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

Case Reference : **CHI/21UD/LDC/2014/0042**

Property : **Haig House Apartments, Devonshire Road, Hastings, E Sussex TN34 1NH**

Applicant : **Flathold Ltd**

Representative : **Ms S Hensher, Financial Director, Oakfield Ltd - Managing Agents for Applicant
Mr N Standen MRICS – Standen Associates Ltd**

Respondents : **Mr D Colvin-Morgan (Flat 1)
Mr P & Miss J Tegart (Flat 2)
Ms B Younie (Flat 3)
Mr N Newstead, Oakfield P M Ltd
(Commercial part – Ground, First and Second Floors)**

Representative : **None**

Type of Application : **Section 20ZA Landlord and Tenant Act 1985
Application to dispense with consultation procedure
Various works**

Tribunal Members : **R T Athow FRICS MIRPM - Valuer Chair
P A Gammon MBE BA (Lay member)**

Date and venue of Hearing : **None**

Date of Decision : **24th November 2014**

DECISION

Background

1. This application relates to additional repair works found to be needed once major works were commenced on a project where Section 20 consultation had already been carried out. This additional work was listed as follows:
 - Replacement rotten beads to front windows and replace cill.
 - Replace rotten fascia and door frame cill to lower flat roof.
 - Remove corroded render mesh to middle Street façade and re-render.
 - Extra over re-rendering to walls.
 - Replace tiles to main roof, Devonshire Road side.
 - Ply, mesh and render top of window to Devonshire Road side.
 - Flashing to stone apex.
 - Fit new vent tile
 - Fit new fan grill.
 - Replace corroded/rotten window cill over the stairwell window.
2. The First-Tier Tribunal Property Chamber (Residential Property), hereafter referred to as “FTT”, gave directions on 17th September 2014, following an application dated 10th September 2014 being made. In the Directions it was decided that the only matter for determination was whether or not it is reasonable to dispense with the statutory consultation requirements under Section 20 of the Landlord and Tenant Act 1985 as amended. The directions stated that the matter could be decided on the papers and could be determined without a Hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013.
3. The Tribunal office sent a form to the lessees and set a timetable for them to reply, giving them the opportunity to
 - a) support the application,
 - b) name a spokesperson or
 - c) request a Hearing.

No responses were received by the Tribunal.

4. The Applicants were also given a timetable to make full submissions, and send a full copy to the lessees and this was done.
5. The Respondents were then given the opportunity to oppose or comment on any of the papers submitted by the Applicants but none were received by the Tribunal.
6. Further documents were requested by the Tribunal prior to the Inspection as this case included work undertaken as a result of the original Section 20 consultation. Additional papers totalling 120 pages were received and comprised:

- Letters and Reports from Standen Associates Ltd, Chartered Surveyors dated 1st May 2012 and 27th September 2012.
- The specification from Standen Associates Ltd dated May 2012.
- Tenders from SDS Builders, Livesley Projects Ltd, Martin & Bowles Ltd for the work in the specification.
- Standen Associates Ltd letter dated 10th July 2012 and the spreadsheet analysis.
- The Notice of Intention dated 28th March 2012 and its covering letter sent to the lessees.
- The Statement of Estimates dated 20th July 2012 and its covering letter sent to lessees.
- The Notice of Reasons dated 12th June 2013 and its covering letter sent to all lessees. This included a summary of lessees' observations regarding the original consultation process together with the Applicants responses to them.
- 11 photographs showing various aspects of additional work found to be needed once the contracted work had begun.

Inspection

7. The Tribunal inspected the property on the morning of 24th November 2014 in the presence of Ms Hensher and Mr Standen. This Victorian property spanning 5 floors occupies a complex site in the centre of Hastings commercial district. It is rendered with colourwashed external elevations. It is mixed use with much of the property being commercially let and the remainder in 3 self-contained flats, all held on long leases.
8. The inspection was restricted to the exterior of the building. Access was kindly available to roof level via the top flat and its roof terrace from which the complexity of the layout and construction could be better observed.
9. The Tribunal were shown the extent of the works originally proposed as laid out in the 2012 Specification, especially the render repairs throughout the building. It was clarified that upon commencing the works there were found to be many additional areas that had lost their bonding key and needed to be removed and re-rendered. In total the area repaired was twice that originally specified.
10. Other works came to light once work commenced, in particular the rotten timber and metal lintel over the first floor window. The Tribunal noted the advanced decay to the wood and metal of the lintel.
11. The Tribunal were informed that the projected cost of the repair to the flashing to the stone apex of £1,420.00 + VAT was based on an estimate from SDS for this work.

12. Mr Standen confirmed that he was the supervising surveyor for the contract.

The Case for the Applicant

13. The original Specification was prepared after a visual inspection from ground level and full Consultation procedures took place in accordance with Section 20 of the Landlord and Tenant Act 1985.
14. When work commenced additional areas of rendering repairs were found to be necessary generally throughout the building. The lintel was exposed and found to be in an advanced stage of decay and required total renewal. Other defects also came to light.
15. When the full extent of the additional works became clear the Landlord's Agent issued a second Section 20 Notice of intention dated 12th September 2014 which related solely to these additional works. The notice included a list of additional works required amounting to ten items. No prices were given in that Notice of Intention. At the same time the Agents informed the lessees they would be making an application under Section 20ZA for dispensation on the full consultation process.
16. It is understood that there were no observations or nominations for contractors from the lessees under either Notice of Intention.

