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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

PROPERTY: 25 Raleigh Road, Exeter, Devon, EX1 1TQ

Applicant: Watrglen Limited

and

Respondents: J K Blackie
R J and Mrs S A Graham
Ms Michelle Pickup
Roger Allen and Mrs Maria Chapman
A J and Mrs P H McKechnie

In The Matter Of

Section 20ZA of the Landlord and Tenant Act 1985

**Landlord's application for the dispensation of all or any of the
consultation requirements contained in Section 20 Landlord and
Tenant Act 1985**

Tribunal

Mr A Cresswell (Chairman)

Mr T Dickinson FRICS

Date of Hearing: 2 April 2013

Appearances: Ms K Hudson for the Applicant
Mr A J McKechnie
Ms M Pickup

DETERMINATION

The Application

1. On 4 March 2013, Countrywide Estate Management, acting on behalf of the Applicant Landlord, made an application to the Leasehold Valuation Tribunal for the determination of an application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985 in respect of works to the roof and in relation to dry rot in Flat 5 at the property.

Inspection and Description of Property

2. The Tribunal inspected the property on 2 April 2013 at 1000. Present at that time were Ms K Hudson and Mrs A Harrison for the Applicant and Mr A J McKechnie, tenant of Flat 5, the top floor flat. The property in question consists of a mid terrace house on 3 floors.

Summary Decision

3. This case arises out of the Landlord's application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985 in respect of works to the roof and in relation to dry rot in Flat 5 at the property. Under Section 20ZA of the Landlord and Tenant Act 1985 (as amended), the Tribunal has jurisdiction to make a determination dispensing with all or any of the consultation requirements "if satisfied that it is reasonable to dispense with the requirements." The Tribunal has determined that the landlord has demonstrated that it is reasonable to dispense with some of requirements, and for that reason does make a determination dispensing with some of the consultation requirements as it details more fully below.

Directions

4. Directions were issued on 13 March 2013. These directions provided for the matter to be heard on the fast track.
5. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. Respondents wishing to contest this application were advised to attend the hearing when they would be given an opportunity to be heard.
6. This determination is made in the light of the documentation submitted in response to those directions and the evidence and the oral representations received at the hearing.

The Law

7. The relevant law is set out in sections 20 and 20ZA of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002. The Tribunal has been given guidance by the Supreme Court also in **Daejan Properties Ltd v Benson** (2013) UKSC 14.
8. The relevant law we took account of in reaching our decision is set out below:
Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 20 deals with the limitation of service charges and consultation requirements

20ZA. Consultation requirements: supplementary

(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.

(5) Regulations 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.

Ownership and Management

9. Countrywide Estate Management is the Managing Agent for the Applicant landlord.

The Lease

10. The lease before the tribunal is a lease dated 15 March 1989, which was made between Roger Charles Pannell and Richard Ren Cockell as lessor and Charles William Ellis as lessee and relates to “Top Floor Flat” at the property.

The Applicant's Case

11. Ms Hudson explained that Countrywide Estate Management had been managing agent since 2008. She had held the portfolio for the property since December 2012.

12. Countrywide Estate Management had been aware of ingress of water to Flat 5 since 2008. It appears that no actual action was taken until she took over the portfolio, save for a survey in 2011.

13. When Ms Hudson saw the 2011 survey in December 2012, she asked the surveyor to make a further study. After an initial visit, the roof space above the bedroom at the rear of Flat 5 and part of the roof space above the lounge of that flat were revealed; the skirting board below and cladding to the right of the window at the head of the stairs leading to Flat 5 were also removed.

14. Following a subsequent visit by the surveyor, Mr P J Harrison, on 13 March 2013, a report of 18 March 2013 was produced.
15. The surveyor's report highlights the need for roof works to cure the ingress of water, either by replacing the whole roof (Plan A), which option the Applicant prefers, or by mending the roof (Plan B), and also the presence of dry rot associated with the window area at the head of the stairs to Flat 5, which requires investigation, excision and treatment.
16. Mr Harrison indicated that the property was in a very serious state of disrepair and had suffered serious neglect and lack of maintenance for a considerable time.
17. Ms Hudson asked the Tribunal to reduce the consultation requirements so that the issues of repair could be addressed as speedily as was possible.

The Respondent's Case

18. Mr McKechnie was anxious that proper quotations should be obtained. He wanted the work to start as soon as possible, subject to ensuring the selection of the best contractor, in relation to which he wanted the surveyor's input.
19. He told the Tribunal that he had first reported ingress of water to his flat in 2005. He had not been able to use the flat as a home since that time.
20. He favoured Plan A described above.
21. Ms Pickup was accompanied by her mother. Ms Pickup, the tenant of first floor Flat 3, told the Tribunal she believed that there had been some roof repairs in 2006 and that a quotation for the replacement of the roof at that time had been considerably less than the surveyor now estimated.
22. Ms Pickup wanted the work to commence as soon as possible and favoured Plan A.
23. No other lessees attended or sent any written submissions for the hearing.

Consideration and Determination

24. The Tribunal finds it clear from its examination of the papers and the oral evidence and its inspection that there has been a longstanding issue with water ingress to Flat 5 and that works are required to ensure the integrity of the building. There was clear physical evidence of dry rot associated with the window at the head of the stairs to Flat 5. Works are required to both problems with some urgency, particularly in relation to the dry rot, where there is a danger of spread within the building and to neighbouring properties.
25. There is a balance to be drawn between speed and caution. The surveyor estimated considerable costs for tenants in a situation where the Tribunal was told that there is no sinking fund available to assist. Caution requires the proper assessment of costs and the selection of an appropriate contractor.
26. It was clear that the 2 streams of work are each likely to involve discreet skills such as to require two quotation exercises.
27. The Tribunal is required to balance the need for a swift approach with the avoidance of prejudice to the tenants.
28. In the event, as the discussion developed, there was a cohesion of views involving the parties and the Tribunal. Both of the parties favoured Plan A. All agreed on the requirement of a speedy result tempered by proper consultation, tailored to the circumstances. The Tribunal's determination represents that cohesion of views and was delivered, in substance, orally at the hearing.

29. The Tribunal grants partial dispensation to the Applicant from the Section 20 consultation requirements to the extent that:
- a. The Applicant landlord is to write an initial letter to each tenant detailing the issues of water ingress and dry rot to the roof and to Flat 5, giving the tenants the opportunity to make representations and observations on the works required and the opportunity too to nominate a contractor for each of the two streams of works required, such nomination and observations to be made to the Applicant within seven days of the sending by the Applicant of the initial letter.
 - b. During the first seven days, the Applicant will obtain specifications of works relating separately to the roof works and the eradication of the dry rot.
 - c. After the first seven days, the Applicant is to seek competitive quotations from three independent contractors for each of the two streams of work, which quotations are to be presented to the tenants for their further observations by the end of the second seven days (i.e. fourteen days from the sending of the initial letter).
 - d. The consultation by the Applicant with the tenants can be completed by the end of the third week (i.e. twenty one days after the sending of the initial letter). It is expected that the surveyor's views of the quotations received will inform this final stage of the consultation process.

Andrew Cresswell (Chairman)

Date 2 April 2013

**A member of the Southern Leasehold Valuation Tribunal
Appointed by the Lord Chancellor**

A. Cresswell