



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

Case Reference : **CHI/43UL/LDC/2014/0016**

Property : **27 Marshall Road, Godalming GU7 3AS**

Applicant : **Elite (FH) Limited**

Representative : **Mr. J Davey
Mr. P. Flynn both of
Residential Management Group**

Respondent : **Mr & Mrs Peterson
Mr & Mrs Woolmington
Mr M. Taylor
Prabhjoat Kaur Bajwa**

Representative : **Mr & Mrs Woolmington
Mr M. Taylor**

Type of Application : **Section 20ZA Landlord & Tenant Act 1985
To dispense with the requirements to consult
lessees about major works.**

Tribunal Members : **Judge D. R. Whitney
B. Simms FRICS**

**Date of hearing
& venue** : **6th June 2014
Guildford County Court**

Date of Decision : **25th June 2014**

DECISION

INTRODUCTION

1. This is an application made by the Applicants property manager Residential Management Group (“RMG”) dated 20th march 2014 to dispense with the formal consultation requirements required under section 20 of the Landlord and tenant Act 1985. Major works were required following water ingress into all four flats within 27 Marshall Road, Godalming (“the Property”).
2. Directions were issued by the tribunal dated 1st May 2014 and both the Applicants and the respondents had filed a bundle of documents upon which they sought to rely.

DECISION

3. The tribunal determined that consultation in respect of works required as set out in the report prepared by Cubitt Consulting titled “Defects Analysis Report” and dated April 2014 could be dispensed with conditional upon the following requirements being met:
 - The Applicant and their agent RMG would have prepared as soon as reasonably possible by Cubitt Consulting a Schedule and Specification of works and would serve this upon each and every Respondent
 - The Respondents would within 7 days of service of the Schedule make any comments or observations upon the same to RMG and nominate any contractors they wished to tender for the works
 - The Applicant would send out requests for tenders requiring all tenders to be received within 14 days of the Schedule and Specification being sent out
 - The Applicant would send to the Respondents a list of all persons invited to tender for the works and copies of all tenders received by them
 - The Respondents would have 7 days from the tenders being sent to them to comment and make observations upon the same
 - The Applicant would then notify the Respondent to whom the contract had been awarded with reasons as to their appointment
4. The tribunal reminds the parties that this decision only affects the requirement as to consultation in respect of these works and no findings or determinations have been made as to the Respondents liability to pay for any such works or the reasonableness of any costs of the works or associated matters.

THE LAW

5. The relevant law can be found in section 20ZA of the Landlord and Tenant Act 1985:

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.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) 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. .

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

6. The tribunal also supplied to both parties representatives a copy of the Supreme Court decision in the case of Daejan Investments Limited v. Benson & Ors [2013] UKSC 14. The tribunal in making its determination had regard to the principles set out in this case and how they should be applied to the question of dispensing with service of the consultation requirements as set out in section 20 of the Landlord and Tenant Act 1985.

INSPECTION

7. Immediately prior to the hearing the tribunal inspected the Property in the presence of Mr P. Flynn and the Respondents.
8. The Property appears to be an Edwardian semi detached house which has been converted into 4 flats. It is of traditional brick construction with a tiled roof with a basement, ground, first and second floor with a flat on each and the fourth flat being within the roof space.
9. The tribunal were shown externally the South facing elevation and the rear of the property. The tribunal had regard to the roof and the various chimneys. It was explained that in or about December 2013 all flats had suffered water penetration although the cause was unclear. The tribunal were shown various cracks in the South elevation and to the rear brickwork which appeared to be in a poor state.
10. The tribunal had the benefit of being able to inspect internally all four flats. It was apparent that all four flats within the building had suffered from water ingress particularly in the wall on the South elevation of the building and to the rear of the building. It appeared to the tribunal that on the day of the inspection this water penetration had either dried out or was drying out. Further the tribunal were advised that certain of the flats (flats C & D) had since the initial water penetration had there windows replaced at the respective leaseholders own cost.
11. Water penetration and the effects of the same were readily visible and it was clear that this had been significant. In flat D (which was within the roof space) there was evidence of water penetration through the ceilings to the rooms at the front of the building. There was also obvious signs of damp penetration to the roof and area around the entrance porch to the main building.

