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

Case Reference : CHI/21UD/LDC/2014/0047

Property : 115 Priory Road, Hastings, East Sussex TN34
3JG

Applicant : Mr. S. Pallister

Representative : Godfrey John & Partners

Respondents : Mrs. S. Veoghan, Ms. R. Meadows, Mr. D.
Heptinstall & Miss L. J. Thomas, Mrs. K.
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Type of Application : Section 20ZA of the Landlord and Tenant Act
1985 (as amended)

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

**Date and venue of
Hearing** : Friday 31st October 2014
Bexhill Town Hall, London Road, Bexhill-on-
Sea, East Sussex TN39 3JX

Date of Decision : Friday 31st October 2014

DECISION

DECISION IN SUMMARY

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 replace rotten timbers above the front bay window in the top flat of the building

INTRODUCTION

2. This is an application by the Freeholders of the property, 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.
3. Directions for the conduct of the matter were issued on 8th October 2014.

THE LAW

4. 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.
5. 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.
6. 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.
7. 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.

8. 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.
9. 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)).
10. 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. However, this decision is subject to an appeal which has yet to be heard.
11. 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

12. The works are described in the Application as "...a supporting beam on the front elevation is crumbling and needs to be replaced as a matter of urgency".

DESCRIPTION AND INSPECTION

13. The building comprises a substantial, mid terrace Victorian house which has been converted into four self-contained flats.
14. The Tribunal inspected the property prior to the Hearing and were met by Mr. Graham John of Godfrey John and Partners, Managing Agents.
15. Scaffolding is in place at the front of the building in connection with works of repair, refurbishment and redecoration which are unrelated to the present Application and which have been the subject of a separate S. 20 Consultation. No meaningful inspection of the relevant part of the building can be made from pavement level.
16. The Tribunal inspected the interior of the top flat with the permission of the lessees, Mr. D. Heptinstall and Miss L. J. Thomas – both of whom were present
17. Work has recently begun to replace the windows in the front bay of this flat with uPVC casements. During the course of the work, it became apparent that the previously concealed timbers above the window opening were rotten. Although the area was partly obscured by protective materials at the time of the inspection, the Tribunal was able to confirm that the timbers were rotten. Some have already been replaced.

THE LEASES

18. The Tribunal were provided with a copy of a lease in respect of the maisonette known as 115a Priory Road, Hastings and the Managing Agent advised at the subsequent Hearing that leases of other flats in the building are the same in every material respect. The lease is for a term of 99 years expiring 2072.
19. By virtue of Clause 6(4), the landlord must, subject to contribution by the tenant in accordance with clause 5(b), maintain repair redecorate and

renew the main structure and in particular the roofs chimney stacks gutters and rainwater pipes...

20. By virtue of Clause 5(b) the tenant covenants to contribute and pay one equal fourth part of the costs expenses outgoings and matters mentioned in the Fifth Schedule hereto
21. The Fifth Schedule to the lease refers to the expense of maintaining repairing redecorating and renewing the main structure of the mansion in particular the roof chimney stacks gutters and rainwater pipes thereof,
22. The demised premises are defined in the First Schedule by “one half part of the joists above the ceiling of the premises and the joists below and the floor of the maisonette or flat above...AND TOGETHER with (subject to the provisions of sub clause 9(a) hereof the external and internal walls of the premises between such levels...”. Clause 9(a) states that “every internal wall separating the flat or maisonette from any adjoining maisonette or flat shall be a party wall severed medially”
23. The Tribunal has not interpreted the leases to determine whether or in what proportion a service charge may be levied on the tenant.

HEARING AND CONSIDERATION

24. A Hearing took place at Bexhill Town Hall, London Road, Bexhill-on-Sea commencing at 11.15. Mr. Graham John, Managing Agent, attended on behalf of the freeholder and Mr. D. Heptinstall and Miss L. J. Thomas, lessees of the top flat, were also present. None of the other leaseholders were present or represented.

PRELIMINARY MATTERS

25. The Tribunal had received copies of the following documents prior to the Hearing:
 - The Application
 - The lease of 115a Priory Road
 - Forms from three of the lessees stating that they support the application

26. 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

27. Mr. John outlined the history of the matter and the circumstances that had led to the present application.
28. Very little maintenance had been carried out to the building over the past 10-15 years. Last year Mr. John became aware of several issues relating to roof areas. In consequence, arrangements had been made for major work to repair and redecorate the front of the building. This work has been the subject of a separate S. 20 consultation process and is the reason that scaffolding is in place. It is not connected with the present application for dispensation.
29. The lessees of the top flat had made arrangements for the windows in the front room to be replaced with uPVC. During the course of this work, the installers had exposed rotten timbers and this was reported to the Managing Agents.
30. On receipt of this information, Mr. John had decided that the matter was urgent and had lodged the present Application for dispensation. The S. 20 consultation procedure was not commenced and this remains the case.
31. At the same time, he had arranged for further investigation to be carried out and produced the following documents to the Tribunal:
- (i) A schedule entitled "calculations and details" from j m loades associates who are a firm of consulting structural and civil engineers. This document is dated 24th October 2014 and includes

detailed calculations and drawings relating to the work considered necessary to replace the beam at roof level over the top front bay window.

(ii) An estimate dated 29th October 2014 from J. D. Ford & Son Ltd. in the sum of £1,120 plus VAT for the following:

- (a) Prop up roof and beams as shown by J M Loads Associates
- (b) Remove rotted timber beams and replace with HD galv 90x90x4 SHS
- (c) Make good brickwork and areas damaged by the works

32. In response to questions from the Tribunal, Mr. John stated as follows:

- (a) He is not aware of any need for consent under the Building Regulations but will take advice from the structural engineer on this aspect.
- (b) He has sent emails and had various telephone conversations with all the lessees regarding the extent and cost of the proposed work. No supporting documents are contained in the bundle supplied to the Tribunal.
- (c) Mr. John had no observations to make on wording used in the lease regarding the extent of the demised premises or the fact that the landlord's repairing covenant in the lease did not specifically refer to the external walls of the building.

THE LEASEHOLDERS' CASE

33. Mr. Heptinstall and Miss. Thomas stated that they would like the work to go ahead as soon as possible.

34. They purchased the flat in March last year and were aware that significant work was planned to the exterior of the building. They also knew that the front of the property was in poor condition, including plants growing around the parapet gutter at roof level. In consequence, they realised that

there was a possibility that defects to the window area would become apparent.

35. The defects to the timber beam above the front bay window were only revealed when the area was exposed as part of the installation of the replacement uPVC windows.

THE DECISION

36. It is clear that these are qualifying works which need to be done urgently.
37. The extent of the proposed work is now known and the work will be supervised by a structural engineer. As indicated earlier, the grant of dispensation simply removes the cap on the recoverable service charges that S.20 would otherwise have placed upon them. The landlord or the tenants can make a subsequent application under S.27A of the Act to deal with the liability to pay the resultant service charges
38. Three of the four leaseholders have indicated that they support the application for dispensation. No representations have been made by the other leaseholder. All leaseholders have been kept informed of the extent and likely cost of the work.
39. The Tribunal has carefully considered all the evidence available to it and has concluded that there is no evidence that the Respondents will individually or collectively be prejudiced by the lack of consultation. There is no evidence that the Respondents are being asked to pay for inappropriate work or are being or will be charged inappropriate amounts.
40. Taking everything 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.
41. For the avoidance of doubt, this dispensation relates to (a) work to replace the defective timbers over the top floor front bay window with a steel beam and (b) the associated costs of the structural engineer.

Dated: Friday 31st October 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.