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HM COURTS AND TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HN/LDC/2012/0045

Between:

Lawfield Properties Ltd (Applicant/Head Lessor)

and

Mr Wei Guo & Mrs Meng Meng Wang, Mr S Slade, Mr & Mrs S Exley, Mr R S & Mrs L Powell, Mrs M Newbery, Mrs D D Picardi, Ms S C Wilton, Mr G Bayliss, Mr P J A Brodie, Mr S & Ms L Charlton, Mr D McDonald & Miss J K Royles, Miss J Kuflik, Mr N C Wilcox, Mr Rohan Master, Ms V Morrall (Respondents/Tenants)

In the Matter of :Section 20ZA of The Landlord & Tenant Act 1985 ('The Act')

Premises: Flats 1-15, Digby Chambers, Post Office Rd, Bournemouth, BH1 1BA

Date of Hearing: 10th December 2012

Tribunal: Mr A.J. Mellery-Pratt FRICS Chairman
Mr J Mills

Introduction

- 1.1 On the 20th November 2012, through its managing agent, Mrs K A Gray of Countrywide Property Management, the applicant submitted an application under s 20ZA of The Act requesting dispensation from the consultation requirements of The Act in relation to works that were urgently required to the roof and gutter detailing at 3rd/4th floor levels
- 1.2 On 26th November 2012, the tribunal issued directions detailing the information required by the tribunal and the timetable for dealing with the matter.
- 1.3 On the 10th December 2012, the Premises were inspected and following that inspection a hearing was held at Salterns Harbourside Hotel, 38 Salterns Way, Lilliput, Poole

The inspection.

- 2.1 At 9:50 am on the 10th December 2012, the tribunal inspected the property, accompanied by Mrs Gray of Countrywide Property Management, Mr C Lewington of Bennington Green Limited, building surveyors, together with Mr R. Powell, Mr G Bayliss, and Ms V Morrall, all members of the residents association and tenants of flats at the property.
- 2.2 The tribunal noted that:-
 - 2.2.1 The Premises are part of a building situated at the junction of Post Office Road and Old Christchurch Road having a short frontage to Old Christchurch Road at its southern end and are very much longer frontage to Post Office Road. The building is arranged with commercial accommodation on the ground floor with residential accommodation on 4 upper floors for the majority of the building, but one section with 3 upper floors. The 4th floor areas are within the pitch of the roof and are each linked with the flat below to create maisonettes.
 - 2.2.2 The building appears to have been constructed around the end of the 19th century and the beginning of the 20th century and is constructed of brick walls under a steeply pitched slate roof. The surveyor believes that a number of the walls are of solid construction and there are a number of stone features. There are also attractive brick features on the elevations. The windows are timber casement windows of an attractive design and we were advised that the local authority would not consent to their replacement in more modern materials.
 - 2.2.3 At the northern end of the site the surveyor pointed out a rendered flank wall with extensive cracking to the render surface. Above this was a large chimney stack, which he believed may also be causing some of the problems of damp penetration above the ceiling of flat 4.
 - 2.2.4 On the Post Office Road frontage there was evidence of badly weathered stonework and poor pointing to large areas of brickwork. A cast-iron gutter ran round the entire building. There was evidence of vegetation growing from various areas of brickwork and within some sections of the gutter.
 - 2.2.5 The approach to the upper floors was from a ground floor lobby off Post Office Road with a passenger lift and staircase to all floors. The tribunal was able to inspect flats 11, 12 and 14, but not flat 4.
 - 2.2.6 Within flat 11, there was evidence of damp penetration below the side of the dormer window in the bedroom and also within the storage area in the lounge which is beneath a tower feature. This storage area also showed flaking brickwork and some timbers which had rotted due to prolonged damp penetration.

- 2.2.7 In flat 12 there was dampness evident on the cheeks of the bedroom dormer window and the timbers of the window were in very poor condition with rot showing on the cill. There was also damp showing on the cheeks of the lounge dormer window.
- 2.2.8 In flat 14 there was bad dampness beside and beneath the bedroom window.
- 2.3 At the subsequent hearing better copies of photographs were produced, which enabled the tribunal to see some of the damp problems that were affecting flat 4.

