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DECISION

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	LON/00AL/LDC/2013/0106
Property	Various leasehold properties in the London Borough of Greenwich (as referred to in this decision)
Applicant	GALLIONS HOUSING ASSOCIATION LIMITED
Representative	MR MICHAEL HUGGETT (Service Delivery Manager) MS JACKIE DICKENS (Home Ownership Manager) MS JULIA SYRAD (Data Co-Ordinator Asset Management)
Respondent	The several leaseholders identified in the schedule or list attached to the application .
Type of Application	An application to dispense with the requirement to consult leaseholders about major works/a long-term agreement.
Tribunal Members	Tribunal Judge S. Shaw Mrs J. Davies FRICS
Date and venue of Application	8th October 2013
Date of Hearing	27th November 2013
Date of Decision	23rd December 2013

Introduction

1. This case involves an application by Gallions Housing Association ("the Applicant") in respect of various leasehold properties within the London Borough of Greenwich. The properties can be identified as Bridge House, Hill House, Miles Drive, Marlin Court, School House Yard and St Joseph's Court. The first four properties are new build properties purchased some time after 2006, and the last mentioned two properties are conversions of existing properties acquired by the Applicant as part of its portfolio. The Respondents to the application are the many leaseholders who are owners of flats within these particular developments. They are listed in a long schedule attached to the application and appear to number approximately 200. They will be referred to collectively in this Decision as "the Respondents" and the properties referred to above will be referred to as "the Properties".

2. The particular application being made by the Applicant is an application pursuant to the provisions of Section 20ZA of the Landlord & Tenant Act 1985, which is an application for the dispensation of all or any of the consultation requirements provided for by Section 20 of the Landlord & Tenant Act 1985. The reason for this application is, as explained in the body of the application and expanded in some evidence which will be referred to below, that the Applicant has a long term qualifying agreement (for the purposes of the Act) with a company called Axis Europe PLC. That contract was entered into in 2006 and runs up until 2020. That company effectively therefore carries out all the Applicant's maintenance and building work in the context of its portfolio.

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The Applicant is of course a housing association with a significant portfolio of properties greatly in excess of the particular properties which are the subject of this application.

3. The application is made because the long term qualifying agreement was entered into in 2006, and the particular properties identified above were all purchased by the Applicant or acquired, post 2006, in other words after the date that the Applicant had entered into the long term qualifying agreement. The result of course is that the various leaseholders who own properties within the properties which are the subject matter of the application, were never consulted about the desirability or otherwise of entering into this long term qualifying agreement. The current position is that the Applicant is about embark upon cyclical maintenance works involving these properties and many other properties within its portfolio. It wishes to instruct the contractors referred to, to carry out these works at the subject properties. In order to do that it would normally have had to consult with the various leaseholders (possibly) in the usual Section 20 consultation way. It is however arguable that having already entered into this long term qualifying agreement and having the benefit of it, any subsequently acquired properties would be subject to that long term qualifying agreement in any event. Happily this is not an issue which the Tribunal has specifically to deal with in the context of this decision because the answer to the question is likely to be academic, for the reasons referred to below.

4. Directions were given in this case on 16th October 2013. The Applicants were directed by 6th November 2013 to supply to the any leaseholder who opposes the application, various detailed documents. The leaseholders in opposition to the application, were required by 20th November 2013 to provide a statement setting out the reasons for the application and including various other details, as identified at paragraph 9 of those Directions. In the event, the Applicant has indeed prepared a detailed witness statement made by Mr Michael Huggett, who is a service delivery manager working within the Asset Management section of the Applicant. That document is accompanied by a strategic project brief which gives some detail about the project of works proposed, and there is also further detail about materials to be used and the manner in which the work is to be carried out.

5. In addition, there are sample letters which have been written to each and every one of the leaseholders affected. One sample letter is dated 4th June 2013. It appears at page 74 in the bundle and it informs the affected leaseholders that the Applicant is proposing to carry out decorations at the property during the course of the year. It also informs the leaseholders about the long term agreement with Axis Europe PLC and tells them that this is an agreement which in the view of the Applicant gives and ensures best value and quality of workmanship. It again, with some transparency, tells them that as their block was not built when the agreement was set up in 2006, they were not formally consulted and accordingly the Applicant will be seeking dispensation from the Tribunal. When and if dispensation is provided, the Applicant undertakes to send out a costed breakdown for the works, as will be required as part of the

emanating from this application, given that it has been *"instigated"* by the Applicant.

