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

Case Reference : CHI/OOML/LDC/2015/0010

Property : 28 Brunswick Terrace, Hove, East Sussex BN3 1HJ

Applicant : Southern Land Securities Limited

Representative : Mr. Adrian Cummings, Hamilton King Management Limited

Respondents : Mr. B. Charles, Mr. J. Rogers & Ms. J. Pollard, Mr. M. Starr & Ms. L. Page, Registered Holdings Ltd., Mr. H. Hasna, Mr. S. Hassan & Ms. V. Reynolds, Mr. L. & Mrs. S. Dedman, Mrs. W. & Mrs. L. Archer-Matthews, Mrs. A. Clark,

Type of Application : Section 20ZA of the Landlord and Tenant Act 1985 (as amended)

Tribunal Members : Mr. R. A. Wilkey (Surveyor/Chairman)
Mr. N. Robinson (Surveyor member)

Date and venue of Hearing : Friday 17th April 2015
City Gate House, 185 Dyke Road, Brighton, East Sussex BN3 1TL

Date of Decision : Friday 17th April 2015

DECISION

DECISION IN SUMMARY

1. The Tribunal determines to dispense with the consultation requirements contained in Sch.4 Part 2 paragraph 8-13 of the Service Charges (Consultation Requirements)(England) Regulations 2003 and the Section 20 procedure in relation to the qualifying works to investigate work required to the front balcony

INTRODUCTION

2. This is an application by the Freeholders of the property, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the consultation requirements in respect of qualifying works.
3. Directions for the conduct of the matter were issued on 4th March 2015 and further directions were issued on 16th March 2015.

THE LAW

4. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
5. S.20 of the Act, and regulations made thereunder, provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a First Tier Tribunal. In the absence of any required consultation, the limit on recovery is £250 per lessee in respect of qualifying works.
6. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section and in S. 20ZA.

7. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying works have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.
8. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI2003/1987. These requirements include amongst other things a formal notice procedure, obtaining estimates and provisions whereby a lessee may make comments about the proposed work and nominate a contractor.
9. S.20ZA provides that a First Tier Tribunal may dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).
10. The Supreme Court has given guidance on how the Tribunal should approach the exercise of this discretion: Daejan Investments Ltd. v Benson et al [2013] UKSC 14. The Tribunal should focus on the extent, if any, to which the lessee has been prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the lessor to comply with the regulations. No distinction should be drawn between serious or minor failings save in relation to the prejudice caused. Dispensation may be granted on terms. Lessees must show a credible case on prejudice, and what they would have said if the consultation requirements had been met, but their arguments will be viewed sympathetically, and once a credible case for prejudice is shown, it will be for the Lessor to rebut it.

EXTENT OF PROPOSED WORK

11. The works are described in the Application as initial investigation to determine the condition of the first floor balcony at the front of the building

DESCRIPTION AND INSPECTION

12. The building comprises a Regency house on four floors plus accommodation within the mansard style roof. It has been converted into self-contained flats and is part of a terrace of similar properties. The building has frontage to a slip road, beyond which is the main coast road and the sea front. It is listed as being of Architectural and Historical Interest Grade II
13. The Tribunal inspected the property prior to the Hearing and were met by Mr. Adrian Cummings of Hamilton King, Managing Agents. Also present were Mr. Hasna (Flat 5), Miss Clark (Flat 9), Mr. Starr (Flat 3) and Mrs. W. Archer-Matthews (Flat 8)
14. The underside of the first floor front balcony was viewed from ground level. Two tell tales have been fixed to monitor any movement.
15. The Tribunal inspected the top surface of the balcony and the perimeter railings from the top flat with the permission of the lessee, Mr. Hasna.
16. It is apparent that work has been carried out in the past to the balcony but it remains in poor condition and in need of further repair. The Tribunal particularly noted (a) The metal perimeter railings are rusting, corroded and defective (b) A central section of the railings is displaced (c) The surface of the balcony is very uneven in places with one section of the balcony slab noticeably displaced (d) a form of metal flashing has been provided at the junction with the surface of the balcony and the front wall of the building

THE LEASES

17. The Tribunal was provided with a copy of a lease in respect of Flat 8, 28 Brunswick Terrace. The lease is for a term of 99 years from 25th December 1998.

