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

Case reference : **LON/00BG/LDC/2018/004**

Property : **Canary Riverside Estate**

Applicant : **Alan Coates, Manager**

Representative : **N/A**

Respondent : **Various Leaseholders as identified
in the schedule accompanying the
application**

Representative : **N/A**

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

Tribunal member : **(1) Judge Amran Vance
(2) Mr L Jarero, BSC FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **28 March 2018**

DECISION

Decision

1. The tribunal grants retrospective dispensation from the whole of the consultation requirements for qualifying works under section 20ZA of the Landlord and Tenant Act 1985 (the "1985 Act"). This dispensation is granted in respect of work undertaken to replace fire alarm panels in the residential areas of the Canary Riverside Estate ("the Estate") which commenced on 29 November 2017 (the "Major Works").

The Application

2. Mr Coates, the tribunal-appointed manager of the Estate applies under section 20ZA of the 1985 Act for a determination permitting the applicant to dispense with all of the consultation requirements set out in Section 20 of the Act and the regulations made under that section, namely the Service Charges (Consultation Requirements) (England) Regulations 2003.
3. Canary Riverside is a mixed-use, purpose built development comprising 325 flats, a hotel, health club and commercial units. Octagon Overseas Limited is the freehold owner of Canary Riverside. Canary Riverside Estate Management Limited ("CREM") is the leasehold owner of a large part of Canary Riverside pursuant to six long leases. The respondents are the sub-leasehold owners of the residential flats in the Estate.
4. Prior to commencement of the Major Works, the existing fire alarm maintenance contractor, ADT, identified issues with the existing fire alarm panels servicing the Estate which they considered to be obsolete and which required replacement as the panels were no longer supported by the manufacturer. It was also considered that the existing closed protocol system was expensive to maintain and that a new open protocol system would be far cheaper to maintain.
5. The applicant says that a specification of works was prepared by Wates Group for replacement of the panels and the usual statutory consultation under s.20 of the 1985 Act was planned. However, on about 20 October 2017, before consultation could commence, an escape of water from a flexi-hose damaged the fire alarm system in Eaton House, one of the residential blocks on the Estate. ADT attended Eaton House on 21 October 2018 and following their report the view was taken by the Manager that works to replace the panels needed to take place as soon as possible to protect the safety of the residential leaseholders.
6. Quotes for the required works, namely the replacement of the existing PSS FireQuest fire alarm control panels with PSS FireQuest4 panels at

Belgrave House, Eaton House, Circus House, Berkley Tower, Hanover House and the gym were obtained from four contractors.

7. BTE quoted £36,683 plus VAT; ADT quoted £37,000 plus VAT; DWM Ltd quoted £47,007 plus VAT and IC Ltd quoted £53,295 plus VAT. Although BTE's quote was slightly lower, the decision was taken to appoint ADT given that they were the existing contractor and therefore had prior knowledge of the existing fire alarm system.
8. A purchase order was issued on 6 November 2017 and works commenced on 29 November 2017. This application seeking dispensation from the statutory consultation requirements was issued the following day, on 30 November 2018.
9. The Major Works had been completed by 9 January 2018 when a letter was sent to the residential leaseholders explaining why the works had been carried out without statutory consultation taking place. In that letter, David Broome, an associate director in HML, the property company instructed by Mr Coates, stated that as a gesture of goodwill ADT had also replaced 22 sensors at no cost resulting in a saving of £990 plus VAT. He also stated that the application for dispensation had been made to this tribunal.
10. Directions were issued by the tribunal on 18 January 2018 in which the tribunal directed that the application was to be determined at an oral hearing. However, following a case management hearing on 6 March 2018, concerning this application as well as several other applications concerning the Estate, the tribunal indicated that the application would be determined on the papers if no objection to the application was received from any of the respondents. No such objection was received and the tribunal therefore determined the application on the papers on 28 March 2018.
11. The tribunal's directions of 18 January 2018 required the applicant, by 2 February 2018, to convene a meeting of leaseholders to discuss the works and to send to every respondent by 29 January 2018 a copy of the application notice and the tribunal's directions together with a copy of the reply form annexed to those directions. Those respondents who opposed the dispensation application were to complete the form and send it to the tribunal by 12 February 2018. They were also directed to send, to the applicant, by the same date, a statement in response to the application together with a copy of the reply form and copies of any documents on which they wished to rely. The applicant notified the tribunal by letter dated 25 January 2018 that it had complied with the tribunal's directions to write to every leaseholder by 29 January 2018.
12. In the event, a total of 15 leaseholders returned a reply form to the tribunal, none of whom objected to dispensation being granted. A letter was also received from CREM dated 5 February 2018 stating that it had

no objection the Major Works carried out but in which it referred to a series of email exchanges between CREM and Mr Coates. These appear to indicate CREM's concern that Mr Coates may not have properly complied with the tribunals' directions of 18 January 2018 as the meeting with leaseholders was held during working hours when only a few residents attended.

