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

Case Reference : **LON/00AY/LDC/2017/0123**

Property : **Century House, 245 Streatham High Road, London SW16 6ER**

Applicant : **Century House (Freehold) Ltd**

Representative : **Houston Lawrence (Agent)**

Respondent : **33 leaseholders named in the list annexed to the Application**

Representative : **Angus French, Toby French, J Chelliah, Robert Knock, Robert Maccorgarry**

Date of Application : **16th October 2017**

Type of Application : **Dispensation with consultation**

Tribunal : **Mr I B Holdsworth MSc FRICS**

Date and venue of hearing : **29th November 2017
10 Alfred Place London WC1E 7LR**

DECISION

The Tribunal determines to allow this application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 in respect of the works specified in the contract number 2679 provided by City Security Services dated 2nd October 2017 at a weekly charge of £4,200 plus VAT and the costs required for necessary mobile phone use, subject to these works falling under the Landlord's obligations under the leases of the flats.

The Tribunal directs the applicant to send a copy of this Decision to the leaseholders and to display a copy in the common parts of the building.

The Application

1. The applicant made an application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act (the “Act”). The application affects some 33 leaseholders at Century House, 245 Streatham High Road SW16 6ER (the “Property”) whose names are annexed to the application form. The applicant asserts that it is necessary for fire patrols to be provided at this property from 29th September to completion of essential works in early December 2017.
2. The six storey block built during the 1930’s as commercial premises, was converted to residential use in the early 1980’s. Several Fire Risk Assessments since 2013 had identified serious defects at the property that needed remedial work. The urgency of the fire safety works became a concern to the London Fire Brigade at an inspection in September 2017. They issued an enforcement notice that required all necessary fire safety works to be carried out immediately and applied the supplementary condition that a waking fire watch be instigated and continue until works completion.
3. The applicant intends to charge the respondents their proportion of the cost of provision of this fire watch. The Tribunal notes that the only issue which we are required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements.

This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of Section 27A of the Act.

Response to the Application

4. On 24th October 2017, the Tribunal gave directions. A reply form was attached to be completed by the leaseholders who oppose the application. The Tribunal notified the parties that we would determine the application on the basis of written representations unless any party requested an oral hearing. There was a request from Angus French, leaseholder of Century House for an oral hearing and the Tribunal made the necessary arrangements.
5. Two leaseholders have written to the Tribunal. In summary, their comments are as follows:-
 - I. On 6th November, Mr Toby French objected to the fact that leaseholders will be obliged to contribute to the cost of the fire patrols. He also said that the reason for the need of fire patrols was the delay to carrying out the fire safety works caused by the managing agent.
 - II. On 7th November, Mr J Chelliah, Century House, 245 Streatham High Road, London SW16 6ER objected on the grounds that

there were more effective alternatives to monitoring the fire risk than the use of 24/7 fire safety patrols.

6. The applicant has responded to each of these objections.
7. The applicant has filed an extensive bundle of documents in support of its application. Counsel submitted a skeleton argument at the hearing to assist Tribunal in their deliberation of the application.

Statutory Duties to Consult

8. The obligation to consult is imposed by Section 20 of the Act. The proposed works are perceived as qualifying works. The consultation procedure is prescribed by Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the Consultation Regulations”). Leaseholders have a right to nominate a contractor under these consultation procedures.
9. The Landlord is obliged to serve leaseholders and any recognised tenants association with a notice of intention to carry out qualifying works. The notice of intention shall, (1) describe the proposed works, (2) state why the Landlord considers the works to be necessary, and (3) contain a statement of the estimated expenditure. Leaseholders are invited to make observations, in writing, in relation to the proposed works and expenditure within the relevant period of 30 days. The Landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The Landlord shall respond in writing to any person who makes written representations within 21 days of those observations having been received. Section 20ZA(1) 1 of the Act provides that where an application is made to the appropriate Tribunal for determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, a Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Background

10. The freehold of the property was transferred to the present owners in or around 2014. The freehold is owned by Century House (Freehold) Ltd. The tribunal is told this company is wholly owned by the property leaseholders.
11. The managing agents, Houston Lawrence, were appointed in 2014. It had been recognised for some time that the property suffered from dilapidation and there was a need to carry out some substantive repairs to improve the fabric of the building. These works included fire safety works.
12. Watts Building Services (“**Watts**”) were instructed in December 2016 to carry out a condition survey and advise on necessary remedial works.

13. They reported later that month on necessary works. They submitted their report as two schemes; a comprehensive works programme, the other emergency works only. A detailed estimate for the works was obtained from Watts in April 2017 and this formed the basis of a Section 20 consultation in respect of the emergency works. On completion of the Section 20 consultation, a meeting was held with the leaseholders in July 2017. The Watts report was discussed, and it was decided that the tender returns were not acceptable and the leaseholders sought to re-tender the scheme. As a result of this instruction to the managing agents a revised specification for improvements to fire control and compartmentation was prepared by H L Professional Services in August 2017.
14. A visit from London Fire Brigade was carried out on 19th September and this was followed by a subsequent visit to the premises by the Fire Brigade some ten days later. On the second visit, London Fire Brigade requested immediate emergency measures to be put in place in the form of a waking fire watch prior to completion of the fire safety works.
15. A letter dated 11th October 2017 summarised the position adopted by London Fire Brigade at that meeting. In summary, they told the claimants that if a waking fire watch was not instigated then a prohibition notice would be served on the premises. This would require immediate evacuation of Century House. The alternative was the instigation of a waking fire watch which would commence immediately and continue until all the necessary fire safety works were satisfactorily completed.
16. The claimants recognised the inconvenience immediate evacuation of the premises would cause and obtained two quotes for carrying out the 24/7 supervision. The claimants instructed the contractor who submitted the cheaper quote at a cost of approximately £5,000 (inclusive of VAT) per week to carry out the 24 hour watch.
17. The London Fire Brigade ultimatum gave the claimants no time to carry out Section 20 consultation for this component of the work and they now seek dispensation from consultation.

