

10205



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

Case Reference : BIR/41UK/LDC/2013/0004

Property : Bolehall House, Amington Road, Tamworth, B77 3PA

Applicant : Davor Developments Limited

Representative : Glinert Davis LLP Solicitors and Mr A.Rosenthal of Counsel

Respondents : The Residents of Bolehall House:
Flat 1 Mr L.W. Chapman
Flat 2 Mr I.M.Adams
Flat 3 J.L.Owen
Flat 4 Mr J.S.Allen
Flat 5 Miss L.S.Baker
Flat 6 Mr L.Clarke
Flat 7 Mr S.P.J.Ryan
Flat 8 A.M.Duffield
Flat 9 Mrs M.E.Tamplin
Flat 10 Mrs J.Scott
Flat 11 Mr D.J.Followell

Representative : Mr N.Somerfield, Messrs Garner Canning Solicitors

Type of Application : Application for dispensation of consultation provisions pursuant to s.20ZA of the Landlord & Tenant Act 1985

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS (Chair)
D.R. Salter LLB (Lawyer)

Date and Venue of Hearing : 29th May 2013 at The First-Tier Tribunal Hearing Room, 3rd Floor, Temple Court, 35 Bull Street, Birmingham

Date of Decision : 27th June 2013

DECISION

under section 19 of the Act or anything that may prejudice a later application to decide if service charges were reasonable under section 27A of the Act if an application were made.

Submissions

19 The landlord was represented at the Hearing by Mr Rosenthal of Counsel and nine of the tenants by Mr Somerfield of Messrs Garner Canning Solicitors.

20 Both parties had sent written submissions that had been exchanged prior and further oral submissions were made at the Hearing.

21 For the landlord

Mr Rosenthal's points may be summarised as follows:

1 The landlord conceded that the cost of rebuilding the wall by Astound Ltd. charged to the tenants should be limited to the amount in their quotation of £20,515 plus VAT, although the final bill had been substantially higher.

2 The amount paid to Beaumont Traffic Management by the tenants should be capped at £4,000.

3 Any terms attached to the dispensation should reflect any 'real prejudice' incurred by the tenants which should be the difference between their position had they been fully consulted and their position without full consultation. The tenants needed to show that they would have been better off with full consultation.

4 The wall needed urgent attention. It was a dangerous structure and leaving it could have caused injury to third parties.

5 The LVT has power to impose conditions but it does not automatically follow that conditions should be applied.

6 The tenants brought no evidence to show that the cost of traffic management would have been less had they been consulted.

7 Even with consultation, the landlord could still have instructed whichever firm it wished.

8 There was no evidence that the cost would have been less with full consultation.

9 The landlord did what it could in the time available. It had spoken to Lisa Baker and at no time did she say she was not acting for all the tenants.

10 This was not a case where the landlord should pay the tenants' legal costs. The work had been undertaken as a matter of urgency due to circumstances outside the landlord's control and it would be inappropriate to award costs against the landlord.

11 If the Tribunal disagreed, the tenants' legal costs were in any case excessive. They were only entitled to claim for costs relating to the application to dispense, not for costs at large i.e. general legal fees to take advice regarding their rights and responsibilities under the leases relating to the service charge overall.

12 In summary, Mr Rosenthal said the work was carried out as a matter of urgency due to circumstances outside the landlord's control; the landlord had no option but to apply to the Tribunal; the landlord had offered concessions to cap the costs and the Tribunal could not deny any additional costs of traffic management unless the tenants could prove that they had been prejudiced by the application to dispense.

22 For the Tenants

23 The tenants of Flats 4 and 10 made no submissions and were unrepresented.

24 Mr Somerfield for the other nine tenants submitted as follows:

- 1 That the traffic management cost should be capped at the cost for three weeks, the estimated time to rebuild the wall in the Astound quote. This would have cost around £965.
- 2 That 'The Respondents propose that it is reasonable in all of the circumstances that the Applicant be allowed dispensation, ...' (Skeleton Argument - paragraph headed 'Dispensation') subject to conditions.
- 3 By failing to consult, the landlord had caused the tenants 'real prejudice'.
- 4 The lessees had no alternative but to address the proceedings which had incurred costs.
- 5 Mr Somerfield differed in his interpretation of *Daejan*. He said the real question was whether the Hearing was necessary and therefore whether the landlord should meet the costs.
- 6 His Firm's costs were reasonable as he had been instructed by several clients, he had contacted the Local Authority and Astound, the time schedule was valid and it had been costed by his Firm.

