


9803

		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	LON/00BC/LDC/2013/0139
Property	:	Flats A, B and C at 2 Fairfield Road, Woodford Green, IG8 9JH
Applicant	:	The Alan Matthey Group (landlords)
Representative	:	Fifield Glyn (chartered surveyors) and Tant Building Management (managing agents)
Respondents	:	Ms C. Stewart (leaseholder of Flat A), Mr M. Reynolds (leaseholder of Flat B) and Ms C. Sloneem (leaseholder of Flat C)
Representative	:	None
Type of Application	:	Application for an order dispensing with the statutory consultation requirements made under section 20ZA Landlord and Tenant Act 1985
Tribunal Members	:	Professor James Driscoll, solicitor, (Tribunal Judge) and Mr Chris Gowman BSc MCIEH (Tribunal Member)
Date and venue of Hearing	:	On the 14 January 2014 the Tribunal considered the application on the basis of the papers filed neither party having sought an oral hearing
Date of Decision	:	14 January 2014

The decisions summarised

1. Under our powers in section 20za of the Act the statutory consultation requirements in section 20 of the Act (and in the regulations made under that provision) are dispensed with. We are satisfied that it is reasonable to do so in the circumstances outlined by the landlord's managing agents.

Background

2. The applicants are the owners of the freehold of the subject premises which was originally constructed as a house and later converted into three flats all sold on long leases.
3. The respondents are the current owners of the flats. A copy of the lease for Flat A was included in the bundle of papers and we have assumed that the other two flat leases are in a similar form. Under the lease for flat A, the leasehold has to pay one-third of the landlord's expenses in repairing, maintaining and insuring the premises.
4. The landlords have appointed Fifield Glyn as their surveyors and Tant (Building Management) Limited (who part of Fifield Glyn group) are the appointed managing agents.
5. Dampness to Flat A and elsewhere appeared in 2011 and in January 2013 a schedule of works was prepared and later revised in March 2013. A detailed report on the dampness to Flat A was prepared by Lancaster Brown, chartered surveyors and sent to the landlords in the form of a letter dated 28 October 2013. It seems that it was then that the urgency of undertaking remedial external works became apparent.

The application

6. Application was made to this tribunal dated 29 November 2013 seeking an order dispensing with the statutory consultation requirements referred to in paragraph 1 above. Directions were given on 6 December 2013 and these were later varied at the request of one of the leaseholders. At the time of the application the managing agents served a statement about the proposed works with two tenders which were very similarly priced (one at £3,900, the other at £4,010 both exclusive of VAT).
7. As none of the parties has sought a hearing we considered the application on the basis of the papers filed on behalf of the landlord on 14 January 2014. The leaseholder of Flat C was given additional time to prepare a statement opposing the application and she was asked to produce the statement by 6 January 2014. However, no such statement has been sent to us.
8. Although this matter has a considerable history and whilst it is far from clear why the works were not carried out before (with a full consultation process as required under the Act) we are satisfied, in light of the October 2013 report that the work has to be carried out as soon as possible. Those representing the landlords have shown us through the documents supplied

that they have kept the leaseholders informed and that they have undertaken a tendering exercise. We calculate that the likely costs for each of the three leaseholders will be in the region of £1,300 to £1,400 (exclusive of VAT).

Our decision

9. As the works were clearly required, that the managing agents have taken reasonable steps to keep the leaseholders informed and that they have appointed a contractor following a competitive tendering exercise, we are satisfied that it is reasonable to order that the full statutory consultation requirements may be dispensed with.
10. It is important to note that this order does not concern any issue of whether any service charges will be reasonable or payable. Any leaseholder has the right to challenge the actual charges made.

Professor James Driscoll
Solicitor and Tribunal Judge

Appendix of the relevant legislation

Landlord and Tenant Act 1985

Section 20

Limitation of service charges: consultation requirements

(1)

Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a)

complied with in relation to the works or agreement, or

(b)

dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2)

In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3)

This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4)

The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a)

if relevant costs incurred under the agreement exceed an appropriate amount, or

(b)

if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5)

An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a)

an amount prescribed by, or determined in accordance with, the regulations, and

(b)

an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6)

Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7)

Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined

Section 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.