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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00BC/LSC/2017/0086
Property	:	Orchard Estate, Woodford Green, Essex, IG8 0AG.
Applicant	:	The London Borough of Redbridge
Representative	:	Legal Services, London Borough of Redbridge
Respondents	:	The 147 leaseholders named in the list annexed to the application
Type of Application	:	Dispensation with Consultation Requirements
Tribunal Members	:	Judge Robert Latham Mr Richard Shaw FRICS
Date and venue of Hearing	:	13 September 2017 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	18 September 2017

DECISION

The Tribunal determines to allow this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985.

The Tribunal directs the Applicant to send a copy of this decision to the leaseholders and to display a copy in the common parts of the Estate

The Application

1. On 31 July 2017, the Applicant made an application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 ("the Act"). The application affects some 147 leaseholders on the Orchard Estate, Woodford Green, Essex IG8 0AG ("the Estate") whose names are annexed to the application form. The Applicant asserts that urgent works are required on the Estate following an inspection by the London Fire and Emergency Planning Authority in the aftermath of the Grenfell Fire tragedy.

2. The six 11 storey blocks contain cladding of solid aluminium panels with polystyrene insulation which were fitted in the 1990's. The Applicant proposes to remove these and replace them with materials which comply with current standards. The Fire Authority has raised further concerns about access to the estate for long reach vehicles due to the number of cars parked on the estate. To remedy this, the Applicant plans to install yellow boxes to keep access clear. These works also affect two low rise blocks.

3. The Applicant intends to charge the Respondents their proportion of the cost of the works. The Tribunal notes that the only issue which we are required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of Section 27A of the Act.**

Response to the Application

4. On 4 August 2017, the Tribunal gave Directions. A Reply Form was attached to be completed by leaseholders who opposed the application. The Tribunal notified the parties that we would determine the application on the basis of written representations unless any party requested an oral hearing. No party has requested an oral hearing.

5. The Applicant was directed by no later than 11 August to send each leaseholder copies of the application and the directions. The Applicant was also directed to display a copy of these documents in the common parts of the Estate. The Applicant has confirmed that it posted the documents first class to the leaseholders on 7 August. It has also displayed the documents in each of the buildings.

6. By 25 August, any leaseholder who opposed the application was directed to send the Reply Form to the Tribunal and a statement in response to the application to the landlord. No leaseholder has notified the Tribunal that they oppose the application.

7. Two leaseholders have e-mailed the Applicant:

(i) On 8 August, Mrs Edlira Banushi, 90 Blenheim Court, objected to the fact that leaseholders will be obliged to contribute to the cost of the works. She stated that she had written to the Applicant warning them not to expend money on the original cladding, but rather to spend the money to improve the safety and security on the estate.

(ii) On 16 August Mr Ahmet Tasan, 293 Elizabeth Court, on behalf of his parents who are the leaseholders, also objected to the fact that leaseholders will be required to contribute.

The Applicant has responded to each of these e-mails.

8. The Applicant has filed an extensive Bundle of Documents in support of its application. This includes a Statement of case signed by Elaine Gosling, Head of Housing Management.

The Statutory Duty to Consult

9. The obligation to consult is imposed by Section 20 of the Act. The proposed works will be carried out pursuant to a Qualifying Long Term Agreement (QLTA). The consultation procedure is prescribed by Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations"). Where there is a QLTA, leaseholders do not have a right to nominate a contractor.

10. The landlord is obliged to serve leaseholders and any recognised tenant's association with a Notice of Intention to carry out qualifying works. The Notice of Intention shall: (i) describe the proposed works; (ii) state why the landlord considers the works to be necessary; and (iii) contain a statement of the estimated expenditure. Leaseholders are invited to make observations, in writing, in relation to the proposed works and expenditure within the relevant period of 30 days. The landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The landlord shall respond in writing to any person who makes written representations within 21 days of those observations having been received.

11. Section 20ZA(1) of the Act provides:

> "Where an application is made to the appropriate 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."

The Lease

12. The Applicant has provided the Tribunal with two sample leases in respect of each of the six high rise blocks. These leases are all for 125 years and were granted pursuant to the statutory Right to Buy.

13. We have perused the lease for 139 Navestock Crescent. The landlord's obligation to keep in repair the structure and external walls is set out in the Ninth Schedule. The covenant extends to reasonable improvements. The landlord covenants to keep the Estate in good repair and condition.

14. It is not necessary for the Tribunal to consider the terms of the leases in any greater detail as we are not being required to determine whether the service charges will be payable.

Our Inspection

15. On 13 September, the Tribunal inspected the Estate. There are six high rise blocks, Blenheim Court, Coopersale Close, Elizabeth Court, Lambourne Court, Orsett Terrace and Sunset Court. Each has 11 floors. Five of the blocks have 65 flats, Coopersale Close being somewhat larger with 110 flats. The total is some 435 flats. Works were in hand with scaffolding being erected around a number of blocks. We were told that internal works had been executed. We were comforted to be told by a leaseholder that he was aware of the application before the Tribunal.

16. We also inspected the low rise blocks in Navestock Crescent and the Orchards. These properties will also be affected by the yellow boxes which are intended to keep the access areas clear so that the Fire Brigade can obtain access. There were notices on lampposts notifying residents of the proposed parking restrictions. There were a large number of cars parked around the estate which would restrict access in the event of a fire.