The Hearing

- 3.1 The hearing, later that morning, was attended by Mrs Gray and Mr Lewington
- 3.2 The tribunal established that :-
- a) the head lease, owned by the applicant/head lessor, contained provisions making it responsible for all repairs and maintenance to the reserved parts of the building. Also, within the sample underlease in respect of flat 10 which was with our papers, it was noted that the reserved property included 'the window frames (but not the glass of the windows of the premises)'
 - b) the commercial section of the building was required to contribute 20% to the cost of works to the structure and exterior
 - c) the residents association comprised 13 of the 15 tenants, but that Countrywide, whilst always consulting the residents association, which would in turn advise all its members, also mailed the same letter to every tenant.
 - d) a full consultation procedure under The Act had been followed in respect of repairs which were necessary to flat 14. The consultation period for this work expired on 30th October 2012. It was only when preparing to start that work, that reports were received of water penetration to flats 11, 12 and 4. As a result, the surveyor had advised that it would be uneconomic to carry out each job as a separate item and that they should be done as a single contract.
 - e) it was not possible to carry out a detailed inspection of the exterior of the building where the problems were visible due to the height and difficulties of access. It would therefore be necessary for scaffolding to be erected so that a detailed investigation could be carried out and suspect areas opened up if necessary.
 - f) the contractor to whom it had been proposed to award the contract in respect of flat 14 had provided a quotation for the scaffolding that would enable detailed investigation of the causes of problems and this was about £7500.
 - g) the surveyor considered that the works that would be required would include:-

Stonework repairs.
Re-pointing.
Replacement timber windows
Leadwork repairs.
Re-fixing of slates.
External redecoration at high-level
Repairs and re-decorations internally

- 3.3 As a result of the surveyor's recommendations, the residents association had agreed that it would be sensible to make an application to dispense with the consultation provisions so that the work could proceed as quickly as possible
- 3.4 Following the surveyor's advice that considerable additional work was required, Countrywide had advised all tenants of the situation and had received support for the proposals from 9 of the tenants but had not yet received replies from the remaining 6. The residents association was fully in agreement with the proposed works.
- 3.5 The tribunal was requested to agree to dispense with all the consultation requirements for the additional work on the grounds that all the residents had been consulted and were aware of the cost involved in respect of flat 14 and had been consulted concerning the additional works.

Consideration

- 4.1 The tribunal:-
- a) Accepted that there is extensive damp penetration to the upper flats and also flat 4.
 - b) Accepted that it is sensible for all these works to be dealt with under a single contract rather than piecemeal.
 - c) Did not accept that this work is of an emergency nature as the dampness which is showing, whilst needing attention, is not endangering the health and safety of the occupants. Furthermore, large parts of the work - pointing, stonework repairs and external redecorations - could not be carried out in the coming months of January and February due to the cold and it is unlikely that these works could be carried out until sometime in March at the earliest.
 - d) Accepted that tenants have been kept informed of progress in resolving the problems and that the managing agents have gone through the full consultation procedure in respect of the works required for flat 14.
 - e) Accepted that the difficulties of accessing the exterior of the building is a major difficulty in determining the extent of the works and their subsequent costs.
 - f) Believes that all tenants should be advised of the potential costs of the additional works and therefore dispensation should not be allowed from the consultation requirements for all works.
 - g) Agreed that the first and most important stage of the work is to allow access to the areas of the roof from which the problems

emanate and that this work should proceed as quickly as possible. It would therefore be appropriate to allow a dispensation in respect of the erection of the scaffolding and the associated costs of the surveyor and any building contractor that he may require to open up problem areas

Decision

5.1 The decision, which was verbally advised to the parties immediately after the hearing, is that:-

- a) In respect of the erection of scaffolding along the entire Post Office Road frontage and returning round the corner into Old Christchurch Road and around the northern flank wall, the consultation requirements of The Act may be dispensed with.
- b) This dispensation will also cover the fees of the surveyor and the costs of any building contractor that may be necessary to assist the surveyor in his investigations and the preparation of a specification of works.
- c) This dispensation is subject to the proviso that the costs incurred under a) and b) should be advised to all tenants as soon as they are known with reasonable estimates provided initially if firm quotations are not available, so that all tenants are aware of the costs at the earliest opportunity.
- d) The reasonableness of the costs incurred under a) and b) are still open to challenge by any tenants if they so wish.
- e) The applicant/head lessor, through its managing agent, should immediately serve the initial notice under The Act and the full consultation procedures should be followed in respect of the resulting works which are required.

Dated 10th December 2012

Signed

A J Mellery-Pratt FRICS

Chairman

A Member of the Tribunal appointed by the Lord Chancellor