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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	: CHI/00HX/LDC/2014/0057
Property	: Bridge House, Faringdon Road, Swindon, SN1 5AR
Applicant	: Swinbury Limited
Representative	: Messrs Moss and Coleman, Solicitors
Respondent	: Stonewater (2) Limited (formerly Jephson Homes Housing Association Limited)
Representative	: Messrs Shakespeares Solicitors
Type of Application	: Dispensation with Consultation, Section 20ZA Landlord and Tenant Act 1985 (as amended)
Tribunal Members	: Mr I R Perry FRICS (Chairman)
Date of Inspection	: 17th February 2015
Date of Decision	: 17th February 2015

REASONS FOR DECISION

DECISION

For the reasons set out below, the Tribunal:

1. **Pursuant to Section 20ZA (1) of the Landlord and Tenant Act 1985 (as amended), dispenses with the consultation requirements set out in Part II of Schedule 4 to the service charges (consultation requirements) (England) Regulations 2003 (SI2003/1987) in respect of the following qualifying works to be carried out by the Applicant at Bridge House.**

   a) Repair car lift and put into a proper working condition.

2. **Pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended) orders that the cost incurred by the Applicant in connection with this determination may be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.**

3. **The Applicants shall make no contribution to the Respondents' legal costs.**

REASONS

Background

1. Bridge House, Farnsby Road, Swindon, SN1 5AR ("the property") is situated in central Swindon, the freehold being owned by Swinbury Limited.

2. The property comprises two blocks. The first block contains some 48 flats all let on long leases by the Applicant except for three flats owned by the Respondent which are let on Assured Shorthold Tenancies.

3. The second block, known as the podium block, containes some further flats and two levels of car parking. This block is let to the Respondent. The upper level of car parking has approximately 25 car spaces and is accessed by a car lift.

4. The Respondents grant shared ownership sub leases to tenants.

5. The car lift has repeatedly failed (since 2007) and, on occasion, people have been trapped in their cars on the lift. The lease to Jephson Homes Housing Association Limited is dated 3rd June 2004 subject to a deed of variation made 8th November 2006.

6. The Applicant considers it to be reasonable to say that the lift has suffered an increasing number of problems over the past two years or thereabouts and states that the lift itself is now over 10 years old.

7. As part of their statement of case the Respondents accept that the car lift has repeatedly failed and, on occasion, people have been trapped in their cars on the lift.

8. On 3rd December 2014 an application was made to the First-Tier Tribunal Property Chamber (Residential Property) to dispense with all of the consultation requirements provided by section 20 of the Landlord and Tenant Act 1985. Directions were issued on 18th December 2014.

9. Copies of the application were served on the Respondents and placed on the notice board.

10. On 15th January 2015 Ms Bridget Stark-Wills of Messrs Shakespeares Solicitors submitted a statement of case on behalf of Jephson Homes Housing Association Limited in support of the application for dispensation and stating specifically at paragraph 6, "Jephson does not contend that it has suffered prejudice in the limited sense identified by *Daejan Investments Ltd v Benson (2013) UKSC 14.*"

11. The statement of case does contend however that two conditions should be imposed. 'The first is that there should be an order under section 20C Landlord and Tenant Act 1985, preventing the landlord from adding the (presumably minimal) costs of this application to the service charge. The second is that the landlord should pay the (again, minimal) costs incurred by Jephson in responding to this application.'

The Law

12. The law relating to determination of the amount of service charges payable by a leaseholder is primarily set out in sections 18, 19, 20, 20ZA and 27A of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act"). In brief, if the parties to a lease cannot agree the amount of service charges payable, either the landlord or the tenant may apply to the Tribunal to make a determination. In making that determination, the Tribunal will consider whether the charge is recoverable under the terms of the lease and, if it is, whether the amount claimed has been reasonably incurred and whether the services or works were carried out to a reasonable standard. Where a service charge is payable before the costs are incurred, no greater amount than is reasonable is payable.

13. When the landlord wants to carry out qualifying works where the tenant's contribution is going to exceed £250, the landlord must comply with the consultation requirements which are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the Consultation Regulations"). Alternatively,

the landlord may apply to the Tribunal for dispensation from those requirements under section 20ZA.

