



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

Case Reference : **CHI/21UG/LDC/2014/0008**

Property : **10 Albany Road, Bexhill on Sea, East
Sussex TN40 1BZ**

Applicant : **Mr. Christopher Hills (Manager)**

Respondents : **Ms. N. Steinberg (Flat 1 - Freeholder)
Mrs. M. Pilbeam (Flat 2)
Mr. P. And Mrs. A. Fearn (Flat 3)**

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

Tribunal Members : **Mr. R. A. Wilkey (Surveyor/Chairman)
Ms. J. Morris (Lay member)**

**Date and venue of
Hearing** : **Wednesday 5th March 2014
Horntye Park Sports Complex,
Bohemia Road, Hastings, East
Sussex TN34 1EX**

Date of Decision : **Wednesday 5th March 2014**

DECISION

1. The Tribunal determines to dispense with the consultation requirements contained in Sch.4 Part 2 paragraphs 8-13 of the Service Charges (Consultation Requirements)(England) Regulations 2003 and the Section 20 procedure in relation to the qualifying works to the roof of the property. This dispensation is subject to conditions.

INTRODUCTION

2. This is an application by the Appointed Receiver and Manager of the block, 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.

THE LAW

3. 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.
4. 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.
5. 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.
6. 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.

7. 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.
8. 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)).
9. As regards qualifying works, the recent High Court decision of Phillips v Francis[2012] EWHC 3650 (Ch) has interpreted the financial limit as applying to all qualifying works carried out in each service charge consultation period.
10. A lessor may ask a Tribunal for a determination to dispense with all or any of the consultation requirements and the Tribunal may make the determination if it is satisfied that it is reasonable to dispense with the requirements (section 20ZA) The Supreme Court has recently 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 work involves significant work, mainly to the exterior of the building, to deal with disrepair and Health and Safety issues.

DESCRIPTION AND INSPECTION

12. The building comprises a semi-detached house on three floors which has been converted into three self-contained flats. It was probably constructed just over 100 years ago and is part of a mixed, predominantly residential area, a short distance from the sea front.
13. The main roof is pitched and has been recovered with interlocking concrete tiles. The elevations are brick and parts have been cement rendered.
14. The Tribunal inspected the property prior to the Hearing and were met by Mr. Hills (Appointed Manager), Mr. and Mrs. Fearn (lessees of Flat 3) and Mrs. Pilbeam (leaseholder of Flat 2) Miss Steinberg (freeholder and lessee of Flat 1) was not present or represented
15. It was apparent that the building is not being well maintained and that significant work is required. Although some work had been carried out within the last two years, including removal of rendering from external walls exposing brickwork, this had not been completed. External paintwork is in poor order with bare wood and flaking paint to many timbers.
16. The Tribunal gained access to the rear garden which allowed an examination from ground level of the rear wall of the building. Most of the external rendering has been removed, exposing cracked and defective brickwork.
17. An inspection was then made of the interior of Flats 2 & 3, both of which are vacant due to the condition of the building. The common stairs leading to these flats are lit by emergency lighting only and this constitutes a danger. The attention of the Tribunal was drawn to defective brickwork to a rear chimney stack which could be viewed through a

skylight above the staircase. In addition, severe dampness was noted to the party wall adjacent to this common staircase.

18. The two rear bedrooms in Flat 2 were inspected. Attention was drawn to severe dampness to the external walls and, more particularly, to large cracks which were present at the junctions with external walls and partitions. Work had been poorly executed in the past by inserting timber props between external window openings.
19. There were no signs of movement to the external wall in the Flat 3 but similar timber props had been placed between window openings

THE LEASES

20. The Applicant has provided a copy of the lease of Flat 2 and it is for a term of 99 years from 25th March 1986. At the previous Hearing, it had been confirmed that the wording of the leases held by the other leaseholders was similar except that the term in respect of the second floor flat was longer.
21. Clause 3(2) requires the Landlord to insure and keep insured the building
22. By virtue of Clause 3(4), the landlord must maintain and keep in good and substantial repair and condition:
 - (i) The main structure of the property including the walls and foundations and the roof thereof...and will paint the exterior wood and ironwork and the interior common parts thereof at such periods as shall in the Lessor's opinion be requisite to preserve the same and maintain the character of the building
 - (ii) The entrance porch stairways and hallways and paths...including cleaning and lighting of the porch stairways and hallway
23. Clause 2(20) requires the lessee to pay to the Lessor annually...one equal third part of all costs charges and expenses incurred by the Lessor in the performance of his obligations under clause 3 hereof...
24. The Tribunal has not interpreted the leases to determine whether or in what proportion a service charge may be levied on the tenant.