The Background to the Application

17. The Estate was built in 1970s. The aluminium cladding was fitted in the 1990s. The Applicant asserts that the cladding was compliant at the time of the installation, but no longer complies with current regulations.

18. The Grenfall fire was on 14 June 2017. This was a wake up call for all landlords to their responsibilities in respect of fire risks. It has also caused understandable anxiety to tenants living in similar blocks. On 26 June 2017, the leader of Redbridge Council wrote to residents seeking to reassure them.

19. At the beginning of July, the Fire Authority inspected the Estate. The Authority subsequently served a number of statutory notices on the Applicant pursuant to the Regulatory Reform (Fire Safety) Order 2005. We have been provided with copies of the notices relating to Lambourne Court (17 July), Blenheim Court (26 July), Sunset Court (25 July), and Elizabeth Court (2 August). A number of fire risks were identified. For example, there were a number of compartment breaches within the service riser cupboards, the fire resistant talon trunking had not been correctly fitted, an enclosed shaft with air vents was found adjacent to a sealed off bin chute and an old incinerator riser cupboard had been used as a service riser for electrical cables. The Applicant was required to remedy these defects within 28 days of the relevant notices.

20. In each case, the Notice referred to the presence of the combustible façade cladding. The Applicant was required to provide all relevant material about any replacement window and façade schemes to risk assessors. Where the relevant material was not available, a strategy was required to assess the risk. The Applicant could be in no doubt but that further statutory action would be taken were these risks not addressed. The Applicant was also warned of the potential criminal sanctions where residents are placed at risk of fire.

21. On 20 July, the Chief Executive confirmed a decision to award a contract for emergency fire safety works to the six blocks to Lawtech Limited in the sum of £2,975,000. The Applicant had ascertained that the cladding did not include aluminium composite material. However, intrusive test and surveys revealed the presence of significant amounts of polystyrene insulation behind the solid aluminium cladding. Experts advised the removal of the polystyrene and the replacement with a safer non-combustible material. Five options were considered. Option 2, "non-combustible, new aluminium PPC cladding panel (6 bent) rain screen cladding onto new bracketry system" was recommended as offering best value and the most suitable technical solution overall. The Report stated that the Fire Authority had set a 16 weeks timeframe for the execution of the works. If this timeframe was not met, there was the likelihood of further statutory action by the Fire Authority. The Report noted that Lawtech Limited had been appointed under a QLTA. Consultants had reviewed the proposed works and tendered rates and had concluded that these represented good value.

22. On 20 July 2017, the Head of Housing Management wrote to all the residents on the Estate advising them of the urgent works that they proposed pursuant to their fire safety plan. The letter referred to (i) the removal of the cladding from the tall blocks; (ii) the installation of drop down vehicle bollards to prevent cars parking underneath the blocks; and (iii) double yellow lines to ensure that emergency vehicles could gain access onto the Estate. Residents were invited to discuss the plans with housing officers. Residents were given notice of a meeting on 26 July. We are told that seven residents attended this meeting.

Our Determination

23. The statutory duty to consult is an important weapon in the statutory armoury to protect leaseholders from being required to pay unreasonable service charges. The prescribed procedures are not intended to act as an impediment when urgent works are required. A strict adherence to the statutory timetable would delay urgent works required to protect the health and safety of residents. In such circumstances, it is important for landlords to follow the spirit of the statutory provisions.

24. The Tribunal is satisfied that it is reasonable to grant dispensation from the consultation requirements in this case. The Applicant has informed the leaseholders of the proposed works and the reason why it considers them to be necessary. Fuller particulars are provided in the application form.

25. Neither the letter, dated 20 July, nor the application notified the leaseholders of the likely cost of the works. The total cost of the cladding works is estimated at £2,975,000. However, it is not known what contribution, if any, may be made by central government. Further, the Applicant will need to determine how to apportion the cost between its secure tenants and its leaseholders. No estimate has been provided of the additional works to the common parts. Part of the cost of these works will be apportioned to tenancies of the low rise blocks. It is understandable why the Applicant has not been able to provide an indication to the leaseholders of the estimate expenditure at this stage.

26. No leaseholder has notified the Tribunal of their intention to oppose this application. The Applicant has properly brought to our attention the written representations made by Mrs Banushi and Mr Tasan. We have had regard to these representations. They object to the fact that they will be required to contribute to the cost of these works. However, we are not being asked to determine whether the sums which will be charged to the leaseholders will be either reasonable or payable. In due course, the Applicant will need to determine what costs will be passed onto leaseholders through the service charge. It will need to consider carefully what sums are payable and would be reasonable. It is open to any leaseholder aggrieved by that determination to challenge it through an application to this Tribunal.

27. No one has suggested that these works are not urgently required. No leaseholder has suggested that they will be prejudiced were we to grant dispensation. It is therefore not necessary for this Tribunal to consider whether the dispensation should be granted on terms.

28. We direct the Applicant to send a copy of this decision to the leaseholders and to display a copy in the common parts of the Estate.

Judge Robert Latham
18 September 2017