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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : 12-31 Church Green
Parade, Harpenden, Herts.
AL5 2TW

Applicant : Merritts Properties Limited

Respondents : The tenants of the long
leasehold residential
maisonettes on the first and
second floor

Case number : CAM/26UG/LDC/2008/0001

Date of Application : 2nd January 2008

Type of Application : Application to dispense with
consultation requirements
in respect of qualifying
works (Section 20ZA
Landlord and Tenant Act
1985) as amended ("the
Act").

The Tribunal : Mr. Duncan Robertson
(Lawyer Chairman)
Ms. Marina Krisko BSc (Est
Man) FRICS
Mr. Mohammed Z. Bhatti

Place and Date of Decision : 15th February 2008 at
Harpenden House Hotel, 18
South Down Road,
Harpenden, Herts AL5 1PE

DECISION

1. The Applicant is not granted dispensation from the consultation requirements in Section 20ZA of the Act in respect of the qualifying works as described in the Application by the Applicant to the Tribunal on the 2nd January 2008.

Reasons

Introduction

2. The Application for dispensation with consultation requirements related to planned works to stop water ingress into Marks and Spencers' retail unit below the residential maisonettes on the first and second floors of the Property. The proposals in the Application were to (a) carry out initial localised patch repairs to defects identified to asphalt covering to first floor rear roof deck (b) removal of brick planter between number 30 and 31 leaving the area to dry out and provide a suitable waterproof covering to roof slab beneath the planter to those areas which are not provided with such, re-install planter subject to consultation with Lessees, (c) repairs to reinforced concrete stairs to the rear left hand side of the block. The asphalt roof covering to the rear steps is no longer affective, resulting in damp penetration to the reinforced concrete steps at high level, causing concrete corrosion and spalling of the stairs underside.

This Application has been altered by the written representations made by Aitchison Raffety as building surveyors to the Applicant who modified their initial recommendations in their report of 3rd December 2007 by a letter of 22nd January 2008 that recommends that initial patch repairs are undertaken to the asphalt decking to see how successful these are with regard to the water penetration before proceeding further. At the inspection Stephanie Edwards the Property Manager of the Applicant confirmed that this was the only urgent work for which dispensation is now required.

The Premises and Lease

3. The Property is three storeys high with retail units on the ground floor and residential maisonettes on the first and second floor. The Property was extended on all three floors about 20 years ago and the Application for dispensation relates to qualifying works within the extended area. A specimen lease has been provided for flat 22 which is in the original building and not the extension. It is presumed that all leases to maisonettes in the Property are similar. There is nothing unusual as regards the specimen lease which states that the Landlord keeps the structure in good and substantial state of repair including renewal and replacement with the Tenants covenanting to contribute by way of a service charge.

An Explanation of the Law

4. In addition to Section 20ZA of the Act the Tribunal has also considered the Service Charges (Consultation Requirements) (England) Regulations 2003 as amended. The Act and these regulations give power to the Tribunal to dispense with consultation requirements if the Tribunal considers that this is reasonable. The consultation requirements are a lengthy and complicated procedure designed to protect tenants. There are situations in the interests of all parties when these should be dispensed with. This is particularly true when there is urgent work needed to protect the fabric of the building and

repairs undertaken quickly will prevent more expensive work being needed later. Care is needed in the assessment as to whether dispensation is given to make sure that the Respondents are not substantially prejudiced by the lack of consultation.

The Inspection

5. The Tribunal inspected the Property in the presence of Stephanie Edwards the Property Manager of the Applicant company. Whilst the Tribunal was inside the Marks and Spencers store the manageress of that store was present and also at one stage Mrs. Wall of flat number 30 of her own volition joined the Tribunal and Stephanie Edwards and made comments that will be dealt with later in this statement.
6. This inspection by the Tribunal is not a structural survey. Although Ms Krisko, a Chartered Surveyor, has now inspected the Property on three occasions the condition of the Property as referred to in this statement of reasons is made as a result of general observation rather than a detailed inspection.
7. The Tribunal first inspected the interior of Marks and Spencers store. They later re-visited the problem areas inside the store after they had inspected the exterior of the problem areas.
8. The manageress of Marks and Spencers store stated that the major problem area is that shown on photograph numbered 39 (a copy of which is annexed) taken by a representative of Aitchison Rafferty. She stated that in late autumn of 2007 after a heavy downpour of rain water came through the ceiling of this area. She had to close down 3 tills and use 51 flower buckets to collect the water. She had a major concern as to the health and safety of both the customers and staff due to the water landing on electrical equipment and also making the floor slippery. The Tribunal considered that this was the major area to which the dispensation application relates. The Tribunal noted that there was no sign of ongoing damp at the moment. This indicates that an internal water source is not the problem. The Tribunal considers that from the representations made that the source of water ingress is more likely to have come from rainfall. There has been no rain for some weeks now.
9. The Tribunal inspected the 4 other areas referred to in the report of Aitchison Rafferty and considered that these problems related to long term seepage rather than urgent work needed to protect the fabric of the building by immediate repair.
10. The Tribunal then proceeded to inspect the decking area on the first floor in the extension. They did not inspect the concrete stairs and rear steps as Stephanie Edwards confirmed that these were part of the long term repair requirements rather than something that needed urgent attention.
11. The Tribunal first of all looked at the asphalt waterproof covering to the first floor decking. Miss Krisko had with her notes that she had made on her first inspection in October of 2000 and many of the defects referred to in the report

of Aitchison Rafferty were there in the year 2000. The Tribunal considers that the asphalt is in reasonable condition for its age and there appeared to be no defect in it that would create the major influx of water as referred to by the Marks and Spencers manageress.