HEARING

12. At the outset of the hearing Mr Davy of RMG clarified that the Applicant was not seeking dispensation to enable them to undertake the quotation prepared by Lynx Response and dated 18th March 2014. It was accepted that in light of the Defects Analysis Report prepared by Cubitt Consulting ("the Cubitt report") and dated April 2014 that this quotation was wholly inadequate.
13. Mr Davy clarified that what was being sought was the right to proceed with works that the Cubitt report recommended. He confirmed that they had been instructed to prepare a schedule of works and specification. He expected to receive this within 14 days of the hearing and would then put this out to tender including the contractor from whom the Respondents had already obtained an alternative quote to that of Lynx Response and then the Freeholder would demand payment and subject to receiving payment would undertake the works.

14. Mr Davy accepted that there had been delays which he put down to workload. He explained that the property manager with day to day responsibility was due to go on maternity leave. He further explained that it was not RMG's policy to pay for quotes and any charge made by Lynx for attending at the property would have been either for undertaking repairs or carrying out necessary inspections to determine the cause of any leak to advise how this could be repaired.
15. When questioned by the tribunal Mr Davy explained nothing had been included in the March budget for these works although the tribunal did not have this before them. It was however, he said, the Applicants policy that they would only proceed with major works once monies had been raised for the same and the Applicant would not fund such works. He accepted that since the problem had been reported in late December 2013/January 2014 a full consultation could have been undertaken. He submitted whilst this may be the case it was apparent works needed to be undertaken sooner rather than later. He believed that originally all of the Respondents were supportive of the works being undertaken without a full consultation and application had only been made when it appeared this was disputed.
16. Mr Taylor told the tribunal that his and other Respondents concerns were that Lynx appeared to have attended on various occasions and done little save it appeared that they had charged for preparing their quotation. He suggested that there appeared to be no transparency in the process. The Respondents accepted works needed to be undertaken and that the works were urgent but wanted to have control over the cost of the same.
17. Mr & Mrs Woolmington supported Mr Taylor's comments and all confirmed they objected to the application. None of the Respondents identified any particular prejudice to them save for a lack of transparency on questioning by the tribunal.

DETERMINATION

18. The tribunal considered the matter at the end of the hearing and communicated its decision orally to the parties so that matters could move forward.
19. It was clear that RMG's handling of the matter since the beginning of the year was far from adequate. Lynx in an email to RMG on 7th January 2014 recommend then that a surveyor be appointed to advise on the works required. It had then taken some months and further visits by Lynx (for which there appeared to be a cost) before a surveyor was appointed resulting in the Cubitt report received after this application was made.
20. What was apparent to the tribunal was that the building had plainly suffered from serious water penetration in the storms of December 2013 and January 2014. All parties accepted that works were required.
21. The tribunal had enormous sympathy with the Respondents who had promptly requested action at the beginning of the year and had been actively chasing the

same with little happening. It was obvious from the correspondence before the tribunal in the two bundles why their initial support had waned over time and as to why they objected to the application.

22. The tribunal had listened carefully to what Mr Davy said. He was candid and readily admitted that there had been failings. He himself confirmed that RMG would wish to keep the Respondents informed as to progress and they were happy to accept nominations for alternative quotations for any works required.
23. There was no obvious prejudice to the Respondents in consultation being dispensed with subject to reasonable conditions. All parties agreed works needed to be undertaken and it was preferable to try and have these undertaken this year before the winter came to prevent further problems. It was clear that since the Applicant as yet had no specification or quotes that a process would have to be undertaken and the Respondents could be given an opportunity to engage in this process.
24. The tribunal therefore determined that the application could be dealt with as set out in paragraph 3 above. The conditions attached must be strictly adhered to by the Applicants and in default no dispensation is granted. The tribunal also reminds the parties as to paragraph 4 above.

Judge D. R. Whitney

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.