11594

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/29UN/LDC/2016/0035**
Property	:	**Royal York Mansions, The Parade, Margate, Kent CT9 1EZ**
Applicant	:	**Ms Mary-Ann Bowring - (Tribunal appointed Manager)**
Representative	:	**Misba Sheikh - Ringley Legal (correspondence) and Rebecca Coxon MRICS - Ringley Engineering (inspection)**
Respondent	:	**The Lessees**
Representative	:	**None**
Type of Application	:	**Section 20ZA Landlord and Tenant Act 1985 Application to dispense with consultation procedure covering proposed works**
Tribunal Members	:	**R Athow FRICS MIRPM - Valuer Chair P A Gammon MBE BA (Lay member)**
Date of Inspection	:	**12th October 2016**
Date of Decision	:	**20th October 2016**

DECISION

Decision

1. The Tribunal made the following determinations:

   i. A dispensation from the consultation provisions of Section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") cannot be granted in respect of:

      1. Replacement of the rotten timbers and glazing to the roof light to the communal hallway to Flat 3.

The reason dispensation is not granted is because Sec 20 has already been complied with as explained in the following Decision.

No costs have been assessed for these works by the Tribunal.

Background

2. An application dated 3rd August 2016 was made for dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985.

3. It was made by Ringley Legal on behalf of Ms Mary-Ann Bowring who was the Manager appointed under an order made on 26th January 2012 by a Leasehold Valuation Tribunal. Royal York Mansions (Margate) Limited, is the freeholder of the subject property but is in liquidation.

4. Ms Bowring is a Director of Ringley Chartered Surveyors who are appointed by her as managing agent for the property.

5. Directions were issued by the First-Tier Tribunal Property Chamber (Residential Property) on 22nd August 2016, which stated that the application was to be determined on papers to be submitted without a hearing, in accordance with Rule 31, of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days of the receipt of those directions. The Applicant was to prepare the bundle and submit it to the Tribunal by 13th September 2016.

6. Three lessees replied in support of the application for dispensation and the matter being decided on the basis of written representation only.

7. Objections were raised from Mr V Scarfe (Ruby Lounge and Ruby Lounge Flat 1) and Mr B Faria (Flat 5).

8. As a result the Tribunal proposed to deal with the matter at a Hearing to be held at the end of September, but some parties were unable to attend at that time, so the date for an inspection and Hearing was set down for 12th October 2016.

9. The bundle was received by the Tribunal office on 26th September and forwarded to the Tribunal members who, upon reading through it, found that the Directions had not been fully complied with, and additional

information was also required. Further Directions were issued on 4th October 2016 for this evidence to be submitted to the Tribunal and the lessees by mid-day on Friday 7th October 2016.

10. Mr Scarfe wrote to the Tribunal on 28th September 2016 and stated:

> "I wish to withdraw my application for a full hearing".

11. The amended bundle was sent by Ringley Legal to the Tribunal by e-mail and was received at 16:54 on Friday 7th October. No mention was made as to whether the lessees had been sent a copy of the amended bundle as required in the Further Directions.

12. Mr Faria sent an e-mail to the Tribunal on 10th October 2016 in which he stated:

> "After speaking to Misba Sheik of Ringley Legal, I'd like to clarify that I am not opposing the application for dispensation and would like the works to proceed as soon as possible."
> "...I would like to revoke my request for an oral hearing and am happy for the application to be made on the basis of the papers alone."

13. Subsequently, with both objectors having withdrawn their request for a Hearing, the inspection took place on 12th October and the Tribunal withdrew to consider the application based on the papers submitted and the observations noted at the inspection.

14. During the inspection the Tribunal asked the Applicant if the property was either a Listed Building or, if not, within a Conservation Area. She was unable to answer the question at that time but subsequently sent an e-mail to the Tribunal as follows:
"We have checked with another of our surveyors, who is more familiar with the building, and he confirmed as follows:
'It is in the Margate conservation area, but there are several UPVC and powder coated aluminium windows around our site, most notably every window and door on all elevations of the large apartment building (White Hart mansions) next door to our building.
There isn't a copy of the conservation area appraisal available on the local authority website.
I've also searched the heritage gateway and there is no record of a Royal York mansions being listed'."

