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

Case Reference : **BIR/00GA/LDC/2016/0004**

Property : **11 and 12 Yazor Road, Moor Farm,
Hereford HR4 OLZ**

Applicant : **Herefordshire Housing Ltd**

Respondent : **Mr MA Prior (11)
Mr G Hammond (12)**

Type of Application : **Dispensation of consultation requirements
S20ZA LTA 1985**

Members of Tribunal : **Judge D Jackson**

Determination : **Without a hearing on 4th July 2016**

Date of Decision : **7 July 2016**

DECISION

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Background

1. The Property comprises two purpose built blocks of flats constructed in 1959. Each block is three storey with two commercial units on the ground floor of each block. There are four flats in each block; eight in total. The Applicant freeholder is a social landlord and only two of the flats (numbers 11 and 12) are leasehold.
2. On 31st March 2016 Application was made to the Tribunal for the dispensation of all or any of the consultation requirements provided for by s20 of the Landlord and Tenant Act 1985 (“the Act”).
3. Directions were issued on 26th April 2016.
4. Neither of the Respondents has complied with Directions and have taken no part in these proceedings. As a consequence both Respondents were barred from taking further part in the proceedings on 9th June 2016.
5. The Applicant is content with a paper determination. As neither Respondent has taken any part in these proceedings I have determined this application without a hearing.

Grounds for seeking dispensation

6. The Applicant has set out its grounds in Statement of Case dated 9th May 2016.
7. The Property was constructed in 1959 and was part of a stock survey of properties over 50 years old, which is consistent with the expected 60 year lifespan of a roof.

8. An inspection, using a cherry picker was carried out jointly with an independent contractor, Merriman. An email dated 17th March 2016 (Appendix B) indicates that the “roof is in a bad way and potentially dangerous to the general public below.” Photographs at Appendix C show loose ridge and roof tiles, rotten battens and blocked valleys.
9. A consultation exercise was commenced in relation to a full renewal of the existing roof.
10. However because of safety concerns it was decided to erect full scaffolding around both blocks to capture any falling tiles.
11. Two quotations were obtained. The Applicant accepted the lower quotation from MG Scaffolding (Appendix E) in the sum of £19,886 plus vat (total £23,863.20).
12. The Applicant has arranged a fourteen week hire period so that the scaffolding can remain on site and whilst the main roofing work is completed.
13. Dispensation is sought solely in relation to the scaffolding system on both blocks. Full s20 consultation is taking place in relation to the main re-roofing programme.

Inspection

14. I inspected the Property on the morning of 4th July 2016.
15. The roof is of concrete Ludlow profile interlocking tiles. There was evidence of tile slippage on the lowest part of the roof which “kicks out”. There was also evidence of loose ridge tiles. Immediately below each roof is a busy footpath used by pedestrians accessing the butchers, newsagents and COOP which comprise the commercial units of the blocks.

16. Although no tiles had yet fallen due to the numerous loose and slipping tiles I am quite satisfied that there is a real danger to pedestrians from falling tiles.
17. Scaffolding had been erected to roof height on both blocks. Initially the top lift was at gutter height to facilitate inspection but there are to be changes to the top lift to create a working platform for the re-roofing works.
18. The scaffolding system erected because of health and safety concerns is entirely appropriate, with minor modification, for the main re-roofing work and accordingly the only additional costs related to the longer hire period of 14 weeks as against the 4-6 weeks required for the re-roofing work.

The Law

19. I am bound by the decision of the Supreme Court in **Daejan Investments Limited v Benson and others** [2013] UKSC 14.
20. The sole question for the Tribunal when exercising its jurisdiction under s20ZA of the Act is the real prejudice to the leaseholders flowing from the freeholder's breach of the consultation requirements.
21. The factual burden of identifying some relevant prejudice that they would or might have suffered caused by the freeholder's failure to consult is on the leaseholders.
22. As both Respondents have failed to comply with Directions and have been barred from taking further part in these proceedings, they have failed to discharge the factual burden necessary for me to consider conditional dispensation on terms. Accordingly I grant unconditional dispensation.

Decision.

23. I determine under s20ZA (1) of the Act that it is reasonable to dispense with all of the consultation requirements in relation to the following qualifying works:
erection of a full scaffolding system to each of the blocks of flats for a fourteen week period as identified in Contract Quotation prepared by MG Scaffolding (Oxford) Limited in the sum of £19,886 plus vat.

D Jackson

Judge of the First-tier Tribunal

Any party may appeal this decision to the Upper Tribunal (Lands Tribunal). However application must first be made to the First-tier Tribunal for permission. Any application for permission must be in writing supported by the grounds on which permission is sought and must be sent to the Tribunal no later than 28 days after the date on which the Tribunal sends this Decision to the party seeking to challenge this Decision.