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

Case Reference : LON/00AN/LDC/2018/0140

Property : 55 Sinclair Road London W14 0NR

Applicant : 55 Sinclair Road RTM Company Limited

Representative : Mr M Benyermak MIRPM of Dexters
block Management

Respondents : See attached schedule of lessees

Representative : None

Type of Application : Dispensation from consultation
requirements under section 20ZA
Landlord and Tenant Act 1985 ("the
Act")

Tribunal Members : Mr Charles Norman FRICS
(Valuer Chairman)
Mr Alan Ring

Date of Decision : 15 October 2018

Determination by Written Representations

DECISION

Decision

1. The decision of the Tribunal is that the application for dispensation from the consultation requirements (to the extent necessary) be **GRANTED** subject to the following conditions:
 - i. Within seven days the applicant shall convene a meeting at which all lessees shall be invited to discuss the matter.
 - ii. The applicant shall have regard (but is not bound to accept) any verbal or written observations made by the lessees at the meeting or received within 14 days thereafter.

Reasons

Background

2. Application to the Tribunal was made on 21 August 2018 for a dispensation from the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) (set out in the appendix).
3. Directions were issued on 24 August 2018 and further Directions on 12 September 2018. The Directions ordered that the matter be dealt with by written representations unless any party made a request for an oral hearing, which none did. The Directions required the applicant to give publicity to the application in the block, evidence of which was provided to the tribunal. In addition, the respondents were invited to respond to the application.
4. The Tribunal did not consider that an inspection of the property was necessary.
5. The applicant is an RTM which by definition is under the control of the lessees.

The Property

6. The property is described as a Victorian House converted into ten flats.

The Respondents’ leases

7. A sample lease of Flat 7 was supplied, dated 7 July 1972 by which a term of 150 years was granted by the applicant. Clause 5 A.(1) obliges the landlord to keep the foundations roof main walls ...and the timbers of the building...and all the external parts... in good and substantial repair...”
8. By clause 6 (II) the lessees covenant to pay the service charge. This is defined in clause 6 (I) as one-tenth of the Annual Service Cost. This in turn includes the reasonable and proper costs of the landlord meeting its obligations under clause 5A It therefore appeared to the Tribunal that the works for which dispensation are sought fall within the service charge recovery provisions in the lease,

although it is unnecessary for the Tribunal to make a formal finding in this application and it does not do so.

The Applicant's Case and Nature of the Works

9. The basis of the application was that during previous works, that had been subject to a s 20 consultation and which concerned resurfacing of roofs to the rear terraces, a partial collapse had occurred. The cause had been identified as rusted joist hangers. Consequently, additional works were required to the substructure of the terrace and remedial works to bedrooms below.
10. The applicants have served an initial s 20 notice (Notice of Intention to instruct A Contractor) in respect of these additional works, dated 27 July 2018. Tender prices ranged from £7,000 to £24,000 plus VAT.

The Respondents' Case

11. No replies were received from the respondents.

The Law

12. Section 20ZA is set out in the appendix to this decision. The Tribunal has discretion to grant dispensation when it considers it reasonable to do so. In addition, the Supreme Court Judgment in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 empowers the Tribunal to grant dispensation on terms or subject to conditions.

Findings

13. The Tribunal is concerned that very little detail of the proposed works or their extent has been provided. The information about the property is also very limited and no photographs or any other relevant factual evidence has been supplied. The grant of dispensation from the consultation requirements under section 20 of the Act is a departure from compliance with the normal statutory provisions involving the exercise of a discretion by the Tribunal. The burden is on an applicant to demonstrate that it would be reasonable on the facts of each case.
14. The Tribunal also notes that there was also no indication of support for the application from any of the respondents.
15. However, it accepts that the work is required urgently. It concluded that the appropriate outcome was to grant dispensation (to the extent still required) but to impose the conditions set out above.

16. 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.

C Norman FRICS
Valuer Chairman

15 October 2018

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix

Section 20ZA Landlord and Tenant Act 1985

(1)Where an application is made to [the appropriate 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.