FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/00ME/LDC/2020/0018**
Property	**:**	**15 Sheet Street,** **Windsor,** **Berkshire,** **SL4 1BN**
Applicant	**:**	**Weathercourt Limited &** **Claycourt Limited** **Represented by Residential Management Group Limited**
Respondents	**:**	**Lessees of the property** **Unrepresented**
Date of Application	**:**	**12 October 2020**
Type of Application	**:**	**Section 20ZA Landlord and Tenant Act 1985 ("the Act")** **Dispensation from the consultation requirements**
Tribunal	**:**	**Judge J. Oxlade**
Date of paper hearing	**:**	**5th November 2020**

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DECISION

For the following reasons, the application made for dispensation from consultation requirements in respect of works described in the application is hereby granted, subject to one condition; namely, that the Applicants shall not apply the costs caused by and arising from this application to the service charge accounts.

REASONS

Basis of the Application

1.The property is a five-storey building, re-purposed in 2015 from offices to flats; 10 one-bedroom flats and 15 studio flats.

2. In 2019 the neighbouring building at 17 Sheet Street ("number 17") was undergoing renovation, and which involved demolition of a 1970's extension which had abutted 15 Sheet Street ("number 15"). This demolition revealed to the contractors working at number 17 that a lower section of side flank wall at number 15 was in poor condition, as to stability and waterproofing.

3. The defects were identified as follows: the flank wall was partly built of lime-silicate brick, which was not water-proofed; the bricklaying was over-hand and rough, with a number of open joints; the lower section – which was older – projected, and required dressing and trimming; the foundations were poor.

4. The contractors notified the Applicants' representatives of their discovery, who requested an immediate temporary rain screen. There were works carried out to the foundations (levelling up, a new base, and repairs) and in due course a new wall was built ("first stage works"). The first stage works took place in the summer of 2019 at a cost of £4,626.25 plus VAT, which were done by the contractor working at number 17 in light of the ease of access available at that time, as the site was under construction

5. However, further works were needed to make the flank wall water proof; it was recommended that this be achieved by provision of a cement board and rendering ("the second stage works"). In November 2019 the same contractor provided a quote of £9,648.50 plus VAT.

6. In February 2020 the Applicants appointed Trevaskis Consulting Limited, to oversee this second stage of the works, who made a brief report in an email dated 12th May 2020 by Ian Thompson FRICS, at page 43 of the Applicant's bundle. This email attach the 3 reports of the Architect who had been working on number 17 in 2019, and which record the condition of wall at number 15. He also attached the quote of the contractor for the second stage works. He details the work already undertaken and the need for it as at May 2020. He had inspected number 15 in February 2020, noting the work which had taken place and the work which was to take place at the second stage.

7. Materially he says that the works which had been done "were necessary" and that which had been proposed at the second stage was a "viable solution", and "should be carried out as soon as possible" in light of the condition of the wall, and the viability of access to the site. He recommended making use of the contractors working at number 17 - for health and safety reasons, and as the only means of access is at number 17 itself.

8. The Applicants had not, at that time before the first works were done, complied with the consultation procedure laid out in the Landlord and Tenant Act 1985 which applies where the likely service charge cost to at least one flat exceeds £250. One explanation for this is the cost of the works.

9. However, the Applicant says that it was the second stage work which gave rise to the need for consultation, but which was not done at the time, because of (it is said) the urgency. The effect of a failure to comply is to limit recoverable costs to £250 per flat – unless dispensation is granted; hence this application.

10. The Applicants rely on a statement of case, dated 20th October 2020, which though not a witness statement, provides a generalised overview.

11. I observe that this statement of case gives no chronology, nor detail as to when the second stage works actually took place, and no invoice has been provided from which the information could be gleaned. The letter of 12th August 2020 (page 90) which notifies the Lessees of the possible application speaks in terms of works *to be done*, not works which *have* been done. The Applicants have not well explained why they have not had time to comply with the consultation requirements; urgency could be a good explanation, but it is not well-established here in respect of the second stage works, as if the works were identified and quoted for in November 2020 the Applicant should explained why in May 2020 they had not been done.

12. In the context of this application the Applicants say that dispensation should be granted in light of the urgency and as no prejudice has been caused to the lessees.

13. The Respondents have not filed a response, either agreeing or disagreeing with the application, neither accepting nor challenging the need for the works or the need for consultation. I have read the Directions requiring that the Applicants serve a copy of the application on each lessee and post in the communal parts of the block of flats, and file a certificate to that effect. The Respondents have filed a certificate to say that they have served this application on each of the 25 lessees. It is from this certificate that I am satisfied of the lessees awareness of the application.

Findings

14. It will be clear from the advice provided to the Applicant (summarised at paragraphs 6 and 7 herein), that there were problems with the wall at number 15, which defects were exposed by the contractors at number 17. The Applicants secured professional advice, which was committed to writing and supported by disclosure of the Architects documents attached to it.

15. Further, the professional advice was that works were necessary to the wall. I accept that for practical reasons (health and safety on building sites generally, and in the COVID- 19 context) there is a good argument that it made sense for the contractor working at number 17 to do the work.

16. Yet, it should equally be clear to the Applicants from paragraphs 11 to 13 herein, that the justification for proceeding quickly – being urgency - and so dispensing with the need to secure alternative quotes, has not been made out. It remains unclear on the

state of the evidence as to why it is that works identified as needed and quoted for in November 2019 remained outstanding in February 2020 (pre-COVID).

17. However, the question for the Tribunal under section 20ZA of the 1985 Act is whether it is "reasonable" for the consultation requirement to be dispensed with.

18. Case law makes it clear that at this stage, I am not deciding whether or not the service charges arising from this are reasonable and payable – just whether the procedure over consultation can be dispensed with. It is said by the Applicants that there is no prejudice suffered by the lessees; there is no submission by any of the 25 lessees to counter this. That latter point carries limited weight.

19. I have considered from the bundle filed that there is sufficient evidence available to identify what problems existed at number 15, he works done, and so if the lessees now wanted to challenge the reasonableness of service charges arising from it that they would be able to do so (after the event); they would secure quotes and professional advice after the event - should there be a dispute about the need for the work, the quality of the work, or the cost. They can do so within the context of an application pursuant to section 27 of the 1985.

20. Accordingly, though not clear why there was a delay in the second stage of works being done – during which it appears that there was time to undergo the consultation requirements – I am not satisfied that there is any prejudice to the lessees in the consultation requirements not being met.

21. I therefore grant the application for dispensation, subject to one condition: that is that the Applicants do bear all of the costs of this application made to the Tribunal. This is because it arises from the Applicant's default; this means that cost of this cannot be recovered by the Applicants through the service charge account.

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Judge J. Oxlade

5th November 2020