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

Case Reference : **BIR/00CS/LDC/2014/0012**

Property : **33-40 and 55, 57 - 62, 64, Trafalgar Court, Tividale, Oldbury, Birmingham, B69 2JD**

Applicant : **Trafalgar Court RTM Company Limited**

Representative : **Barclay Property Management Ltd**

Respondent : **The lessees of the flats contained in the Property who are listed in the Schedule attached to this decision**

Representative : **None**

Type of Application : **Application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985**

Tribunal Members : **Judge C Goodall
Mr S Berg FRICS**

Date and venue of Hearing : **12 February 2015 at the First-tier Tribunal hearing centre, Priory Court, 33 Bull Street, Birmingham B4 6AF**

Date of Decision : **25 FEB 2015**

DECISION

professionally by Barclay Property Management Ltd, a director of which is Mr John Walker. Mr Walker is also company secretary of the Applicant.

8. The Applicant wishes to proceed with the repair work required by the Council. The Applicant is not itself in receipt of any statutory notices, but it believes the work is required urgently. To that end, it has applied to the Tribunal for dispensation from the need to consult with the Respondents over the repair work, as is required by section 20 of the Landlord and Tenant Act 1985 ("the Act").

Inspection and hearing

9. The Tribunal convened a hearing on 12 February 2015 to determine the Application, which was attended by Mr Moran (4th Respondent) and by Mr Farak Ali, a relative of Mrs Bibi (3rd Respondent). There was no attendance by the Applicant or any other Respondent. The Application was opposed by Mr Moran, who also purported to speak on behalf of Mrs Bibi.
10. Prior to the hearing, the Tribunal inspected the Estate. It was apparent at the inspection that the Estate is poorly maintained. The Tribunal looked in detail at the areas of work said by the Council in the notices recited above to be required, and agrees that those repair works are required as a matter of urgency.
11. Letters in support of the Application had been received by the Tribunal from Mr Love (7th Respondent - flat 58), Savory Ltd (10th Respondent - flat 62), and General Properties (Finance) Ltd (1st Respondent - flats 33, 35, and 36).

The Application

12. The Application is to dispense with the obligation to consult with all Respondents on the carrying out of proposed works as is required by section 20 of the Act, unless the Tribunal grants dispensation.
13. The works proposed ("Proposed Works") are:

Block 33/40

- Replacement of corroded external steel stairways to both North Western and South Eastern elevations
- Replacement of steel balustrading to external first floor walkways at both North Western and South Eastern elevations
- Replacement of windows and doors, including frames, to comply with BS 6206: 1981 (1994) for communal porches at both North Western and South Eastern elevations

Block 55/64

- Repair and/or replace frame of external stairs to both North Western and South Eastern elevations to ensure treads are adequately supported and to ensure frames are free from corrosion
- Adjust ground level at base of stairs to North Western elevation to ensure rise on lowest step matches rise on other steps
- Repair and/or replace steel balustrading to external walkway serving flats 51, 59 and 64 [Tribunal note: there must be an error here as flat 51 is not within this block]
- Replace felt roof covering to communal porch serving flats 55, 57 and 60. Repair damaged ceiling of same porch and repaint
- Replace windows and doors of communal porches North Western and South Eastern elevations to comply with BS 6206: 1981 (1994)
- Arrange inspection of electrical installation to all communal areas by an NICEIC registered electrician. All faults or concerns raised to be addressed and certificate of compliance with current regulations to be provided

14. Mr Walker explained in his statement to the Tribunal that the reasons the Applicant requests dispensation are:

- a. the Proposed Works are considered to be urgent as there is an immediate danger to public health and safety.
- b. an email to one Respondent from the Council has indicated that the Council are now considering issuing Prohibition Orders, and ultimately Demolition Orders in relation to the Estate.
- c. until the improvement notices are lifted, it is not possible to obtain insurance cover

Mr Moran's and Mrs Bibi's concerns

15. Mr Moran is in favour of having work carried out. As the owner of two of the flats in Block 33/40, he told the Tribunal that he had carried out a fair amount of work himself in clearing and tidying the site. He was, however, concerned that contractors costs should be monitored and controlled. His interest was in knowing the proposed costs of the works, ensuring that competitive quotations were obtained, and safeguarding the Respondents against excessive cost.