The Case for the Respondents

17. The Tribunal has not received any communication from any of the lessees.

The Law

18. The statutory provisions primarily relevant to these applications are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act).
19. Section 20ZA (1) of the Act states:
 - a. '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.'
20. In Section 20ZA (4) the consultation requirements are defined as being:

- i. 'Requirements prescribed by regulations made by the Secretary of State'. These regulations are The Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations').

21. In Section 20(2) of the Act 'qualifying works' in relation to a service charge, means works to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge.
22. If the costs of any tenant's contribution exceed the sum set out in section 6 of the Regulations (which is currently £250) the Landlord must comply with the consultation requirements. The relevant requirements applicable to this application are those set out in Part 2 of Schedule 4 of the Regulations.
23. The Tribunal may make a determination to dispense with some or all of the consultation requirements but it must be satisfied it is reasonable to do so. The Tribunal has a complete discretion whether or not to grant the application for dispensation and makes its determination having heard all the evidence and written and oral representations from all parties and in accordance with any legal precedent.
24. The matter has been considered in the leading case of **Daejan Investments Ltd v Benson & Ors [2011] EWCA Civ 38, 2011** in which three main issues were identified namely (i) whether the financial consequences to the landlord were relevant to a grant of dispensation under S20ZA; (ii) whether the nature of the landlord was relevant; and (iii) the correct approach to prejudice allegedly suffered by a tenant as a consequence of a landlord's failure to comply with the Consultation Regulations.
25. In the above case it was held that the financial effect of refusing dispensation on the landlord is an irrelevant consideration when exercising discretion under S20ZA (1) [59 of the Judgment]. Although there is no "closed list" of situations in which dispensation might be granted, the following situations might commend a grant of dispensation: (i) the need to undertake emergency works; (ii) the availability of only a single specialist contractor; and, (iii) a minor breach of the procedure under the Consultation Regulations which causes no prejudice to the tenants [63].
26. In the above case it was noted that the nature of the landlord can be a relevant factor, e.g. where the landlord is a company owned or controlled by the leaseholders [67].
27. It was further noted that in considering whether to grant dispensation, the FTT should consider whether the breach of the consultation regulations has caused significant prejudice to the leaseholders [72]. The landlord's failure to comply with the regulations,

as ruled by the FTT, caused the respondents serious prejudice. The curtailment of the consultation exercise was a serious failing [73].

The Consideration

28. The Tribunal considered all of the evidence submitted and the clarifications made by Ms Hensher and Mr Standen.
29. The Tribunal considered the additional rendering required which came to light after the contract had started. It had to consider whether this could reasonably have been observed and, therefore, included in the original specification. The original specification identified a number of areas throughout the property where render repairs were required, totalling in all about 50 square metres. During the course of the work a further 51 square metres were found to be re-rendered.
30. The Tribunal considered the deteriorated condition of the lintel and whether this should have been observed, noted in the original report and included in the original specification. It had before it the two estimates from P Coglan and SDS for these works.
31. The Tribunal considered the remaining additional works.

The Findings and Reasons

32. In most cases it is possible to identify the extent of the works required from a ground level inspection. In this case the building is unusually complex in its layout and design, making full visual inspections impossible without recourse to scaffolding or a cherry picker. Even if access had been available, it would not have shown the full extent of the deterioration of the lintel or the render. Very often the full extent of the works required only come to light when the contractor is 'eye-to-eye with the problem once work has commenced. It is usual to allow some form of contingency in this size of work and the supervising surveyor had allowed a 10% sum for this. In this case, this sum has proven to be inadequate, but could not have been accurately assessed for the forgoing reasons.
33. This situation is addressed in legislation by the inclusion of Section 20ZA of the Act and the landlord has sought to regularise the situation appropriately. It does not cause significant prejudice to the Respondents as the work needs to be undertaken to protect the integrity of the property. Under the terms of the lease the landlord has an obligation to maintain the structure of the building.
34. The Tribunal was satisfied that once the work was under way, the correct action was taken to mitigate the inconvenience to the lessees and that there was no prejudice to them. Both the original proposed

works together with the additional works found during the course of the contract are deemed to be necessary to comply with the Applicants obligations under the lease.

35. The Tribunal orally informed the Applicants that the application to dispense with the consultation requirements in relation to these additional qualifying works was granted in full as sought by them.
36. The purpose of this decision is to formally record that the application was granted and the basis for doing so.
37. It should be noted, the Tribunal has not considered whether any costs incurred in relation to the works carried out are reasonable or not. If and when those costs are known, they can be challenged by the Respondents if they are considered to be unreasonable.
38. It is important to distinguish between the reasonableness of dispensing with the notice requirements and the reasonableness of the works themselves.
39. The decision of the FTT cannot give or imply any judgement about the reasonableness of the quality and/or costs of the works themselves.

Signed

Richard Athow FRICS MIPRM Valuer Chair

Dated

26th November 2014

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber), which may be on a point of law only, 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.