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

Case Reference : CHI/00HY/LDC/2013/0035

Property : 11-15 High Street, Amesbury, Wiltshire,
SP47ET

Applicant : Nos Limited [Landlord]

Representative : Mr. C. Lewington M.R.I.C.S.
Eddisons, Managing Agents

Respondents : Mrs. H. Miller, [Flat 11A], Lesley
Richardson, [Flat 11B] & Mr. R. Pennels
[Flat 11D] [Lessees]

Representative :

Type of Application : Under Section 20ZA of the Landlord &
Tenant Act 1985

Tribunal Member : Mr. J.S. McAllister F.R.I.C.S.

**Date and venue of
Hearing** : 4th. July 2013 at the Antrobus Arms,
Hotel, Church Street, Amesbury,
Wiltshire, SP4 7EU

Date of Decision : 4th. July 2013

DECISION

DETERMINATION AND REASONS

SUMMARY DECISION

1. For the reasons set out below, the Tribunal determines that it is satisfied that it is reasonable to dispense with consultation requirements of section 20 of the Act in respect of the specific qualifying works which are the subject of this application.

REASONS

THE APPLICATION

2. The Applicant's Managing Agents made an application dated 5th. June 2013 to the Tribunal, under section 20ZA of the Act for the dispensation of all of the consultation requirements in section 20 of the Act and in the Service Charges [Consultation Requirements] [England] Regulations 2003 ["the Regulations"] in respect of qualifying works being specified repairs to the property.
3. The Tribunal issued Directions dated 20th. June 2013 for the matter to be the subject of an oral hearing on 4th. July 2013, following its inspection of the property.

THE LAW

4. Subsection 1 of section 20 of the Act, as amended provides:
"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] a leasehold valuation tribunal."
5. The effect of subsections 2 and 6 of section 20 is that the consultation requirements apply where the contribution which each tenant/lessee has to pay towards the cost of qualifying works by way of service charge exceeds £250.
6. Subsection 1 of section 20ZA of the Act provides:
"Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the qualifying works or qualifying agreement, the tribunal may make the determination if satisfied that it is satisfied that it is reasonable to dispense with the requirements."
7. Subsection [2] of section 20ZA of the Act states –
"In section 20 and this section-

“qualifying works” means works on a building or any other premises...”

8. The legal transfer of the functions of the former leasehold valuation tribunal to the above First Tier Tribunal with effect from 1st. July 2013 was achieved by the combined effect of several statutory instruments viz. The Amendments to Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 Order 2013 SI 2013/1034, The Transfer of Tribunal Functions Order 2013 SI 2013/1036. From 1st. July 2013 the procedure for the Property Chamber is governed by The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169(L.8).

INSPECTION

9. The Tribunal inspected the property on 4th. July 2013 in the presence of Mr. Lewington the Applicant’s managing agent and the Respondent lessee Mrs. Miller. Mr. Miller, Mr. Richardson and Mr. B. Welsh the letting agent for Flat 11B also attended.

10. Briefly the property comprises an end terraced 2 storey building comprised of 2 ground floor retail units and 3 flats. It is mainly of brick construction with slate covered roof slopes and a section of flat roof at the rear. Apparently it is a Listed Building and is about 200-300 years old. The Tribunal was shown the inside of Flat 11A in particular the damage to the ceiling of the bathroom due to the defective bituminous felt covering to the flat roof above. It was not possible to inspect the flat roof itself externally but Mrs. Miller indicated that she would produce photographs of the defective felt covering at the hearing.

LEASES

11. The Tribunal received with the application copies of the 3 Flat leases. All Parties agreed at the hearing that the responsibility for the repair of the flat roof was the landlord’s.

THE HEARING

12. Those persons that attended the inspection also attended the hearing except Mr. Welsh. Mrs. Richardson a Respondent also attended the hearing.

APPLICANT’S EVIDENCE

13. Mr. Lewington spoke for the Applicant. He stated that the application was made as urgent repairs were needed to the flat roof due to water penetration to the bathroom of Flat 11A. He referred to the fact that he had explained to the tenants their right to be consulted about the proposed repairs under section 20 of the Act. He produced copies of

letters from each of the Respondents dated, 22nd., 24th. and 25th. May 2013, in which they all stated that they had requested that the managing agents make this application under section 20ZA of the Act. Mr. Lewington also produced a copy of a quotation dated 19th. May 2013 from Assured Roofing Contractors for the sum of £2100 for the roof repairs. He stated that this contractor had been chosen by the Respondents rather than the landlord. Mr. Lewington concluded by saying that the qualifying works were as stated in the quotation and that no specification of repairs had been prepared by the landlord. These repairs are:

“To supply and erect necessary scaffold to comply with current safety regulations. To strip slates around the perimeter of flat roof area. These will have to be replaced with new or like for like. To strip existing felts and clear from site. Replace any missing decking. To supply and fit three layers of high performance felts, comprising of 1st. layer of perforated, 2nd. layer torch on underlay and 3rd. layer torch on mineral, all necessary welts, drips and upstands in mineral felt. If after stripping the existing decking is found to be defective then replacement work can be carried out on a materials and labour cost basis. Reinstate slates to perimeter of roof on completion. We have made no allowance for unseen work e.g. rotten timbers....”.

RESPONDENTS' EVIDENCE

14. Mrs. Miller and Mrs. Richardson stated that they supported this application. Mrs. Miller said she had lost a good tenants due to the water penetration and she produced for the landlord and Tribunal a copy email dated 4th. June 2013 from her former tenants in confirmation. She produced 11 photographs for Mr. Lewington and the Tribunal showing the defective felt and the internal damage caused by the water penetration. She said that previous work in 2010 to the flat roof had not been successful and that for financial reasons she wanted the repairs carried out as quickly as possible.

CONSIDERATION AND DECISION

15. The Tribunal carefully considered all the written and verbal evidence submitted to it by the Parties. It decided that the proposed repairs were urgently required. It noted the lessees' total agreement to this application and the fact that the proposed contractor had been nominated by them. It decided that there was no prejudice to the lessees if the full consultation process had not been undertaken. Taking all factors into account the Tribunal concluded that it is reasonable to dispense with the consultation requirements of section 20 of the Act in relation to the qualifying works set out in paragraph 13 above

16. The Tribunal gave its decision verbally to the Parties at the end of the hearing, indicating that this written decision and reasons would follow. It also informed them that this decision would not prevent the Respondents from making a future application to the Tribunal under section 27A of the Act in respect of the reasonableness of the cost and the standard of these repair works.

J.S. McAllister F.R.I.C.S.
Chairman

Dated 4th July 2013