16. Mrs Bibi was not represented by Mr Moran. She had not provided the Tribunal with any written representations, nor had she given the Tribunal any written confirmation that Mr Ali, who said he represented her, in fact had that authority. It was therefore difficult for the Tribunal to discern her concerns. Mr Ali associated himself with Mr Moran's representations and if it is the case that Mrs Bibi shares Mr Moran's concerns, she can be assured that the Tribunal has listened to those concerns carefully and has taken them into account.

The Tribunal's deliberations and determination

17. Section 20 of the Act requires that any contribution requested from a leaseholder for qualifying works is limited to the sum of £250 per leaseholder unless consultation requirements have either been complied with or dispensed with. The Proposed Works in this case fall within the definition of qualifying works, in the view of the Tribunal.
18. To comply with the consultation requirements (which are contained in the Service Charges (Consultation Requirements) Regulations 2003) ("the Consultation Regulations"), the landlord or manager has to give a notice of intention to carry out works in which he must also describe the works in general terms, explain why the works are considered necessary, invite representations, and invite the proposal by any leaseholder of a contractor for the works. There is a duty upon the landlord / manager to have regard to the representations. Then, once all quotations have been received and analysed (including quotations from any contractors proposed by the leaseholders), a second notice must be given setting out the details of the quotations (or at least two of them), summarising the observations received, making the quotations available to the leaseholders, and inviting further representations. The landlord / manager must then have regard to the further representations before making the final decision on selection of contractor and placing the contract. Each of the two notices required must give the recipients 30 days to respond, and each response will require further potentially time consuming activity by the landlord / manager.
19. As can be seen, the consultation exercise can be time consuming, and could take a number of months to complete.
20. The Tribunal may dispense with the consultation requirements under section 20ZA of the Act if it considers it is reasonable so to do.
21. In this case, the Tribunal considers that it is reasonable to dispense with the consultation requirements for the Proposed Works for the following reasons:
 - a. The Proposed Works are urgently required to make the blocks safe. At present, hazards exist that expose the occupants of Block 33/40 and Block 55/64, and visitors to the risk of injury to health which is so serious that it has been considered by the Council to be worthy of the issuing of statutory notices.
 - b. The requirement to carry out consultation under section 20 of the Act would take more time than is justifiable bearing in mind the urgency and risk that presently exists.
 - c. As no insurance of any kind can be placed for the blocks at the present time because of the improvement notices, there is a further imperative to carry out the works as quickly as possible.

22. To allay Mr Moran's concerns to some extent, it is important to understand the scope of this decision. All that the Tribunal is determining is that the Applicant be absolved of the obligation to carry out the procedures required by the Consultation Regulations, so that the Applicant is not limited to recovery of no more than £250 per leasehold flat for the carrying out of the Proposed Works. But the rest of the statutory protections in sections 18 – 27A of the Act which are available to leaseholders continue to apply. If Mr Moran considers that the cost of the works has not been reasonably incurred or the work has not been performed to a reasonable standard, he still has a remedy, should he choose to pursue it, under the Act.

Appeal

23. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)

Schedule of Respondents

Resp No	Flat No	Name
1	33, 35 and 36	General Properties (Finance) Ltd
2	34	Ms H Maitlin
3	37 and 39	Ms S Bibi
4	38 and 40	Mr G J Moran
5	55	Mr M Wozencroft
6	57 and 60	Mr J and Mrs R Chauhan
7	58	Mr P S Love
8	59	Mr P Sammels
9	61	Mr M Volante
10	62	Savory Ltd
11	64	Mr A L Parker