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LEASEHOLD VALUATION TRIBUNAL



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S.20ZA Landlord & Tenant Act 1985

(Application to dispense with all or any of the Section 20 Consultation requirements)

DECISION & REASONS

Case Number: CHI/21UG/LDC/2012/0009
Property: 42 Wilton Road, Bexhill-on-Sea, East Sussex TN40 1HX
Applicant: Hattenholm Investments Ltd. (represented by Godfrey John & Partners)
Respondent: Mrs. I. Philcox (Flat 1), Mr. P. S. Beswick (Flat 2) and Mr. D. Wicks & Miss N. Caxton (Flat 3)
Date of Application: 10 February 2012
Date of consideration: 27 February 2012
Date of this determination: 27 February 2012
Tribunal members: Mr. R. A. Wilkey FRICS (Valuer/Chairman)
Miss J. Morris (Lay Member)

DECISION

1. The Tribunal determines to dispense with the consultation requirements contained in Regulation 13 of the Service Charges (Consultation Requirements)(England) Regulations 2003 and the Section 20 procedure in relation to the qualifying works the subject of this application.

REASONS

INTRODUCTION

2. This is an application by the freeholders of the block, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the consultation requirements in respect of qualifying works.

THE LAW

3. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had

regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.

4. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.
5. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.
6. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.
7. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI2003/1987. These requirements include amongst other things a formal notice procedure, obtaining estimates and provisions whereby a lessee may make comments about the proposed work and nominate a contractor.
8. S.20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

BACKGROUND & REPRESENTATIONS

9. The work involves replacement of a defective beam above a rear bay window and associated repairs.
10. The Application to the Tribunal states “taking out the old supporting beam and replacing it”. The supplied estimate refers to “replacement of rotted lintel and new flat roof”. Neither states to which part of the property the work relates. Accordingly, the extent of the work in respect of which dispensation was sought was not immediately apparent.

INSPECTION

11. The property comprises a mid-terrace, Victorian building which has been converted into three self-contained residential units. Flat 1 is on the ground and lower ground floors. The main roof is pitched and covered with tiles. The main walls are of brick and rendered construction. The building as a whole appeared to be reasonably well maintained but paint was flaking to some external timbers
12. The Tribunal inspected the property prior to the Hearing and were met by Mr. Graeme John, Managing Agent, Mrs. M. Garcia, representing her mother Mrs. Philcox (Flat 1) and Mr. P. Beswick (Flat 2). Also present was Mr. K. Beswick. No representative of Flat 3 attended.
13. The Tribunal gained access through the ground floor flat to the rear of the property. There is a flat roof over a single storey addition to the main flank wall and this part of the property is the subject of the application.
14. The covering to the flat roof has been removed and it can be seen that the timber beneath the main wall of the building is rotten. We were also informed that the adjacent timber is defective but this could not be properly inspected.
15. The attention of the Tribunal was drawn to plastic waste and soil pipes fixed against the flank wall around the flat roof. Several joints had been patch repaired and there were gaps at junctions with these pipes and the main outside wall.
16. The Tribunal also inspected the interior of the dining area in Flat 1 which is beneath the flat roof mentioned above. Water was dripping through the ceiling at the junction with the external wall of the main building.

THE LEASES

17. The Applicant has provided a copy of the lease of Flat 2, 42 Wilton Road which is for a term of 999 years from 24 June 1974. It is assumed that the leases of other flats in the building are in similar form.
18. The demised premises are stated to include the "internal and external walls of the flat"
19. The lessee covenants "to repair...the demised premises" and the lease further states "It is hereby agreed and declared that there is included in this covenant as repairable by the lessee (including replacement whenever shall be necessary) the ceilings and floors of and

in the demised premises the joists or beams on which the said floors are laid but not the joists or beams to which the said ceilings are attached..."

20. There are provisions for the landlord to *"keep in good and substantial repair and condition...the outside walls...of the main buildings"*
21. The tenant covenants, amongst other things, to pay a rateable proportion of the total annual costs incurred in managing the flats and carrying out the obligations of the lessor
22. The Tribunal has not interpreted the lease to determine whether or in what proportion a service charge may be levied on the tenant.
23. There were no matters raised by either of the parties in respect of the interpretation of the lease.

HEARING AND CONSIDERATION

24. A Hearing took place at Council Chamber, Bexhill Town Hall commencing at 10.45. The parties who attended were the same as at the Inspection.

