete Cladding Company following an insurance claim which was closed once works were complete in April 2014.
9. On 22nd April 2014 it was reported that water was coming into Flat 14 again and it was apparent that this repair had not been successful. The Complete Cladding Company were asked to investigate but refused unless travel, time and labour were paid for because the company did not believe that the ingress was related to the work they carried out.
10. Therefore the Armour Group were engaged to carry out an inspection and following their initial findings The Complete Cladding Company returned on the

2nd May 2014 and inspected the roof. On the 20th May 2014 The Complete Cladding Company applied a further waterproof coating. However, it was claimed that Armour Group had employed invasive tactics in the course of their inspection and therefore The Complete Cladding Company claimed that their guarantee was void.

11. On 29th July 2014 it was reported that water was coming into Flat 14 again and it was apparent that this second repair had not been successful. The Maintenance Group, a new contractor, was instructed to carry out repairs. Due to weather conditions and the likely cost of more permanent repairs the Group carried out a temporary repair on 29th October 2014.
12. Early in 2015 the Directors of the Applicant determined to carry out a survey of the roof. This was not carried out until May 2015 when the Applicant had sufficient funds to pay for it. The report was carried out by Hazelvine, a copy of which was provided to the Tribunal.
13. The survey was carried out on 7th May 2015. It was suggested that the previous repairs had failed because they were carried out when the deck was not completely dry. The sealant had therefore failed. It was recommended that such sealants in any event only have limited time span and that a more effective action would be to remove the existing covering and overlay each flat roof with a EPDM (Ethylene-Propylene-Diene-Monomer) waterproofing system. It was said that it should have at least a 15 year guarantee and would cost in region of £6,000.
14. At the time of the survey there had been no reported leaks and therefore the roof appeared to water tight however on the 28th May 2015 a leak was reported in Flat 14.
15. Prior to the Annual General Meeting on the 25th June 2015 an additional letter was sent with the notice of the meeting (dated 29th May 2015) making it clear that the issue of the roof was to be discussed with a view to approve the best course of action. Copies of the letter and Minutes of the Annual General Meeting were provided to the Tribunal.
16. Following the Meeting on the 29th June 2015 a Notice of Intention in relation to the roof repairs was sent to comply with the Section 20 Consultation Procedure. However, the Directors of the Applicant were concerned that the works should be commenced as soon as possible due to the water coming into Flat 14 and the fear that the weather conditions towards the end of the year might be such as to prevent the repairs being carried out or completed in good time. They therefore requested their Managing Agents to ask for some dispensation from the Section 20 Procedure so that work could commence as soon as an appropriate contractor was identified and Leaseholders were sent a letter updating them on this on the 20th July 2015.

17. Two contractors had submitted preliminary estimates and a third was being sought. All contractors would be required to provide a quotation following an inspection and scaffolding was being erected on 3rd August 2015 (and was noted at the Tribunal's inspection) to enable this.
18. Copies of the estimates were provided to the Tribunal. It was noted that Encompass had put forward an estimated cost of an EPDM system as £9,613.00 with 10 year guarantee and Birch Roofing Contractors Ltd had estimated the cost at £5,520.00 with a 20 year guarantee. The Managing Agent noted the wide variation in the estimates and so has asked another contractor to give a quotation.

Determination

19. In determining whether or not dispensation should be given and the extent of such dispensation the tribunal took into account the decision in *Daejan Investments v Benson* [2013] UKSC 14. Lord Justice Gross said that "*significant prejudice to the tenants is a consideration of the first importance in exercising the dispensatory discretion under s.20ZA(1)*".
20. In addition Lord Neuberger said that the main issue and often the only issue is whether the tenants have been prejudiced by the failure to comply:
Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements. [44]
21. The Tribunal noted that the consultation requirements had been fulfilled so far as the first stage of giving Notice of Intention was concerned. They were also in the process of being fulfilled in relation to the second stage in the obtaining of estimates. The fourth stage would only apply if the quotation obtained was not the cheapest and would not hold up the work, although was important as it provided the leaseholders with an explanation as to why the cheapest had not been selected.
22. Therefore the Tribunal found that it was only the third stage, the Notice of the Landlord's Proposals, from which the Applicant was seeking dispensation. The Tribunal considered it wise to obtain quotations following an inspection and not just rely on estimates in the present circumstances so that the full extent of the repairs each contractor proposed could be assessed. The Tribunal was of the opinion that the Leaseholders would be prejudiced if they did not have the opportunity to see, consider and comment on the full quotations once they had been obtained (especially in the light of the history of this roof defect) as it was possible the cheapest may not be considered the most cost effective.

23. The Tribunal therefore considered that a full dispensation from this particular requirement should not be given. Nevertheless taking into account the need to expedite the work the Tribunal was satisfied that a partial dispensation would be appropriate. The Tribunal took into account that the Managing Agent had said that copies of the quotations would be sent to each of the 14 Leaseholders, once obtained and that the Leaseholders have been alerted to the works and their urgency by the Annual General meeting and subsequent correspondence. Therefore the Tribunal were satisfied that it was reasonable to reduce the relevant period from 30 days to 14 days for the leaseholders to make observations in respect of the third stage, the Notice of the Landlord's Proposals, as set out in Schedule 4 Part 2 Paragraph 11 of the Service Charges (Consultation requirements) (England) Regulations 2003.

Judge JR Morris