FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00ML/LDC/2018/0086
Property	:	12 Chichester Terrace, Brighton BN2 1FG
Applicant	:	12 Chichester Terrace Management Company Limited
Representative	:	Mr Ken Maynard, Chair of the Applicant
Respondents	:	Mr Kevin and Mrs Sandra Maguire
Representative	:	-
Type of Application	:	To dispense with the requirement to consult lessees about major works
Tribunal Member(s)	:	Judge Tildesley OBE Mr R Wilkey FRICS
Date and Venue of Hearing	:	Havant Justice Centre 1 March 2019
Date of Decision	:	18 March 2019

DECISION

The Application

1. This is an application for dispensation from the consultation requirements provided for in section 20 Landlord and Tenant Act 1985.

2. The property is a converted terraced house in central Brighton consisting of six flats. The property is a Grade 1 Listed Building.

3. On or around 25 April 2015 the Applicant decided to carry out major works to the property which involved redecoration of the exterior, roof works to rear terrace and main flat roof, and erection of scaffolding. The Applicant embarked on consultation exercise which identified the estimated costs and a preferred contractor. The leaseholders agreed to pay their contribution towards the costs of the works before they started. The Respondents, however, failed to make their contribution on time. The parties agreed to resolve their dispute by mediation. Under the terms of the agreement dated 28 July 2017 the Respondents paid £8,000 as an interim contribution towards the costs of the major works which commenced on the 19 February 2018.

4. Whilst the works were being carried out Mr David Smith, the Chartered Building Surveyor and Contracts Administrator, discovered that the timber gutter to the front first floor belvedere (Flat 2) was suffering from severe timber decay to the extent that the only practical repair was to remove the timber structure back to where sound timber was found which would enable it to be rebuilt. Mr Smith suspected that most if not all the gutter around the belvedere would require complete rebuilding and then lined with lead. Mr Smith noted that the zinc sheet covering the belvedere and the canopy was the original. In Mr Smith's opinion the zinc sheet would now be brittle and require replacement when the gutter was repaired. Mr Smith, therefore, recommended that the most cost effective option in the long term was to replace the zinc roof covering at the same time the gutter was rebuilt and be included as an addition in the current external works contract. Mr Smith suggested that a call for additional funds was made.

5. On 30 May 2018 the managing agent requested advance funds for the additional works which was forthcoming from the leaseholders except the Respondents. On 1 September 2018 the Applicant approved the works carried out to date and those identified by Mr Smith in respect of the belvedere and canopy. The Respondents continued with their opposition to the additional works and refused access to the contractors to carry out these works.

6. On 22 October 2018 the Applicant applied for dispensation from consultation in respect of the additional works which were described as the roofing on the first floor flat (Flat 2) and on the belvedere and canopy. The Applicant stated that it would be more cost effective if the works were carried out now whilst the present scaffolding was up and before the onset of winter.

7. On 25 October 2018 the Tribunal directed that the Application would be heard on the papers in the seven days commencing 26 November 2018. On 7 November 2018 the Respondents requested an extension for their response which was granted for seven days. The Respondents then requested an oral hearing. On 5 December 2018 a procedural judge reviewed the file and advised the parties that the sole issue for determination was whether dispensation from consultation should be given and whether the Respondents have demonstrated that they have been prejudiced by not being consulted about the additional specification. The procedural judge informed the parties that the Tribunal would not be determining whether an amount was payable by way of service charge. Finally the Tribunal indicated that a hearing would take place in the week commencing 14 January 2019. The Tribunal was advised that neither party would be available until the end of February 2019. A hearing date was fixed for 27 February 2019. The Respondents stated that they could not make that date with the result a new hearing date of 1 March 2019 was fixed.

8. At the hearing Mr Ken Maynard presented the case on behalf of the Applicant. Mr Maynard was accompanied by Mr Matthew Evans of Jonathan Rolls, the Managing Agent, Mr David Smith who had provided a witness statement, Mr Douglas Lowe of Flat 5 who was the Applicant's secretary and co-ordinator and Mrs Sue Maynard of Flat 4. Mr Kevin and Mrs Sandra Maguire of Flat 2 attended in person. The parties supplied the Tribunal with separate hearing bundles which were admitted in evidence.

9. On 27 February 2019 Mr Maynard supplied the Tribunal with a breakdown of the costs relating to the major works. Mr Maynard identified four components of the costs: 1. Original budget £40,000 and 2. Contingency £8,000 3. Additional works carried out £14,885, and 4. Additional works not carried out to the belvedere and the canopy in the estimated sum of £19,790 plus VAT. Mr Maynard stated that the Applicant had consulted on 1 and 2 but not 3 and 4.