14. In the case of *Daejan Investments Ltd V Benson [2013] UKSC* 14 the Supreme Court gave guidance to tribunals as to how they should exercise the discretion given to them by section 20ZA. At paragraph 42 of the speech of Lord Neuberger, he says *"It seems clear that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. ... The following two sections, namely sections 20 and 20ZA appear to me to be intended to reinforce, and to give practical effect to, those two purposes."* Then at paragraph 44 he says *"It seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 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. When a landlord incurs legal or other costs in connection with court or tribunal proceedings, he may seek to recover those costs from tenants through the service charge if he is entitled to do so by the terms of the lease. Section 20C of the 1985 Act enables a tenant to apply to the Tribunal for an order preventing the landlord from recovering his costs through the service charge. The Tribunal may make such order as it considers just and equitable in the circumstances.

16. Section 29 of the Tribunals, Courts and Enforcement Act 2007 provides that the costs of all proceedings in the First-tier Tribunal shall be at the discretion of the tribunal in which the proceedings take place. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) makes further provision for the award of costs in tribunal proceedings. The Tribunal may make an order for costs if a person has acted unreasonably in bringing, defending or conducting proceedings.

17. Section 20C (1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a Court, Residential Property Tribunal or Leasehold Valuation Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant cost to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application".

18. Section 23C (3) The Court or Tribunal to which the application is made may make such an order on the application as it considers just and equitable in the circumstances.

Inspection

19. The Tribunal inspected the property on 17th February 2015.

20. The property appears to have originally been built for commercial use but is now arranged with flats and car parking. It is situated at the corner of Faringdon Road and Farnsby Street, Swindon with a further frontage to Milton Road. This may account for the slight variance in postcodes contained within the papers.

21. The Tribunal inspected the property in the presence of Mr John Evans from the Respondents.

22. There is a single car lift at the rear of the building which gives access to the upper car park providing about 25 car spaces. The lift has broken down so often that it is not now in use.

The Evidence

23. A state of case was submitted on behalf of both parties and copied to both parties.

24. The car lift has repeatedly failed (since 2007) and, on occasion, people have been trapped in their cars on the lift. The lease to Jephson Homes Housing Association Limited is dated 3rd June 2004 subject to a deed of variation made 8th November 2006.

25. By section 3 of the schedule attached to the variation of lease the landlord covenants to "maintain and repair the car lift and to keep the same in good and substantial repair and condition".

26. By paragraph 2 of the schedule attached to the deed of variation the tenant covenants to "pay 60% of the cost to the landlord of complying with its obligations under clause 4.4".

27. As part of their statement of case the Respondents accept that the car lift has repeatedly failed and, on occasion, people have been trapped in their cars on the lift.

28. The Applicant considers it to be reasonable to say that the lift has suffered an increasing number of problems over the past two years or thereabouts and states that the lift itself is now over 10 years old.

29. Following a breakdown which occurred on the 16th August 2014 the Applicant has sought to find a proper solution to what has been an increasing number of problems.

30. A report was prepared by Saxon Lifts Limited on the instruction of Schindler Limited. Schindler Limited indicated that the costs to repair

would exceed £50,000 and the Applicant had sought alternatives to this quotation. After due consideration Saxon Lifts Limited provided the Applicant directly with a quotation, rather than sub-contracting to Schlinder Limited. This led to a significantly lower quote in the sum of £28,159 + VAT.

31. No objections to the Notice were received from any other parties and the Respondents submission says "Jephson supports the application for dispensation as this should allow the works to be carried out promptly."

32. The Respondents submission goes on to say "Jephson does not contend that is has suffered prejudice in the limited sense identified by *Daejan Investments Ltd v Benson (2013) UKSC 14*."

33. The Respondents contend that two conditions should be imposed in respect of a Section 20C application and their own costs. No reason or justification for this is made.

Conclusion

34. The Tribunal agreed with the parties that the car lift was in need of urgent refurbishment and repair and decided to grant a section 20 dispensation as requested in the original application.

35. The Tribunal decided that, on the facts before it, the applicants had acted as landlords in a reasonable and prudent manner and decided not to make any order in connection with section 20C of the Act nor in respect of the Respondents' legal costs.

Right of Appeal

36. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.

37. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. 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. 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. 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.

38. The parties are directed to Regulation 52 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169. Any application to the Upper Tribunal must be made in accordance with the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600.

Chairman: .....

I R Perry FRICS

Dated: 10th February 2015.