Hearing

18. In response to the request by Mr Angus French, leaseholder, a hearing was held on 30th November.
19. The applicants were represented by Counsel, Miss Polimac. Mr Turl, Chief Operating Officer of Houston Lawrence, managing agents for the property and three directors from the Century House (Freehold) Ltd also attended, namely Mr J Bradley, Mr M Gin and Mr Sharma also attended.

20. The leaseholders were represented by Mr Angus French, Mr Toby French, Mr J Chelliah and Miss Lockyer. Representations were made by three leaseholders. Miss Lockyer attended but chose not to speak at the hearing.

Relevant Matters Raised by Parties at Hearing

Claimants

21. Counsel for the Claimants argued that the provision of a fire safety watch is a “service” rather than “qualifying works”. The Act defines a “qualifying long term agreement” as an agreement entered into for a term of more than 12 months. The present safety watch contract is a short term temporary arrangement pending the conclusion of the works. It will last at most six months. It was submitted that no dispensation is required for the waking fire watch as it does not amount to qualifying works or qualifying long term agreement.
22. Alternatively the Tribunal was asked to consider that the waking fire watch was (a) required by London Fire Brigade, (b) an emergency measure, failing which a prohibition notice would have been served which would have required all residents to evacuate their homes, (c) efforts were made to obtain quotes prior to instigation of the works and as a consequence no prejudice was shown by the leaseholders.

Respondents

23. Mr Toby French raised a series of procedural issues that he claimed invalidated the application made by the Claimants. These were submitted in his letter dated 20th November 2017. The Tribunal advised that these were not deemed serious breaches of the directions that caused prejudice to parties. The Tribunal advised the hearing could proceed.
24. Mr Angus French suggested that the Claimants were remiss in not taking legal advice when they received the ultimatum from the London Fire Brigade that a prohibition notice would be served or the waking fire watch should be instigated. He asserted that the direction from the Fire Brigade could have been temporarily accepted, whilst further legal enquiries were made. It was his understanding that no legal enquiries were made to determine an alternative action in September or since.
25. Mr Chelliah reiterated his view that there were alternative means of monitoring the safety of the building. He told the Tribunal that a fire detection system had been discussed with the London Fire Brigade and the details of the system sent to the Managing Agents. He was disappointed this was not pursued by the Managing Agents. The leaseholders expressed dissatisfaction with the Managing Agents in that they failed to expedite the revised fire safety works specification after the meeting in July of leaseholders. They claim that it was this two month delay that has led to the need for the waking fire watch.

26. The Supreme Court's decision in the case of *Daejan Investments Ltd v Benson and Ors* [2013] 1 W.L.R. 854 clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.
27. The scheme of the provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.
28. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
29. The burden is on the landlord in seeking a dispensation from the consultation requirements. However the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered as a result of the lack of consultation.
30. The Tribunal having considered the evidence is satisfied that the works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply. The Tribunal does not accept the argument by Counsel that they are a service. The fire patrols are an essential element of the fire safety works. They are not a separate service but an integral component of the safety works scheme. The discrete application made by the claimants to the Tribunal for dispensation does not change the purpose or character of the activity.
31. The Tribunal is satisfied that the works are of an urgent nature given the ultimatum made by the London Fire Brigade that without the waking fire watches a prohibition notice would be served upon the property. The Tribunal is not persuaded a legal remedy to the Fire Brigade ultimatum delivered to the claimants is readily available given their statutory powers.
32. The Tribunal is satisfied that the works are for the benefit of and in the interests of both landlord and leaseholders in the Property. Mr Turl, the operating officer for the managing agents confirmed that Houston Lawrence had explored alternative methods of monitoring the building rather than safety watch, but the costs were prohibitive.
33. The Tribunal noted that only 2 of 33 leaseholders had objected to the grant of dispensation.

34. The Tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to the failure to consult. The Tribunal noted that the managing agent had taken more than 2 months to produce a revised fire safety works specification after the Leaseholders meeting on 12th July 2017. This is a disappointing delay, but the Tribunal does not consider that there would have been any significant saving in the cost of the fire patrol works in the event that the statutory consultation had been fully complied with. The Tribunal is not persuaded that the leaseholders have suffered any financial prejudice as a result of the failure to consult.
35. The Tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted under the 2003 Regulations. However, the works were urgent, and the applicant has taken reasonable steps in the circumstances and time available, to provide the leaseholders with relevant information. The claimants did obtain two quotes for the provision of the works and accepted the lower cost tender. The Tribunal can confirm that the costs charged by the contractors are comparable to those made for similar fire patrols at nearby at-risk properties. In view of the circumstances under which the works became necessary the Tribunal does not consider that the leaseholders, in losing an opportunity to make observations and to comment on the works or to nominate a contractor, suffered any relevant prejudice.
36. The Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are dispensed in respect of the works specified in contract number 2679 provided by City Security Services dated 2nd October 2017 at a weekly charge of £4,200 plus VAT and the costs required for necessary mobile phone use, subject to these works falling under the Landlord's obligations under the leases of the flats.

Chairman: Ian B Holdsworth Valuer Chairman

Dated: 4th December 2017