18. By virtue of Clause 4 of the Eighth Schedule, the landlord must carry out the works provide the services and facilities and otherwise do the acts and things set out in the Fifth schedule...
19. Insofar as it is relevant to this application, the Fifth Schedule refers to the maintenance expenses including repairing rebuilding repointing improving or otherwise treating as necessary and keeping the Maintained Property...in good and substantial repair order and condition and renewing and replacing all worn or damaged parts thereof.
20. The definition of "Maintained Property" is contained in the First Schedule and includes "the structural parts of the building including the external decorative surfaces of window frames doors door frames and the window frames and glass therein the roofs gutters rainwater pipes foundations all walls bounding individual flats therein and all external parts of the building..."
21. The demised premises (The said flat) are defined in the Second Schedule by "...floors ceilings walls and doors bounding the flat"
22. The Sixth Schedule sets out the proportion of maintenance expenditure payable by the tenant and the manner in which it is payable
23. The Tribunal has not interpreted the leases to determine whether or in what proportion a service charge may be levied on the tenant.

HEARING AND CONSIDERATION

24. A Hearing took place at City Gate House, 185 Dyke Road, Brighton commencing at 11.15. Mr. Adrian Cummings, Managing Agent, attended on behalf of the freeholder and Mr. Hasna (flat 5) and Miss Clark (Flat 9) spoke on behalf of the leaseholders. Mrs. W. and Mrs. L. Archer-Matthews (flat 8) together with Mr. Starr (flat 3) were also present.
25. The Tribunal had been informed at the time of the application that the leaseholders would be represented by Mr. Elliott of Barwells solicitors. However, a letter dated 8th April 2015 had been received at the Tribunal office from Mr. Elliott stating "I was never asked to accept nor did I

accept instructions from the lessees with regard to this application”. Accordingly, the lessees present represented themselves.

PRELIMINARY MATTERS

26. The Tribunal had received copies of a number of documents and confirmed that it had read them prior to the Hearing. The supplied documents are summarised in the index to the bundle. They include:
- The Application
 - The lease of Flat 8, 28 Brunswick Terrace
 - Various photographs
 - Hamilton King Management statement of case
 - Witness statement of Sara Addis, building surveyor employed by Langley Byers Bennett, chartered surveyors
 - Letters of opposition to the application from the tenants of flats 2, 6, 7, 8 and 9
 - Letter of support for the application from the tenant of flat 4
 - Copies of various emails
 - Various letters, quotations, specifications and other items of correspondence
27. The Tribunal confirmed that the Application today is solely to dispense with the consultation requirements that would otherwise exist to carry out the procedures in accordance with S.20 of the Act. It does not prevent an application being made by the landlord or any of the tenants under S.27A of the Act to deal with the liability to pay the resultant service charges. It simply removes the cap on the recoverable service charges that S.20 would otherwise have placed upon them.
28. At the earlier inspection, the Tribunal had drawn attention to the fact that the supplied lease related to Flat 8 whereas the balcony was part of, and the only access was through, flat 5. The Managing Agent produced a copy of a further lease immediately prior to the start of the Hearing but unfortunately it related to another flat in the building. Both Mr. Hasna

and Mr. Cummings advised the Tribunal during the inspection that leases of all flats in the building were in substantially the same form.

THE APPLICANT'S CASE

29. Mr. Cummings outlined the history of the matter and the circumstances that had led to the present application. He expanded on the information provided with the application and has now received a quotation for the erection of scaffolding to allow a proper examination of the balcony. This was for the sum of £580 plus VAT and the quotation was produced to the Tribunal.
30. The Managing Agents had been aware of the poor condition of the balcony for some years and various patch repairs had been carried out. An email dated 24th February 2015 from Langley Byers Bennett, chartered surveyors, had highlighted the fact that the balcony was in a potentially dangerous condition and should not be used. This had prompted the present application for dispensation.
31. The initial Notice to the lessees in accordance with the S. 20 procedure had been served on 25th February 2015 and no replies or comments had been received. No further notices had been served upon the leaseholders but they had been kept informed of the ongoing situation, as evidenced by copies of letters and emails in the bundle.
32. Since the service of the initial Notice, Mr. Cummings had taken steps to establish the likely cost of work to investigate the problems associated with the balcony. He summarised, that the indicative figures are as follows:

Scaffolding	£580 plus VAT
Structural engineer to date	£453 plus VAT
Architect's fees to date	£375 plus VAT
Full report from structural engineer when scaffolding is in place	£500 plus VAT