25. There were no matters raised by either of the parties in respect of the interpretation of the lease.

HEARING AND CONSIDERATION

26. A Hearing took place at Horntye Park Sports Complex, Bohemia Road, Hastings commencing at 13.30. The parties who attended were Mr. Hills, Mrs. Fearn, Mrs. Pilbeam and Mr. John Bolton (from Mr. Hills' office) who was present as an observer. Mrs. Steinberg was not present and was not represented.

PRELIMINARY MATTERS

27. The Applicant had supplied a simple bundle of documents which may be summarised:
- (a) The completed Application form and copies of the lease of Flat 2
 - (b) The previous decision of the First Tier Tribunal which appointed Mr. Hills as Manager
 - (c) Letter from Standen Associates (building surveyors) dated 19 January 2011
 - (d) Letter from J. M. Loades Associates (structural engineers) dated 19 January 2011
 - (e) Schedule of works for external redecoration and associated repairs prepared by Standen Associates and dated February 2011
 - (f) Further schedule of works (believed prepared by Standen associates) which is undated and unsigned
 - (g) Improvement Notice served by Rother District Council and dated 13 December 2012
 - (h) Consent form signed by the leaseholders of Flats 2 & 3 in which they both supported the Application for dispensation from full consultation for the works.

28. Mr. Hills made reference to a further letter dated 23 October 2013 from J. M. Loades (structural engineer) which had not been included in the bundle. A copy had been sent to Miss Steinberg.
29. After due consideration, the Tribunal decided that the document could not be submitted at this late stage, particularly as Miss Steinberg was not present. The main value of the letter to the Applicant's case was that it highlighted the dangerous condition of the building.
30. The Tribunal noted that the Application form referred to this letter by stating "The structural engineer's report advises that the property is in a dangerous state and requires immediate attention. I quote the structural engineer's report 'In my opinion there is a high risk of partial or full collapse of the rear elevation in the very near future and that the building is therefore unsafe'"
31. In view of this information, the Tribunal did not consider that the Applicant would be disadvantaged by the refusal to include the most recent letter from J. M. Loades
32. No written communication had been received from the Respondent
33. 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.

THE APPLICANT'S CASE

34. Mr. Hills briefly summarised the position and made reference to the supplied documents. He was appointed as Manager in December 2013 and was faced with the task of sorting out a history of neglect and poor quality work. The property is in a dangerous condition and unsafe for

occupation. The proposed work is intended to address all Health and safety issues. Work which may be described as “cosmetic” is not the subject of this Application and can be dealt with in the usual way.

35. In addition, he was particularly concerned with the following:
- (a) The freeholder has not maintained insurance on the building. He has made numerous attempts to obtain insurance cover but without success
 - (b) A tenant remains in the ground floor flat and there are concerns for the tenant’s safety. Neither Mr. Hills nor Rother District Council have authority or means to evict this tenant
 - (c) Mr. Hills has written to the freeholder expressing his concern regarding the safety of the above tenant but has received no reply.
36. It was accepted that the supplied reports were three years old and would need to be updated. Although some work has been carried out to the exterior of the building, it is insufficient to comply with the Notice served by Rother District Council and the building remains unsafe.
37. Miss Steinberg has not replied to any correspondence. Immediately before the inspection, Mr. Hills received a telephone call regarding access to the rear of the property from the letting agent for the ground floor flat which is owned by Miss Steinberg. The caller refused to give the name of the firm or a contact number. This tends to confirm that Miss Steinberg is fully aware of these proceeding but has chosen not to participate.
38. In response to questions from the Tribunal, Mr. Hills confirmed the following:
- He has not commenced the Sec. 20 Consultation process yet because he has only recently been appointed as Manager. In addition, he considers that it is obvious that dispensation will be required.
 - The Application for dispensation relates to the work mentioned on pages 6 & 7 of the schedule of work which is part of the bundle. This document is

unidentified, undated and unsigned but it is believed to have been provided by Standen Associates.

The work proposed in the above schedule may be summarised under the headings “Main roof level”, “Front bay roof and parapet porch”, side elevation”, rear elevation” and “general repairs”

THE DECISION

39. It is clear that these are qualifying works which need to be done urgently.
40. The leaseholders have confirmed their agreement and the Tribunal is satisfied that the Freeholder is fully aware of the proceedings.
41. It follows from the above that there is no prejudice to any of the parties.
42. Taking all the circumstance 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 contained in the schedule of works mentioned in the final bullet point of item 39 above

Before the work commences, Mr. Standen, or another suitably qualified surveyor, must re-inspect the property and update the schedule of works to reflect the current state of repair and related Health and Safety issues

Dated: Wednesday, 05 March 2014

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.