7. A hearing of the application took place on 27th November 2013. At one stage it was contemplated that this application would be dealt with by way of paper determination without the need for the parties to attend, but it seems that a Ms Turner, who is a leaseholder at St Joseph's Court, as referred to above, called for a hearing. In the event, she did not attend the hearing, and a phone call was made to her property, and the case manager involved in this matter was told that she was not at home and that her father had been delegated to deal with the matter on her behalf, but also had not appreciated that he had to attend. The hearing thus proceeded without any Statements of Case, any clear opposition, or any attendance from any of the many Respondents who had been notified in the manner indicated, of this application.

8. Mr Huggett, at the hearing, assisted by the two other members of staff referred to above, explained more or less as indicated above, about the proposed cyclical works required into which it was desired to incorporate these properties. His statement at pages 17 and 18 in the bundle expands upon the matter. He told the Tribunal, as indicated in the application, that a particular part of the works is in fact quite urgent because St Joseph's Court is a listed building, and it requires extensive brick and render repairs externally to the bay windows forming part of the block. Those external decorations are required to be carried out urgently or at any rate as soon as possible, to avoid any further damage being caused. The other properties were described by the Applicant to

the Tribunal as being in a *"tired"* state in terms of the internal common parts which now require decoration. The Tribunal was informed that with the exception of St Joseph's Court, the particular works affecting the subject properties were not particularly extensive, and in the main related to internal decoration of common parts.

9. The Tribunal's determination in this case is that this is indeed a case in which it is reasonable, for the purposes of Section 20ZA, to dispense with any other consultation which might otherwise have been required. It is a moot point as to whether such dispensation is in any event required, given that these properties are part of the Applicant's portfolio, which itself is governed by the long term qualifying agreement. However, the Tribunal is persuaded by the evidence put forward by the Applicant in writing and expanded upon in oral evidence, that there are good reasons for proceeding with these works, and that the economies obtained for the leaseholders are entirely to their benefit, rather than detriment, given that the work can all be done at one time. Moreover, part of the work is urgent, as indicated, which is another reason for the work proceeding.

10. A further reason of course is, that not a single leaseholder objected in the form directed for objections by the Tribunal, nor was there any attendance at the hearing by any objecting leaseholders. Moreover, the single letter provided from a leaseholder indicated, as mentioned above, expressed satisfaction with the quality of the work carried out by the long term contractor in any event.

Conclusion

11. For all the reasons indicated above, dispensation is granted in favour of the Applicant in respect of the Section 20 Consultation which would otherwise have been required in respect of the long term agreement. This dispensation of course does not absolve the need on the part of the Applicant to comply with the Schedule 3 obligations in any event incumbent in respect of long term agreement works. This obligation is recognised by the Applicant and it is referred to in terms at paragraph 6 of Mr Huggett's statement. The effect of this is that all leaseholders will be supplied with a full estimated breakdown of costs, and if any leaseholder is unhappy or objects to the works, either because they consider them unreasonable in terms of scale or cost or necessity or on any other basis within the 1985 Act, it is of course entirely open to them to make an application to the Tribunal in this respect pursuant to Section 27 of the Landlord & Tenant Act 1985. The Tribunal would then determine whether or not the works are reasonable in terms of extent and cost. Obviously it is hoped that no such application will be necessary, and that the works will proceed smoothly and without objection, but the leaseholders should be in no doubt that that is their legal entitlement for further protection if needed.

12. One final matter should be mentioned, which is that the leaseholder referred to above was concerned that no costs occasioned by this application should be added to the leaseholders' service charge account, or in any way be made their responsibility. The Applicant confirmed that this was not to be the case, and for the avoidance of doubt, the Tribunal directs that the costs of, and occasioned by, this application shall be borne by the Applicant alone, and no part of the costs charged back to any leaseholders.

Tribunal Judge: **S. Shaw**

Dated: **23rd December 2013**