10. The Tribunal explained that the Application for dispensation related to the works not carried out under item 4 and that its decision would be limited to those works.

Reasons

11. The 1985 Act provides the Respondents with safeguards in respect of the recovery of the Applicant's costs for the major works. Section 19 ensures that the Applicant can only recover those costs that are reasonably incurred on works which are carried out to a reasonable standard. Section 20 gives the Respondents an additional safeguard of requiring the Applicant to consult with them on the major works. If the Applicant fails to do this, the Respondents' contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.

12. This Application is concerned with the additional safeguard of section 20. The question for the Tribunal is whether the requirement to consult on the additional works not carried out to the roof and belvedere and specifically identified under item 4 referred to in paragraph 9 should be dispensed with. Section 20ZA of the 1985 Act is the authority which enables the Tribunal to dispense with the requirement for the applicant to consult with the Respondents on the costs of those works.

13. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, it would appear that the Tribunal has a broad discretion. That discretion, however, has to be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.

14. Lord Neuberger in *Daejan* said at paragraphs 44:

> [44] Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.

15. In the case the Applicant accepted that it had not complied strictly with the consultation requirements in respect of the additional works to the belvedere and roof. The question, therefore, for the Tribunal is whether the Respondents would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the Respondents to identify any relevant prejudice which they claim they might have suffered from the failure to consult. If the Respondents show a creditable case for prejudice, the Tribunal should look to the Applicant to rebut it, failing which it should, in the absence of good reason to the contrary, require the Applicant to reduce the amount claimed as service charges to compensate the Respondents fully for that prejudice.

16. The Tribunal finds the following facts:

    a. Although the Applicant had not followed the requirements of section 20 in respect of the additional works, the Applicant had carried out extensive consultation with the Respondents about the proposed works to the extent that the Applicant accepted the contractor nominated by the Respondents.

    b. The Respondents had organised six companies to inspect the zinc Roof and give quotations for the works.

    c. Mr Smith, the Contractors Administrator, had based his estimate of costs for the additional works on the quotation

supplied by the Respondents' nominated contractor (South Coast Metal Roofing Brighton).

d. The Respondents said in evidence that if they had been consulted they would have submitted that the canopy roof and the belvedere required repair rather than replacement. The Tribunal found the Respondents' evidence contradictory. Mr Maguire in an email dated 15 May 2018 to the leaseholders reported that the companies he organised to inspect the proposed works had strongly recommended replacing the existing roof due to its poor condition. Further Mr Maguire stated that they agreed with the replacement. In this regard the Tribunal also accepts the expert evidence of Mr Smith that the roof and the gutters required replacement not repair.

e. The Tribunal was satisfied that the additional works to the roof and belvedere were not included in the original specification for the major works despite the Respondents' protestations to the contrary.

f. The Respondents will be the beneficiary if these works are carried out, as no other leaseholder has a right of access to the belvedere, and the other leaseholders are prepared to contribute their proportion of the costs.

g. The Tribunal acknowledges that the urgency of the works was no longer a relevant factor because of the time taken to hear the Application which was mainly due to the Respondents requesting an oral hearing and the Respondents' refusal to allow the contractors access to carry out the works.

17. In view of the above findings the Tribunal is satisfied that the Respondents would not suffer relevant prejudice if unconditional dispensation was given.

Decision

18. The Tribunal, therefore, dispenses with the consultation requirements in respect of the works to rebuild the gutter to the belvedere, lining of new gutter with leadwork, recovering roofs to belvedere and canopy with new Zinc, replacement of dentils, new scaffold, contingency sum for unforeseen works and associated management charges.

19. The Tribunal considers that the Respondents' case was about the costs of the major works project and that they put forward no substantive ground challenging the application for dispensation. The Procedural Judge in December 2018 reminded the parties that the Tribunal would not be making a determination on the reasonableness of the costs. The Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works. The Tribunal has made no determination on whether the costs of those works are

reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

20. The Tribunal Orders the Respondents to reimburse the Applicant with the £100 Application fee and the £200 Hearing fee within 28 days. The Tribunal makes this decision because the Respondent raised no substantive challenge to the dispensation application and there was no justification for an oral hearing.

21. The Tribunal announced its decision at the end of the hearing.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) 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.