15. After the inspection had taken place the Tribunal found that the bundle did not contain sufficient detail to enable them to reach a fully considered decision. Consequently on 14th October 2016 the Tribunal ordered the Applicant to:
    a. Confirm that the Prefix estimate is the same as the Omega Windows, giving a full explanation why this has occurred.
    b. Explain why P&P's estimate has been omitted from the Statement of Estimates, and address in particular the fact that it is the cheapest of the three estimates in the bundle.

16. A response was received on the same date from Ringley Legal as follows:

"I have spoken to our surveyor Jonathan Bowman, who signed off the Section 20 notices. He confirmed as follows:

1. The quote from Omega windows was sent on 'Prefix' headed paper, but the request was actually made from a company connected with Omega - that is why they are referred to as 'Omega' in the notice of estimates. Omega is listed as the customer in the quotation on page 47 of the bundle.

2. The quote from P&P was not included in the notice of estimates as it was received after the notice of estimates was sent out (the quote is dated 17 August 2016 and the notice of estimates was sent out on 4 August 2016).

Should you require any further information please let me know. We are of course keen that this matter is expedited as soon as possible."

The Law

17. Section 20 of the Landlord and Tenant Act 1985, as amended (the Act) sets out procedures that must be undertaken where qualifying works are undertaken where any one lessee's contribution is estimated to, or does, exceed £250.

18. Firstly a "Notice of Intention to carry out work" containing specified information is required to be served on all lessees setting out the proposed works and giving them 30 days within which observations may be made to the landlord. Nominations can be made by a lessee within that timescale for contractors whom they wish to be included in the list of contractors invited to tender for the work.

19. Estimates are then to be obtained and verified by the landlord, who then issues a second notice, "the Statement of Estimates in relation to proposed works", (again containing specified information) setting out the estimates received and recommendations. Lessees have a further 30 days to make their observations.

20. After this second observation period a third notice, "Notice of Reasons for awarding a contract to carry out works" is required to be served on all lessees. However, if the landlord intends to proceed with the lowest tender, this third notice is not required.

21. Failure to comply with this process will result in the landlord being restricted to recover up to £250 from each lessee towards the cost of such works. However, the landlord can make an application for this procedure to be dispensed with under certain circumstances.

22. The statutory provisions primarily relevant to such application are to be found in S.20ZA of the Landlord and Tenant Act.

23. Section 20ZA (1) of the Act states:

'Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.'

24. In Section 20ZA (4) the consultation requirements are defined as being:

'Requirements prescribed by regulations made by the Secretary of State'. These regulations are The Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations').

25. In Section 20(2) of the Act 'qualifying works' in relation to a service charge, means works (whether on a building or on any other premises) the costs of which the tenant, by whom the service charge is payable, may be required under the terms of his lease to contribute to by the payment of such a charge.

26. If the costs of any tenant's contribution exceed the sum set out in section 6 of the Regulations (which is currently £250) the Landlord must comply with the consultation requirements. The relevant requirements applicable to this application are those set out in Part 2 of Schedule 4 of the Regulations.

27. The Tribunal may make a determination to dispense with some or all of the consultation requirements but it must be satisfied it is reasonable to do so. The Tribunal has a complete discretion whether or not to grant the application for dispensation and makes its determination having heard all the evidence and written and oral representations from all parties and in accordance with any legal precedent.

28. The matter has been considered in the leading case of **Daejan Investments Ltd v Benson & Ors [2013] UKSC 14** in which three main questions of principle arose, and needed to be answered, before deciding how to resolve that appeal. Those questions were:

(i) The proper approach to be adopted on an application under section 20ZA(1) to dispense with the compliance with Requirements;
(ii) Whether the decision on such an application must be binary, or whether the LVT can grant a section 20(1)(b) dispensation on terms;
(iii) The approach to be adopted when prejudice is alleged by tenants owing to the landlord's failure to comply with the Requirements.

29. The outcome of that case was that the Supreme Court overturned the decisions of the lower Courts as it decided that the Applicant had gone

through all processes of consultation except for the final stage, but had taken part in discussions relating to the proposed works. In other words, they felt that the Applicant had undertaken a sufficient amount of consultation to result in there being insufficient prejudice to the Respondents.

This case has created the precedent under which Tribunals must now work.

30. The Judgement accepts that there are many circumstances under which a section 20ZA(1) application can be made and as a result it does accept that any principles that can be derived should not be regarded as representing rigid rules.

Inspection

31. On 12th October 2016, the Tribunal inspected the exterior and internal communal areas of the subject property. Also present was Mr Scarfe and a friend, and Rebecca Coxon, MRICS of Ringleys.