The Law

13. The tribunal is being asked to exercise its discretion under section 20ZA of the Act to dispense with the consultation requirements in respect of qualifying works. The tribunal may make that determination if it is satisfied that it is reasonable to dispense with those requirements.
14. The relevant consultation requirements are set out in Part 2 of Schedule 4 of Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations") a copy of which is annexed to this decision.
15. The procedure has three stages. In outline, these involve, at Stage 1, the landlord providing each lessee with notice of intention to carry out qualifying works and allowing them an opportunity to make observations about the proposals. This is followed by Stage 2 which requires the landlord to provide the lessees with notice of the proposal to enter into an agreement for the works. Details of the estimates obtained from the contractors need to be provided, or made available, and a further period is allowed within which the lessees can make written observations on any of the estimates. Stage 3 (which requires provision of a notice of the reasons for entering into an agreement, a summary of the observations made and the landlord's response to these) is omitted if the lowest estimate is accepted or the contract is awarded to a person nominated by a tenant.
16. The leading authority in relation to s.20ZA dispensation requests is *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 ("*Benson*") in which a majority of the Supreme Court set out guidance as to the purpose of the Regulations. The majority opinion was that the purpose is to ensure that lessees are protected from (a) paying for inappropriate works, or (b) paying more than would be appropriate. The Court considered that when considering dispensation requests, the Tribunal should focus on whether the lessees were prejudiced in either respect by the failure of the landlord to comply with the Regulations (relevant prejudice). The factual burden of identifying some relevant prejudice is on the lessees. If a credible case of prejudice is established, then the burden is on the landlord to rebut that case. The decision also establishes that the tribunal has power to grant dispensation on such terms as it sees fit where it is appropriate to do so.

The Tribunal's Decision and Reasons

17. The approach for a tribunal to adopt when considering a dispensation request was identified in *Benson* as requiring it to focus on the extent, if any, to which the lessees were prejudiced in either paying for inappropriate works or paying more than would be appropriate, because of the failure to comply with the consultation requirements. In his judgment, Lord Neuberger said as follows;
44. 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.
45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the Requirements had been complied with.
18. In our determination, the lessees have not been prejudiced by the lack of statutory consultation. It was clearly appropriate for these works to have been carried out given the report from ADT that the existing panels were obsolete and needed to be replaced. We accept that the works were sufficiently urgent to require immediate action, justifying departure from the statutory consultation procedure. It was stated in the application notice that Eaton House, which had a defective panel, is 12 stories high and that another tower on the Estate is 22 stories high. In these circumstances, leaving Eaton House with a defective panel whilst consultation took place was not an appropriate option.
19. Further, the HML's report following the damaged caused to the Eaton House panel indicates that the now reduced annual maintenance cost means that the Major Works will pay for themselves in about 5 years. The previous annual maintenance cost was £13,345 plus VAT compared to £6,000 plus VAT to maintain the new system.
20. The burden on proving relevant prejudice is on any objecting lessees and, in this case, there are none. Accordingly, we are satisfied that it is reasonable to grant retrospective dispensation from the consultation requirements in respect of the Major Works. Nor, given the lack of any

objections from the respondents do we consider it appropriate to impose conditions on this grant of dispensation.

21. As to CREM's concerns we are satisfied that our directions have been complied with. Whilst it may have been preferable to hold the meeting during non-working hours, the directions did not require this and the fact that no leaseholders have objected to this application indicates that leaseholders have not been prejudiced because of the timing of the meeting. Our review of the correspondence passing between the HML, the Manager and the residential leaseholders, as contained in the hearing bundle, indicates, that leaseholders received a clear explanation on 9 January 2018 as to why the Major Works were required as a matter of urgency and we see no reason to criticise the Manager's communication with leaseholders nor his compliance with our directions.

Amran Vance

Date: 6 April 2018

ANNEX 1- RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2

APPENDIX OF RELEVANT LEGISLATION

Landlord and Tenant Act 1985

20ZA. Consultation requirements: supplementary

- (1) Where an application is made to the appropriate 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.

Service Charges (Consultation Requirements) (England) Regulations 2003.

Part 2 - consultation requirements for qualifying works for which public notice is not required

Notice of intention

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
 - (a) to each tenant; and
 - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
 - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
 - (c) invite the making, in writing, of observations in relation to the proposed works; and
 - (d) specify—

- (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period;
and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

2. (1) Where a notice under paragraph 1 specifies a place and hours for inspection—

- (a) the place and hours so specified must be reasonable; and
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

3. Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

4. (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a

recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
 - (a) from the person who received the most nominations; or
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
 - (c) in any other case, from any nominated person.

- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
 - (a) from at least one person nominated by a tenant; and
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
 - (a) obtain estimates for the carrying out of the proposed works;
 - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

- (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
 - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
 - (a) each tenant; and
 - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—

- (a) specify the place and hours at which the estimates may be inspected;
- (b) invite the making, in writing, of observations in relation to those estimates;
- (c) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.

- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

- 5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

- 6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
 - (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
 - (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.