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

Case reference : **LON/00AK/LDC/2018/0120**

Property : **54 Derby Road, Enfield, EN3 4AW**

Applicant : **Marketbell Ltd**

Representative : **Mr A Christou of Robert Irving
Burns, Managing Agents**

Respondent : **The Lessees**

Representative : **Did not attend and were not
represented save for Mr and Mrs
Baldwin (Flat D) in person**

Type of application : **For dispensation under section
20ZA of the Landlord & Tenant Act
1985**

Tribunal members : **Tribunal Judge I Mohabir
Mr C Gowman MCIEH MCM1 BSc**

**Date and venue of
determination** : **26 September 2018
10 Alfred Place, London WC1E 7LR**

Date of decision : **27 November 2018**

DECISION

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for dispensation from the consultation requirements imposed by section 20 of the Act.
2. 59 Eaton Place, London, SW1X 8DF (“the property”) is described as a being comprised of 4 flats in a period building arranged over the ground, first, second and third floors. Access to Flats A and B are through the main door and access to Flats C and D is through a door at the side of the building. The property is presently managed by Robert Irving Burns (“RIB”) on behalf of the Applicant freeholder.
3. It appears that water ingress occurred to Flat D, which is the top floor flat located directly beneath the main pitched/hip roof. The current leaseholders are Mr and Mrs Baldwin and the flat is sub-let by them. Historically, some roof repairs had been carried out in or about June 2015.
4. In January 2018, RIB instructed Mr Murphy MRICS RMaPS of A J Murphy Surveyors Ltd to carry out a survey of the roof. At paragraph 5 of his report, Mr Murphy noted water ingress and consequential damage in particular to the rear room, bathroom and front room in the flat.
5. At paragraph 6 in his report, Mr Murphy concluded that the roof covering over the left hand and central parts of the main roof had failed in local areas with active leaks. This was caused by the roof elements in these areas having reached the end of their lifespan. He noted that the historic works to the right hand roof appeared neat, tidy and watertight and no leaks were noted to this area.
6. Materially, Mr Murphy advised it was essential that the roof repairs were carried out in the short term to mitigate further damage or inherent longer term problems, which would require scaffolding to effect. He further advised that the thermal insulation in the roof void should be addressed.
7. Acting on the report, RIB initially obtained 2 estimates for the proposed roof repairs. These were from “General Roofing” and Asphalt Roofing Ltd in the sum of £3,900 plus VAT and £1,475 plus VAT respectively.
8. However, Mr and Mrs Baldwin wanted a more extensive scope of roof repairs carried out. Therefore, RIB obtained further estimates from the RDF Group in the sum of £13,720 excluding VAT, who were nominated by Mr and Mrs Baldwin, and from “Polyteck” in the sum of £14,800 plus VAT.

9. Eventually, RIB decided to instruct Polyteck to carry out the roof repairs, which the Tribunal was told commenced on 21 May and were completed by the beginning of July 2018. Prior to doing so, the other 3 leaseholders were notified by RIB of the scope of the proposed works, the estimated cost and their intention to seek dispensation from having to carry out section 20 consultation in relation to the works.
10. Subsequently, the Applicant made this application seeking dispensation. On 22 October 2018, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. No Respondent has filed any objection to the application save for Mr and Mrs Baldwin.

Relevant Law

11. This is set out in the Appendix annexed hereto.

Decision

12. The hearing of the application took place on 26 September 2018. Mr Christou and Mr Field from RIB appeared on behalf of the Applicant. Mr and Mrs Baldwin appeared in person. None of the other lessees appeared or were represented.
13. Mr Christou explained that his firm had decided to instruct Polyteck because they had used these contractors in the past and they had done good work. In contrast, they were reluctant to use the RDF Group because of recent bad experience.
14. Mr Christou also explained that consultation had not been carried out because Mr Baldwin had wanted the roof repairs carried out urgently otherwise he was going to instruct the RDF Group personally. He confirmed that the specification of the works carried out was as set out at paragraphs 1-14 of the estimate provided by Polyteck dated 2 May 2018 and that dispensation was sought in relation to these works only.
15. Mr and Mrs Baldwin said that they objected to the application because the water ingress had been going on for approximately 5 years and was as a result of historic neglect. It should have been done earlier.
16. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
17. The issue before the Tribunal was whether dispensation should be granted in relation to the requirement to carry out statutory consultation with the leaseholders regarding the roof repairs. It should

be noted that the Tribunal is not concerned about the actual cost that has been incurred, as that is not within the scope of this application.

18. The Tribunal granted the application the following reasons:
- (a) the fact that each of the leaseholders has been kept informed of the roof repairs and the requirement to carry out the remedial work urgently.
 - (b) the fact that 3 of the 4 leaseholders had not objected to the application.
 - (c) based on the findings in the survey report carried out by the Surveyor, Mr Murphy, the Tribunal was satisfied that the remedial roof repairs were immediate and urgent, as confirmed by Mr and Mrs Baldwin. Indeed, they were prepared to undertake the work themselves if it was not dealt with by the Applicant immediately and provides support to grant dispensation.
 - (d) the objection of Mr and Mrs Baldwin was one of historic neglect. If this is correct, it may provide a challenge to the cost of the work and is not a basis for refusing to grant the application.
 - (e) importantly, any prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred.
19. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the failure to consult by the Applicant and the application was granted as sought.
20. It should be noted that in granting this part of the application, the Tribunal does not also find that the scope and estimated cost of the repairs are reasonable. It is open to any of the Respondents to later challenge those matters by making an application under section 27A of the Act should they wish to do so.

Name: Tribunal Judge I
Mohabir

Date: 27 November 2017

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(1) 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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises.