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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/34UG/LDC/2016/0016**
Property	:	**102 Watling Street East, Towcester, Northampton NN12 6BT**
Appellant	:	**South Northampton Council**
Respondent	:	**The Leaseholders of Flats 1, 2 & 3**
Type of Application	:	**To dispense with the consultation requirements set out in section 20 of the Landlord and Tenant Act 1985 (Section 20ZA Landlord and Tenant Act 1985)**
Tribunal Members	:	**Judge JR Morris** **Mrs M Wilcox BSc MRICS** **Mr C Gowman BSc MCIEH MCMI**
Date of Application	:	**23rd May 2016**
Date of Directions	:	**21st June 2016**
Date of Decision	:	**28th July 2016**

DECISION

DECISION

1. The Tribunal grants dispensation in respect of all the consultation requirements referred to in Section 20 of the Landlord and Tenant Act 1985 as set out in Schedule 4 Part 2 Paragraph 11 of the Service Charges (Consultation requirements) (England) Regulations 2003 except the requirement of Notice of Works if the cheapest quotation is not accepted

*[**NOTE:** This decision only relates to the section 20 consultation requirements for the works. The Tribunal has not considered and makes no determination in respect of the reasonableness or costs of the works or their payability It also makes no determination as to the extent to which the works are chargeable to the Respondents under the Sixth Schedule of the Lease.]*

REASONS

Preliminary

2. An Application for dispensation under section 20ZA of the Landlord and Tenant Act 1985 from the section 20 consultation requirements in respect of the replacement of windows to Flat 1 of the Property which open onto the primary escape route to ensure they satisfy the provisions of the Building Regulations and the Regulatory Reform (Fire Safety) Order 2005 was made on the 29th May 2016. The Application was made following a Decision of the Tribunal on the 13th April 2016 to quash a Prohibition Order under the Housing Act 2004.

3. The Prohibition Order dated 21st December 2015 was made by the Applicant and served on the Leaseholder of Flat 1 which stated that the Applicant Respondent was satisfied that a category 1 hazard exists. The Leaseholder appealed against the making of the Order to the Tribunal on the 16th January 2016.

4. The Tribunal stated in its Decision dated 13th April 2016 as follows:
   - Having considered the evidence the Tribunal found that there is a category 1 hazard as identified and as described in Schedule 1 of the Prohibition order. This is that two of the windows of Flat 1 open onto the only fire escape for the three flats providing insufficient room below the openings for escape when smoke and flames may be emitted from the open windows. In addition the glass was not identified as having 30 minute fire resistance.
   - Whereas the Tribunal found that the actions set out in Schedule 2, required to revoke the Prohibition Order, were generally accepted methods of dealing with the risk, there were other ways of doing so, which appeared to be more cost effective and appropriate in this case. The Tribunal made no finding as to the most appropriate method as the evidence for this was not available, however, it did make a finding that a wider range of options should have been considered prior to the issuing of the Order.
   - The Tribunal found the Prohibition Order defective in Schedule 2 as to the remedial action and defective in respect of the persons who should have been served with the Order both as to the work to be carried out and to its extent with regard to the Property.
   - If the Order were to be considered appropriate it would apply to all three flats.

5. The Tribunal therefore ordered the Prohibition Order be quashed.

6. The Tribunal found on reading the Lease that the escape route across the walkway was within either the Building Common Parts as part of *the structure and the Building Common Entrance* or the Common Parts as *used in common by the Tenant and the Flat Owners and/or which benefit the Premises and the Flats.* It further found that the methods of remedying the deficiencies which gave rise to the hazard were not limited to actions required of the Leaseholder to Flat 1. There were potentially remedial actions which could have carried out either in respect of the Building Common Parts or the Common Parts. Under the Lease the Leaseholder of Flat 3 was responsible for maintaining the Common Parts which relate to the three Flats and for preparing and charging the cost to the Service Charge. Therefore these works should have been arranged by the Leaseholder of Flat 3 or in default this responsibility would pass to the Landlord. The Building Common Parts and Common Parts should all have been subject to the Prohibition Order. Therefore under Schedule 2 Part 1 Paragraph 2 Housing Act 2004 sub paragraph 1 -3 the

Order should have been served on the Respondent as Landlord and the Leaseholder of Flat 3 in respect of their responsibilities for the Common Parts, in addition to the Appellant.

7. Following the Tribunal's Decision, because the Category 1 Hazard remained, the Applicant as Landlord and the Respondents as Leaseholders are all obligated to remedy the hazard and therefore the Landlord proposes to carry out the works as being part of the Common Parts and pay for them under the service charge provisions. The Applicant has obtained two quotations for remedial work to be carried out which it submits is more cost effective and appropriate and satisfies the provisions of the Building Regulations and the Regulatory Reform (Fire Safety) Order 2005. Fire resistant glass of at least 30 minutes will be provided to a height allowing for an escape route below the openings. The openings will give sufficient ventilation to satisfy building regulations for residential use.

8. The quotations are as follows:

DJ Hutchings Ltd	£1,607.54 plus VAT or £1,839.54 plus VAT if Georgian wired glass required
UPVC Window Design and Construct Ltd	£2,120.00 plus VAT

9. The cost of the work exceeds £250.00 per flat and therefore the provisions of Section 20 of the Landlord and Tenant Act 1985 apply. Due to the urgency of the work the Landlord applied for dispensation of these requirements under section 20ZA in order to carry out the works as soon as possible for the safety of the occupiers of the premises.

10. The Tribunal was minded to grant such dispensation however all Leaseholders must be given an opportunity to respond to the Application.

11. Therefore the Tribunal issued these Directions on the 21st June 2016 to ensure all Leaseholders were aware of the works to be carried out and their likely cost; were provided with an opportunity to make representations with regard to the proposed works and to respond to the Application.

12. The addresses of the Leaseholder for Flats 2 and 3 were provided by the Applicant to which the Directions were sent as follows:

Flat 2 Leaseholders: Mr Douglas Young & Mr Michael Robins, Aliske Barn, Church Street, Rothersthorpe, Northants, NN7 3JD

Flat 3 Leaseholder: Mr David Guille, 82 Langthorne Street, London, SW6 6JX

13. The Tribunal considered the case suitable for a determination on the basis of the papers (the application, statements of case and representations) lodged or to be lodged without the need for a hearing.

14. The Tribunal gave notice under Rule 31 of Part 4 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 of the intended mode of hearing and that a determination will be made on or after the 25th July 2016 following receipt of the documents in compliance with this Order. The Direction gave the parties an

opportunity to request a hearing before that date otherwise the parties would be regarded to consent. No request was received.

15. An inspection was not considered necessary as the tribunal had already inspected the Property in respect of the Prohibition Order. The Direction gave the parties an opportunity to request an inspection if it considered necessary by applying to the tribunal giving reasons by 5.00 p.m. on 11th July 2016. No application was received.

16. The Directions invited the Respondents to make representation by 5.00 p.m. on 8th July 2016. None were received from the Leaseholders of Flats 2 and 3.

17. The Agent for Leaseholder of Flat 1 Mr Nayab Haider confirmed by letter dated 8th July 2016 that the Leaseholder did not have any objections to the application for dispensation from the section 20 consultation requirements in respect of the replacement of the window in Flat 1 and agreed in this respect that the Council proceed with the estimate from DJ Hutchings Ltd (£1,607.54 plus VAT) and split the cost between the three flats.

The Law

18. Section 20 of the Act limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements)(England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.

19. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and may be summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the "relevant period" and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord's Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the "relevant period" and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

20. Section 20 of the Act limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements)(England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.

21. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –

S20ZA Consultation requirements: supplementary

(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, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

if it is an agreement of a description prescribed by the regulations, or

in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
b) to obtain estimates for proposed works or agreements,
c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) and (7)... not relevant to this application.

Evidence

22. The reasons for the urgency of the works and the need for dispensation were as stated in the Decision regarding the Prohibition Order and repeated in the Directions. These were that at a Category 1 Hazard existed which the parties were required to remedy, namely that the primary escape route in case of fire did not satisfy the provisions of the Building Regulations and the Regulatory Reform (Fire Safety) Order 2005. This has been confirmed by Mr Ian Grieve, a Fire Protection Officer of Northamptonshire Fire and Rescue Service who stated that if the work was not carried out as soon as possible the Service had power to issue the equivalent of a Prohibition Order.

Determination

23. In determining whether or not dispensation should be given and the extent of such dispensation the Tribunal took into account the decision in *Daejan Investments v Benson* [2013] UKSC 14. Lord Justice Gross said that "*significant prejudice to the tenants is a consideration of the first importance in exercising the dispensatory discretion under s.20 ZA (1)*".

24. In addition Lord Neuberger said that the main issue and often the only issue is whether the tenants have been prejudiced by the failure to comply:

Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements. [44]

25. The Tribunal noted that the consultation requirements had been truncated in that the Notice of Intention, the Obtaining of Estimates and the Notice of the Landlord's Proposals together with two quotations had been put together. These had been issued contemporaneously with the Directions providing a period of 30 days before the Decision in which the Respondents could make representations as to the works and/or the Application.

26. No representations were received from the Leaseholders of Flats 2 or 3. The Leaseholder of Flat 1 agreed to the works provided the estimate from DJ Hutchings Ltd (£1,607.54 plus VAT) was accepted.

27. The Tribunal found that the Respondents had received reasonable notice of the works and opportunity to make observations and would not be prejudiced if dispensation should be given in respect of the Notice of Intention, the Obtaining of Estimates and the Notice of the Landlord's Proposals. Therefore the works may commence. There is no need to provide a Notice of Works unless the cheapest estimate is not selected. If the cheapest quotation were not chosen then this requirement must be undertaken.

28. This decision only relates to the section 20 consultation requirements for the works. The Tribunal has not considered and makes no determination in respect of the reasonableness or costs of the works or payability. It also makes no determination

as to the extent to which the works are chargeable to the Respondents under the Sixth Schedule of the Lease.

Judge JR Morris

Annex – Right of Appeal

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.