Decision

25 In respect of the four disputed issues:

1 Dispensation

26 Having heard the evidence and seen the site the Tribunal finds that this is a case where it would be reasonable to dispense with the consultation requirements due to the urgency of the work needed in the interests of public safety.

27 The landlord had clearly discussed the work with Lisa Baker but on its own admission she was not acting on behalf of all the tenants and unable to speak and act on their behalf. However, it had carried out at least some consultation on an informal basis and accepted the lowest quote from Astound at Miss Baker's request.

2 Cost of Rebuilding Wall

28 The Tribunal accepts the concession offered by the landlord to cap the cost at £20,515 plus VAT as initially quoted by Astound.

3 Legal Costs

29 Following the *Daejan* case, it is clear that the Tribunal can grant dispensation on terms if it can be shown that by failing to consult, the landlord had placed the tenants in a worse position.

30 The question is not whether the tenants' legal costs should be denied because the work had been required by circumstances beyond the landlord's control, it was whether by failing to consult, the tenants had incurred additional costs over and above those they might have incurred had they been consulted.

31 With full consultation there would have been no need for the present application and it would be reasonable for any costs flowing from it to be paid by the landlord. Furthermore, the Tribunal notes that on the application form the landlord requested a Hearing, it could have asked for a paper determination that would not have required attendance by the tenants' Solicitor and to that extent the cost of the Hearing and any ancillary costs relating to the application should be paid by the landlord.

32 However, having seen the time schedule and applying its expert knowledge, the Tribunal finds that a large proportion of the legal costs would not have been incurred solely for the purposes of the present application. They may have been incurred on other legal work

requested by the tenants that they may have incurred even had they been consulted. The fees requested are therefore unreasonable as a condition of the grant of dispensation.

- 33 Messrs Garner Canning would have needed to take instructions from the nine clients, meet them, attend a site meeting, agree terms and conditions to act and advise them in connection with the application. They needed to prepare papers to submit to the Tribunal and attend the Hearing for which the Tribunal allows 1 hour each way from their office in Tamworth to the Hearing and 2 hours in the Hearing. In total the Tribunal finds a reasonable charge to have been based on 13 hours at their normal hourly rate of £150 / hour plus VAT which is a total of £1,950 plus VAT.

4 Traffic Management

- 34 The work certainly took longer than envisaged by the contractors or parties. There were various reasons for this claimed by the parties, the landlord claiming delays due to bad weather, the tenants claiming the delays had been caused by contractors' inefficiencies but none of these are strictly relevant for present purposes. The question is whether the tenants were prejudiced and incurred greater costs due to the lack of consultation.
- 35 The consultation requirements are lengthy and depending on exactly which requirements are applied, in the Tribunal's experience it can take at least two months to comply. Regardless of how long the work in fact took, the Tribunal finds that the start of the work would have been delayed by at least two months. From 29th October to the start of reconstruction on 4th December was five weeks which even if Beaumont had been instructed initially would have cost £1,415 plus VAT, which together with the three week estimate for the work to complete would have increased the total cost to £2,090 plus VAT. However, Beaumont was not instructed at least for the first week because the Council employed its own emergency contractors. Adding a further two months for consultation would have cost an extra £1,800 plus VAT at Beaumont rates i.e. a total of £3,890 plus VAT plus any additional amount paid to the Council contractor over and above the Beaumont rate for the initial installation of emergency lights. The Tribunal therefore finds for the landlord that the tenants have suffered no prejudice by not being fully consulted and agrees its proposed cap of £4,000 plus VAT.

36 Summary

- 1 The Tribunal grants dispensation.
- 2 The grant is conditional on a cap for the cost of rebuilding the wall of £20,515 plus VAT.
- 3 The grant is conditional on the landlord paying the tenants' legal fees of £1,950 plus VAT to Garner Canning.
- 4 The grant is conditional on a cap for the cost of traffic management of £4,000 plus VAT.

Service Charge

- 37 The Tribunal emphasise the point made and accepted by the parties' representatives at the Hearing that this Decision does not prejudice any application that may or may not be brought by the parties at a later date to determine service charges under s.27A of the Act. This decision is not a finding that the cost of the traffic lights should be £4,000, it merely grants dispensation for the right for the landlord to claim up to £4,000 and then prove at a later date that such amount is reasonable.

I.D. Humphries B.Sc.(Est.Man.) FRICS

Date: 17 JUL 2013