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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/00S/LDC/2017/0052

Property : Elmfield North & West, 24 Millbrook Road East,
Southampton. SO15 1JA

Applicant : St Sampsons Finance Limited

Respondents : Various leaseholders

Type of Application: Application under Section 20Za Landlord and
Tenant Act 1985 ("the 1985 Act") for dispensation
from consultation requirements - Decision dated
7th February 2018

Tribunal Members: Judge P J Barber
Mr P D Turner-Powell FRICS Valuer Member

REFUSAL OF PERMISSION TO APPEAL

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THE APPEAL :

1. By a statement citing Grounds of Appeal dated 9th February 2018 (“the Appeal”), St Sampsons Finance Limited applied to the Tribunal requesting permission to appeal its decision dated 7th February 2018 (“the 2018 Decision”).
2. The reasons or grounds of the Appeal were, in broad summary, stated to be in relation to the following:

(1) The Tribunal made an error of law by deciding that the costs of the works were not recoverable by the Applicant from the Respondents, even though it had granted dispensation, and that as a matter of law the effect of Section 20 (1) of the 1985 Act is that if the consultation requirements are dispensed with, the relevant contribution of the tenants to the costs of major works is not limited and, absent any other finding of the Tribunal, whenever dispensation is granted, the total cost of the works is payable. Further, that as the Tribunal`s sole reason in the earlier decision CHI/00MS/LSC/2016/0075 for finding that the Applicant could only recover £250 per leaseholder, was that consultation requirements had not been followed, it must follow from dispensation having been granted that the costs of the works are payable in full (subject to a re-apportionment of some of the costs).

(2) The Tribunal`s decision to award the Respondents costs of £2,010, because it would be unfair for the Respondents to bear their own costs in circumstances where the Applicant could have made an application for dispensation earlier, was a decision that no reasonable Tribunal could have made on the evidence before it; reference was made to the remarks made by Lord Neuberger in paragraphs 59-62 (inclusive) and also paragraph 68 of the decision in Daejan Investments Limited v Benson [2013] UKSC 14; [2013] 1 WLR 854. The Tribunal lacks jurisdiction to award costs (other than under rule 13); the award of costs must be linked to the dispensation application and is limited to the cost of “investigating” or “establishing” prejudice and, if prejudice is established, contesting the application. The fact that the landlord could have made the application earlier, is not a reason for awarding costs and there was no evidence of invoices before the Tribunal, the Respondents simply having asserted in their statement of case that they had incurred legal fees of £2,010. As the Tribunal found no evidence of prejudice, it is difficult to see what costs were incurred in establishing any prejudice and the Tribunal had no lawful basis to make an order for costs as a condition for granting dispensation.

DECISION OF THE TRIBUNAL :

3. The Tribunal has considered the Applicant`s request for permission to appeal and determines that
 - a. It will not review its decision, and
 - b. Permission is refused

4. In accordance with Section 11 of the Tribunals, Courts and Enforcement Act 2007 and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 the Applicant may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.

REASONS FOR THE DECISION :

- 5 In regard to the first ground, it is incorrect to state that the Tribunal made an error of law by deciding that the costs of the works were not recoverable even though it had granted dispensation; paragraph 2 of the decision section, on Page 2 of the 2018 Decision, provided that the Tribunal made no determination on whether the charges are reasonable or payable. Furthermore, it is incorrect to assert that as a matter of law, if consultation requirements are dispensed with and absent any other finding, the total cost of the works are payable. Section 20(1) of the 1985 Act provides for tenant contribution to be limited unless consultation requirements have been followed, or dispensation granted. It does not follow that Section 20(1) provides that if dispensation is granted, total costs are payable as a matter of course. Tenants remain entitled to challenge the reasonableness of the costs under Section 27A of the 1985 Act. Reasonableness as to such costs, was the subject of the previous decision CHI/00MS/LSC/2016/0075 (“the 2016 Decision”); in those proceedings the Applicant’s evidence as to the extent of works properly included in the service charge, as opposed to those costs relating to the Link House or Boiler Room and not properly included in the service charges, was confused and unclear. Given the conclusions reached by the Tribunal in the 2016 Decision, that the Section 20 consultation procedure had been significantly flawed, it was not necessary for the Tribunal to go on to attempt to consider in further detail, the reasonableness of the total costs, particularly given the Applicant’s lack of clarity in regard to them, and as to their specific and proper apportionment.
6. In regard to the second ground, Lord Neuberger makes it clear in paragraph 61 of the decision in *Daejan v Benson*, that the Tribunal is not precluded from imposing as a condition for dispensing with consultation requirements, a term that the landlord pays the costs incurred by the tenants in resisting the landlord’s application for such dispensation and that the condition could be a term on which the Tribunal granted the statutory indulgence of a dispensation to a landlord, not a freestanding order for costs, and that a Tribunal may require the landlord to pay the tenants’ costs on the ground that it would not consider it “reasonable” to dispense with the requirements unless such a term was imposed. Further at paragraph 68, Lord Neuberger stated that the Tribunal should be sympathetic to the tenants not merely because the landlord is in default of its statutory duty to the tenants, and the Tribunal is deciding whether to grant the landlord a dispensation. Evidence was given by the Respondents in their statement of case in the proceedings which resulted in the 2018 Decision, that they had incurred legal fees of £2,010 and also that they collectively incurred hundreds of hours of unbilled time themselves in order to prepare for the hearing, which they proposed by way of a fair measure of calculation, in a further sum equal to the legal costs. The Tribunal considered that it would be reasonable as a condition of granting dispensation, to order payment by the Applicant of the costs limited only to the sum of £2,010, rather than including

any further or additional allowance for costs as had been claimed by the Respondents. No full argument or detailed challenge was raised for the Applicant at the hearing, in respect of the sum of £2,010 claimed by the Respondents; Mr Madge-Wyld`s main submission in regard to costs was that they should not be allowed in the absence of a finding of relevant prejudice.

Dated this 9th day of March 2018

Judge P. J. Barber