Full report from architect when scaffolding is in place	£550 plus VAT
Additional costs of Langley Byers Bennett for dealing with the balcony works	£1,950 plus VAT

In addition, there would be costs associated with obtaining statutory consents and the costs of opening up the structure for the investigative works and temporary making good/waterproofing pending the actual works

33. Mr. Hasna and Miss Clark put various questions to Mr. Cummings. The Tribunal also raised questions and clarified various aspects of procedure for the benefit of the parties. The following points emerged:
- (a) When asked why the Application for dispensation had been made, Mr. Cummings replied that he had “no idea”. He had experienced delays in obtaining the cost of scaffolding and that is why the second S. 20 notice had not been sent
 - (b) Miss Clark asked why the work was being treated as an emergency and took the view that it should have been carried out several years ago when the scaffolding was in place. In reply, Mr. Cummings stated that a surveyor had advised that, until recently, the work was not considered urgent. He referred to a letter in the bundle but this could not be located. He accepted that the work had been necessary for some time
 - (c) Mr. Cummings would be perfectly happy if formal consultation was deemed necessary by the refusal of the application for dispensation as he now had the scaffolding quotation and could proceed with the S. 20 process. He does not wish to withdraw the application.
 - (d) Mr. Hasna was of the view that little time would be saved if dispensation were granted as, in any event, the applications for statutory consent would take some time. In reply, Mr. Cummings said that this should not take more than two weeks.

- (e) In response to a question from the Tribunal, Mr. Cummings confirmed that Langley Byers Bennett will be the surveyors for the project generally and will oversee the balcony repairs. They will charge an additional fee of £1,950 plus VAT for this supervision which will cover monitoring and supervision of all the work to the balcony.
- (f) When asked why a structural engineer who is outside the area had been engaged Mr. Cummings advised that he was known to Langley Byers Bennett.
- (g) Hamilton King will deal with all aspects of the S20 procedure
- (h) Mr. Hasna took the view that there was no need for both a surveyor and a structural engineer to supervise the project. There was discussion on this and it was accepted that it would probably not be wise to engage two different surveyors for different parts of a single contract.
- (i) Mr. Cummings was sympathetic to this point of view and said that he would have regard to the observation.

THE LEASEHOLDERS' CASE

- 34. Miss Clark addressed the Tribunal on the subject of prejudice. She was of the view that the leaseholders would be prejudiced if they were unable to suggest the names of professionals to deal with the appraisal. In reply, Mr. Cummings reminded Miss Clark that no reply had been received to the initial S. 20 Notice from any of the leaseholders. In particular, no names had been suggested as alternatives to the suggested architect and structural engineer.
- 35. In view of all that had taken place during the hearing, Miss Clark now believed that all the leaseholders would be in favour of the work being carried out as quickly as possible.

36. Both Mr. Hasna and Miss Clark (and presumably the other leaseholders) had believed, prior to the Hearing, that, if the application for dispensation were granted, they would lose their rights to object to the work that was to be carried out. Now that they realised that this was not the case, they are in favour of granting the application so that the work can proceed more quickly.

THE DECISION

37. Although the balcony has been in poor order for some time, it is only recently that a surveyors report has been obtained which states that it is in a dangerous condition.
38. As indicated earlier, the grant of dispensation simply removes the cap on the recoverable service charges that S.20 would otherwise have placed upon them. The landlord or the tenants can make a subsequent application under S.27A of the Act to deal with the liability to pay the resultant service charges
39. Now that the leaseholders are aware of this, they are in favour of the application.
40. The Tribunal has carefully considered all the evidence available to it and has concluded that there is no evidence that the Respondents will individually or collectively be prejudiced by the lack of consultation. There is no evidence that the Respondents are being asked to pay for inappropriate work or are being or will be charged inappropriate amounts.
41. Taking everything into account and for the reasons stated above, the Tribunal is satisfied that it is reasonable in all the circumstances for it to grant dispensation from the requirements of Section 20(1) of the Act in respect of the works.
42. For the avoidance of doubt, this dispensation relates to the cost of the initial works of investigation into the nature and extent of work required to the first floor front balcony including the railings.

Dated: Friday 17th April 2015

Roger A. Wilkey FRICS (Surveyor/Chairman)

Appeals

38. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
39. 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.
40. 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 the time limit, or not to allow the application for permission to appeal to proceed.
41. 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.
42. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.