12. The Tribunal then looked at the planter between flats numbered 30 and 31. Inside the planter there are two large pipes that lead downwards. There is a drainage channel both sides of the planter that continues through the planter. There is a small drain gully on number 30's side of the planter which was clear on inspection. Inside the planter next to the channel is an upstand on the outside of the channel furthest away from the flats. There is a smaller upstand on the inner side of the channel. If there were a surge of water and an inability of the drain to cope then this is likely to go back towards the flats and then down to the major problem area inside the Marks and Spencers store.
13. Mrs. Wall in flat 30 then came out and of her own volition stated that when there is a heavy down pour of rain there is a backsurge from the small drain on her side of the planter which causes a substantial flooding issue.
14. The Tribunal then noted an enclosed hatch area at the flat end of the 30/31 planter that would appear to house a downpipe. The Tribunal were not able to open it and considered that it probably had not been opened by anybody in recent years due to the fact that the surround of the hatch had been painted over.
15. The Tribunal then inspected the expansion joint between the extension and the original building and noted minor repairs and maintenance work that would be necessary but nothing that would require dispensation.

Written representations

16. This case is a paper hearing relying on written representations being made by the Applicant. No written representations were received by the Respondents. No request was made by any parties for a hearing.
17. The first document considered was a schedule of repair works prepared by the Applicant in February 2007. The Applicants have made reference to item 7.2 in that schedule providing for asphalt repair and item 9.11 as regards a dye test of the expansion joint and then possible works to that area.
18. The second document considered was a report by L & J Drainage. Their report was based on CCTV film. This was limited. So far as they could see there was no problem with the rainwater pipework.
19. The third document considered was the Aitchison Rafferty report of 3rd December 2007. Again, this was a limited report although it runs to some seven pages. The main problem to which the application for dispensation relates is area number 1 in that report. Only a very small part of the report deals with this and Mr. Robert Wiseman, senior Chartered Building Surveyor

with Aitchison Raffety, says that the water penetration in this area would appear to be as a result of the lack of ongoing regular maintenance to ensure that the rainwater gully and channel do not block to the roof decking to the rear of numbers 30 and 31 along with resultant back surge of water over the asphalt and drainage channel walls and on to areas which are not provided with an adequate waterproof asphalt covering.

20. The fourth document considered is Mr. Wiseman's letter of 22nd January 2008 with estimate from Ifield and Bartlett Roofing Limited annexed. His opinion now is that patch repairs are undertaken to the asphalt decking. Consideration should be given as to how successful these are with regard to water penetration to the accommodation below and the brick planter area can be dealt with once more firm quotations and method statements have been received from relevant contractors. He also recommends professional supervision of this work for which his firm would charge at the rate of £125 plus VAT per hour.

Relevant facts considered by the Tribunal:-

21. The Tribunal noted that two previous cases had been considered by it in relation to this Property – Case number CAM/96/LVTSC/054 and Case number CAM/26UG/LSC/2006/0054. The second case related to an application under Section 27A of the Act relating to whether insurance premiums were reasonable. It is not relevant to this case. The first case is relevant. In 1998 just over £55,000 was spent primarily on replacing the asphalt covered walkways on the first floor with the Applicant's Surveyor Mr. Rawlings giving evidence that this repair should last at least 30 years. A retention of approximately £3,000 was supposed to have been applied to a snagging list and the current state of the asphaltting is indicative that this may not have been done.
22. The Tribunal then bore in mind that this is only an application for dispensation. Whatever works are eventually undertaken they may still be subject to an application under Section 27A of the Act.
23. The Landlords have taken a balanced view. They have not rushed into repair following professional advice and they have obtained an estimate for certain work as requested by the Tribunal. They have given notice of the Section 20ZA application but other than this there is no evidence that they have proceeded with any of the statutory consultation requirements.
24. The Tribunal noted that despite the previous history of the Property none of the tenants has made any written representation or complained about the Landlord's proposals for dispensation. Notwithstanding this the Tribunal bore in mind that the Respondents should not be prejudiced by the lack of consultation. The consultation requirements of the Act and the regulations are to protect the Respondents.
25. The Tribunal also considered health and safety issues that had been raised by Marks and Spencers as regards their staff and customers and electrical

equipment. Although these are the most important the Tribunal also felt the impact on the business of Marks and Spencers should be considered.

26. Although the report of Mr. Wiseman is fairly lengthy and comprehensive for a limited report only a small part of it addresses the major concern so far as the application for dispensation is concerned. His report does not appear to cover any investigation of the area behind the hatch which is by the front door of flat 31.

Conclusion

27. The Tribunal has some sympathy with the Applicant because it agrees that some urgent work is needed to protect the fabric of the building. It is not convinced that patch repairs to the asphalt are the answer. If some repair to that area is needed then this can be done within the limits not requiring dispensation and from any of the previous reserve that is still available for this purpose. The Tribunal highlights again what Mr. Wiseman says about the major problem from Marks and Spencers' point of view. It appears that it is the rainwater gully and channel that are causing the back surge of water. More investigation is necessary to ascertain what work is in fact needed to protect the fabric of the building.



Duncan T. Robertson

Chair

22 February 2008