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**HM Courts  
& Tribunals  
Service**

**Leasehold Valuation Tribunal**

In the matter of S.20ZA Landlord & Tenant Act 1985

**CONFIRMATION of DECISION & REASONS**

**Case Number:** CHI/21UF/LDC/2011/0037

**Property:** 18 Esplanade  
SEAFORD  
East Sussex  
BN25 1JL

**Applicant:** 18 Esplanade Seaford Ltd

**Represented by** Mr Miles Clark (Parsons Son & Basley)  
Mr Chris Johnson (Director)

**Respondents:** The Lessees

**Date of Application:** 18 October 2011

**Date of Hearing:** 23 November 2011

**Date of these reasons** 30 November 2011

**Tribunal Members:** Mr B H R Simms FRICS MCI Arb (Surveyor Chairman)  
Mr T Sennett MA MCIEH (Professional Member)

**DECISION**

1. Confirmation of oral decision announced at the Hearing in accordance with Regulation 18(2) Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003:
2. The Tribunal determines to dispense with the S.20 consultation requirements in relation to the additional works, the subject of this application being **the replacement or repair of lintels to the South and East elevations of the property.**

## INTRODUCTION

3. This is an application by Parsons Son & Basley (PSB) on behalf of their client, 18 Esplanade Seaford Residents Ltd (ESR), the freehold owning management company, for dispensation of all or any of the S.20 consultation requirements in respect of additional qualifying works in accordance with S.20ZA of the Landlord & Tenant Act 1985.
4. ESR is a company formed to own and manage the property and six of the eight leaseholders are shareholders.

## THE LAW

5. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate Regulations or Statutory Instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
6. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.
7. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.
8. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.
9. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements)(England) Regulations 2003, SI2003/1987. These requirements include, amongst other things, a formal notice procedure, obtaining complete estimates and a

provision whereby a lessee may make comments about the work and nominate a contractor to provide a quotation for the work.

10. S.20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to do so. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

## **THE LEASE**

11. The Tribunal was provided with a copy of a sample lease of flat 5 and understands that the other leases are in a similar form.
12. Although the Tribunal had regard to the full lease, little turned on its interpretation during the course of the representations made to it. There are covenants for the landlord to keep the Building insured and to maintain and keep the Building, Service Media and Common Parts in good and substantial repair and condition.
13. There were no matters raised by the parties in respect of the interpretation of the lease.

## **BACKGROUND**

14. On 21 October 2011 the Tribunal issued Directions for the conduct of the case. The matter was listed to be dealt with on the fast track. The Applicant was to prepare a bundle of documents and a statement and these were received.
15. If the Respondents wished to make representations then any documents were to be produced at the hearing. Mr Chris Johnson, the joint lessee of flat 7, attended the hearing but only in his capacity as a director of ESR.

## **INSPECTION**

16. The Tribunal members inspected the property, as previously arranged, in company with Mr Clark of PSB and Mr Johnson. The Respondents were

not in attendance. The Tribunal briefly inspected the exterior from ground level.

17. The property comprises a Victorian building with accommodation on basement and four upper floors with, to the North, a more modern two storey building, the whole being converted into eight flats and maisonettes. The roof is of pitched design covered with tiles. The building is located in an exposed position on the seafront. The South and East elevations are cement rendered and some flats have small balconies with railings. Scaffolding has been erected to the South and East elevations and areas of the rendering have been removed revealing the substrate bricks and cast concrete lintels. The rusty reinforcing steel bars are clearly visible on the face of most lintels and the brickwork above several is uneven and in poor order.

## **EVIDENCE**

18. A Hearing took place at the Law Courts in Eastbourne commencing at 11:15 a.m.

### **The Applicant's Case**

19. Mr Clark for the Applicant had submitted a detailed statement to the Tribunal and spoke to this at the hearing. He reminded the Tribunal that a formal S.20 procedure had been completed in respect of the original work which was described in the Notice of Intention as "*external repair, maintenance and redecoration of all elevations to include any roof repairs and remedial works to defective rendering*". No comments had been received from any lessee.
20. Once the scaffolding had been erected and the rendering repairs commenced it became apparent that a number of lintels over the openings had deteriorated. This deterioration could not have been expected and the replacement of lintels was not envisaged when the original consultation took place and there was no visual evidence of structural deterioration of the lintels until the rendering was removed.

21. Mr Clark explained that the work should be completed before the winter weather in this exposed location and in order to save cost it would be appropriate to utilise the existing erected scaffolding. Mr Johnson, on behalf of ESR, confirmed that the scaffolding had been in place since June and a further delay would involve requesting more funds from the lessees before the work could continue.
22. At the hearing Mr Clark was able to give the Tribunal an email from the consultant, Robert Bowden, outlining cost comparisons for the additional work. Mr Clark explained that it was intended to continue with the same contractor and to omit the redecoration and repair to the rear elevation in order to save overall costs.
23. By formal Notice of Intention and covering letter dated 20 September 2011 PSB advised all lessees that additional work being "*the replacement of reinforced concrete lintels*" was envisaged. No comments have been received from any lessee.
24. The Tribunal was provided with a detailed schedule of proposed work.

### **The Respondents' Case**

25. The Tribunal's Directions provided for the Respondents to make submissions at the hearing if they wished to. Only Mr Johnson attended the hearing but he made no comment as a lessee. No other lessee attended or made representations.

### **CONSIDERATION**

26. There is no doubt that lintel repairs are required. The Tribunal had a detailed expert report. The work is quite extensive but is urgent if the winter weather is to be avoided. It would be more cost effective to complete the additional work from the existing scaffolding and at the same time as the other repairs and decorations.

27. The Tribunal considered whether dispensation would cause significant prejudice to the leaseholders and determined that it would not. A formal consultation procedure had already been completed in respect of the original proposed works and a formal Notice of Intention had been issued in respect of the additional work. The lessees had made no objection to the proposals in response to the Notice or to the Tribunal in respect of the proposed dispensation.
28. The control of costs is important and dispensation would allow the existing scaffolding to be utilised and remove the need for its re-erection which would be at increased cost. This Tribunal does not however determine the reasonableness of the cost of any of the work.
29. Merely for the sake of clarification the Tribunal reminds the parties that either the landlord or the tenant may make an application to the Tribunal under section 27A, or other sections, of the Act for a determination as to the payability and reasonableness of charges either before or after any works. The decision given in this document does not prevent any future application to the Tribunal.

Dated 30 November 2011

Signed

Brandon H R Simms FRICS MCI Arb Chairman