32. The Tribunal explained the reason for the inspection and that, as laid out in the Directions, the matter would be dealt with as a paper determination now that both requests for a Hearing had been withdrawn. As a result the Tribunal would not be able to receive submissions or arguments from either party at the inspection, and the Tribunal would rely solely on the papers submitted.

33. Mr Scarfe made representations on various matters, but they were not relevant to this application.

34. The Tribunal was shown into the building and directed to the upper floor from which a short staircase and small landing led to the door which gave access to flat 3. The Tribunal were shown the pitched glass lantern roof above this area. It is of timber construction with twelve panes of glass (six either side) approximately 1000mm by 500mm, nine with square patterned wire, and three with 'chicken wire' design. Four panes of glass were cracked and one had slipped by about 100 mm making this part of the building susceptible to water penetration. The bottoms of the timber glazing bars were in an advanced state of decay due to wet rot.

35. The Tribunal were also shown the scaffolding which is currently erected in the rear yard of the building. This goes up to about second floor level.

The Applicant's case

36. On approximately 15th July 2016 the Applicant had been instructed by the local council to clear the gutters. Scaffolding was installed to gain access to the roof. Upon inspection, it was discovered that the frame around the roof was suffering from large amounts of decay and that the glass was cracked in several areas. Because the roof was found to be in this deteriorated condition the Applicant considered it to be a Health and

Safety Risk for residents of the building as the glass could fall out at any moment and cause injury to anyone passing by. It would also leave the internal communal areas unprotected from the elements. Their conclusion was that the replacement of the roof was a matter of urgency.

37. Scaffolding is still in place and continues to be charged at £150 per week all the time it is in situ. The Section 20 consultation process takes at least 65 days to complete. It therefore makes economic sense to carry out the work as quickly as possible rather than remove the scaffolding and re-erect it once the consultation process has been completed as this would considerably add to the cost of scaffolding.

The Respondents' cases

38. Mr Scarfe originally objected to the landlord's application, but at that time did not give any written reasons for doing so. It is noted that because he subsequently withdrew his request for a hearing it prevented him from making any verbal submissions at the inspection, even though he may wished to have done so. By its regulations a Tribunal may not receive any submissions or evidence during an inspection.

39. Mr Faria originally objected to the application on the following grounds:

a. The Court-appointed freeholder has not been transparent in this matter. We have had scaffolding up for several weeks now, with no noticeable works commencing, or any notice of who is paying for this and how much it is costing the leaseholders.
b. I would like the regularization of the leases to be central to this endeavour. Without a clear and fair apportioning of share of liability between the domestic and commercial leaseholders, works cannot and should not commence.
c. I would also like to include a clear process whereby which the leaseholders can immediately purchase the freehold from the court-appointed freeholder for a nominal sum.
d. I have intimated b) and c) this to the building management, whose legal department are now making this tribunal application for Section 20 dispensation. Given the lack of response, clarity and transparency, I have lost faith in the court-appointed freeholder's ability to run the affairs of the building.

However, his objection was withdrawn, as was his request for a hearing.

Consideration and Reasons

40. All the documents included in the bundle have been considered together with the written submissions subsequently received after the further directions and the Order of 14th October 2016, and the Tribunal made findings of fact on a balance of probabilities.

41. The Tribunal firstly considered the implications of the *Daejan Investments Limited v Benson and others* decision and the implications it places on this case.

a. In that case it was agreed by all parties that all Consultation Notices had been complied with up until the final phase. Indeed, the Respondents' preferred Contract Administrator had been appointed by the landlord, the specification was published and the Respondents' preferred contractor (Rosewood) had been asked to tender. Four quotes had been received and an analysis of these had been issued to the lessees together with the Applicant's preferred contractor (Mitre) being nominated. What had not been included in the papers published was the detailed priced tender from Rosewood although the priced tender from Mitre was included. The Respondent asked to have a copy of Rosewood's tender but failed to obtain one in spite of repeated requests.

b. In the course of discussions it became clear that Mitre were the Applicant's preferred contractor but discussions continued between the parties on various aspects. After the end of the Stage 3 period of Consultation the Applicant informed the Respondent that they had awarded the contract to Mitre. There was further discussions and eventually Mitre were formally contracted to undertake the work.