PRELIMINARY MATTERS

25. The Applicant had supplied a limited bundle of documents including:
 - (a) The completed Application form and copies of the lease of Flat 2
 - (b) Copies of an estimate provided by J. D. Ford Ltd. for carrying the work and dated 5 February 2012 together with a surveyor's report dated February 2012. These additional documents had been provided shortly before the Hearing.
26. No communication had been received from the Respondents. Mrs. Garcia said that the latest documents had not been received but that her mother (lessee of Flat 1) may have mislaid them. Mr. P. Beswick advised that the first he knew of the proposed works was the original bundle of papers supplied by the Tribunal office. Both Respondents were content for the matter to proceed.
27. The Tribunal confirmed that the Application today is solely to dispense with the consultation requirements that would otherwise exist to carry out the procedures in accordance with S.20 of the Act. It does not prevent an application being made by the landlord or any of the tenants under S.27A of the Act to deal with the liability to pay the

resultant service charges. It simply removes the cap on the recoverable service charges that S.20 would otherwise have placed upon them.

THE HEARING

28. Mr. John addressed the Tribunal and responded to a number of questions. The position may be summarised as follows:

- (a) Mrs. Garcia reported that water was penetrating through the flat roof into the dining area of Flat 1. Mr. John instructed a builder to examine the property and it was reported that the problem related to the defective covering to the flat roof. A price for the works was given. Mr. John considered this to be reasonable and instructed the builder to proceed. This cost of this work was below the threshold which required the Sec. 20 procedure.
- (b) When the flat roof covering was removed, it became apparent that the supporting beam beneath was rotten. Mr. John commissioned a report from a surveyor and a copy is part of the bundle. Mr. Ford was then asked to provide another quotation for the additional work. Mr. John considered that the work should proceed swiftly and made the present application for dispensation.
- (c) Mr. John stated that he has written to all lessees explaining the circumstances and enclosing a copy of the relevant estimate. The procedure under part 1 of S. 20 had not been commenced. He also accepted that the estimate provided by J. D. Ford was an estimate rather than a quotation but that it was agreed that this was the cost of the works.

29. Mr. John replied to questions from the Tribunal to confirm the following:

- (a) Although the application stated that the works comprised "taking out the old supporting beam and replacing it", the estimate referred to replacement of the defective beams, renewal of the flat roof covering together with associated making good and internal redecoration. It was the work contained in the estimate which is the subject of this application.
- (b) He accepted that he had only provided one estimate but that he was quite happy to obtain additional estimates on a comparable basis.

30. Mrs. Garcia stated that her mother (Lessee of Flat 1) hoped that dispensation would be granted so that the work could proceed without delay as she was affected by the defects.
31. Mr. P. Beswick expressed disappointment that only one estimate had been provided and he had hoped that others would be obtained. He also pointed out that the firm was based in Battle and may thus be more expensive. Nevertheless, he accepted that the work had to be done.
32. The Tribunal reminded Mr. Beswick that the application today relates solely to the question of dispensation. In addition, Mr. John had earlier agreed to obtain further estimates.
33. Mr. K. Beswick stated that, unless repairs to downpipes close to the flat roof were repaired and maintained in the future, the same situation will happen again. The point was noted by Mr. John

THE DECISION

34. The Tribunal had clarified that the work involved in the application was as set out in the supplied estimate rather than the application
35. Both the Respondents who were present at the Hearing agreed that the work must go ahead. Nothing had been heard from the third Respondent.
36. Mr. John admitted that they had not commenced the S. 20 procedure but he had written to the lessees, advising them of the situation and the likely cost. In addition, he had agreed to obtain at least one further estimate on a comparable basis.
37. The flat roof area is currently exposed and covered by a tarpaulin on a temporary basis. The building is likely to suffer if the work is not done. The cost may also increase if there is delay. In the view of the Tribunal, the lessees would not be prejudiced if the Application were granted.
38. Taking all the circumstance into account and for the reasons stated above, the Tribunal is satisfied that it is fair and reasonable in all the circumstances for it to grant dispensation from all the requirements of Section 20(1) of the Act in respect of the works.

Signed

R A Wilkey

Roger A. Wilkey FRICS (Valuer/Chairman)

Dated - Tuesday, 28 February 2012