c. In the meantime the Respondents had made an application to the LVT (now the First-Tier Tribunal Property Chamber (Residential Property)). There were many heads of claim and eventually part of the application became the topic of this case. It was a closely related section 20ZA(1) Application that led to the matter being decided firstly by LVT on 8th August 2008. This was the subject of appeals by the Applicant to the Upper Tribunal, then to the Court of Appeal. All of these courts found for the Respondent.

d. The matter was then appealed to the Supreme Court who looked at specific elements of the case and gave their decision which clearly set out the way that Tribunals should look at such cases in the future. The Supreme Court considered that "relevant" prejudice should be given a narrow interpretation; it means whether non-compliance with the consultation requirements has led to unreasonable costs being incurred in the provision of services or in the carrying out of the works, which fell below a reasonable standard and thus led to the tenant being prejudiced. This Tribunal has considered the decision of the Supreme Court fully.

e. It acknowledged in paragraph 42 of its judgement;

> "Further, the circumstances in which a section 20ZA(1) application is made could be almost infinitely various, so any principles that can be derived should not be regarded as representing rigid rules." In other words, the factual matrix of an individual case is determinative of whether prejudice has resulted from the actions of the landlord.

42. As no case had been put forward by any lessee regarding prejudice the Tribunal accepts that none was suffered by any lessee.

43. In view of the withdrawal of his objections, Mr Faria's grounds as set out in paragraph 11 above have not been considered by the Tribunal. However, the objections raised are not relevant to this application as they relate to other aspects of the building that are not covered by the restrictive nature of the Section 20ZA legislation. If Mr Faria wishes to proceed in these areas he should take advice on how to progress these points.

44. Mr Scarfe has not put forward any written reasons for objecting to the application, but at the inspection began to make representations about various matters. It was pointed out to him that he had withdrawn his application for a Hearing to take place and as a result, no evidence or submissions could be taken at the inspection. The Tribunal are not permitted to take submissions or evidence at any time during the inspection.

45. However, the Tribunal is concerned that the application for dispensation may not be all that it appears.

46. Firstly, there was a Notice of Intention dated 16th December 2015, served on the lessees [54]. Under section 2 of the notice it has four items of work intended to be carried out:

. Works to the rear glass roof above the entrance to Flat 3.
. Lift re-instatement.
. Internal repair and redecoration including carpet replacement.
. Decoration to the underside of the balconies.

47. Then estimates were obtained and a "Statement of Estimates" appears to have been published to all lessees on 4th August 2016 [p75]. In that Notice, which was issued by the managing agent on behalf of the Court appointed Manager, it stated;

> ".....Putting the lease variation and liability aside, in the interests of saving money and speed I have made the decision to
> 1 go ahead with the works as currently we have scaffolding up, which was needed to remove the netting and clear the guttering required by building insurance. This will save over-run rental charges in keeping the scaffolding for the four week consultation period if I instruct the works now.

2 Having made this decision, to save you all money – I have also had to apply to the Tribunal to grant dispensation from the second Section 20 Notice and I hope that they will see my decision to proceed now is prudent and responsible.

The contractor will be placing the order with is Omega Windows of Canterbury Road, Margate."

48. The Tribunal finds that the first part of the required consultation procedure has been met in the "Notice of Intention" dated 16th December 2015.

49. The "Notice of Estimates" dated 4th August 2016 only deals with the first of these four items. It intends to go with the cheaper of the two quotes listed in the Notice.

50. The question of the omission of the P&P quote has been explained by the Applicant in their response dated 14th October 2016. It was received after the "Notice of Estimates" had been published.

51. As a result there is no requirement for the "Notice of Reasons for awarding" and the Applicant is free to instruct the lowest tenderer and the work can commence.

52. The Tribunal therefore finds the applicant has complied with the requirements under Section 20 of the Act for "the works to the rear glass roof above the entrance to Flat 3". The Tribunal cannot grant dispensation for a matter that has already been complied with.

53. The Application for Dispensation is deemed to be superfluous and not required for these works alone. The remaining works contained in the "Notice of Intention" dated 16th December 2015 still require the full consultation process.

54. Consequently, the Tribunal are unable to grant the dispensation sought as the Applicant has already complied with the Section 20 Consultation process for the glazing works to the roof outside Flat 3.

55. For the sake of clarity the Tribunal has not considered the matters of reasonableness, suitability or standard of the works undertaken to date. Any disputes on these aspects are dealt with by an application under Section 27a of the Landlord and Tenant Act 1985.

R Athow (Valuer Chairman)

Dated 20th October 2016

Appeals

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.

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, together 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.