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BIR/37UC/LDC/2012/0003

HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Landlord and Tenant Act 1985
&
Commonhold & Leasehold Reform Act 2002

Application under Section 20ZA of the Landlord & Tenant Act 1985 for dispensation of the Section 20 consultation requirements for qualifying works at

3 – 39 Lanchester Gardens
Shrewsbury Road
Worksop
Nottinghamshire
S80 2PN

RMB Trading Ltd (Applicant)

&

The Leaseholders of Flats 3, 4, 5, 6, 7, 8, 8A, 9, 9A, 10, 11, 12,13, 14, 14A, 16, 16A, 17, 17A, 18, 19, 20, 21, 22, 23, 24, 24A, 25, 25A, 26, 27, 28, 29, 30, 31, 32, 32A, 33, 33A, 34, 34A, 36, 37, 38 & 39 Lanchester Gardens (Respondents)

Application dated:	30 April 2012
Inspection	17 May 2012
Hearing:	17 May 2012 at the Panel Office
Representation:	
Applicant	Diana van Aperen and David Holliman of CP Bigwood – Managing Agents.
Appearance for the Respondents:	James Syson, Leaseholder of 16A & 34A Lanchester Gardens
Members of the Tribunal:	Mr V Ward BSc Hons FRICS Professor N P Gravells MA
Date of Tribunal's decision:	17 May 2012
DETERMINATION:	**The Application for Dispensation is granted.**

REASONS FOR THE TRIBUNAL'S DETERMINATION

Background.

1. The Applicant's application dated 30 April 2012 ("the Application") requested the Leasehold Valuation Tribunal ("the Tribunal") to grant a dispensation from the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") and the Service Charge (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations") in respect of roof repairs to 3 – 39 Lanchester Gardens , Shrewsbury Road, Worksop, Nottinghamshire S80 2PN ("the Works"). The Works are qualifying works within the meaning of section 20ZA(2) of the 1985 Act and the Applicant claims that they are required as a matter of urgency as water is leaking into flats 12, 14A, 17A, 34A and the corridors of the communal parts.

2. Lanchester Gardens comprises a development of 46 residential flats formed by the conversion of a former Local Authority Nursing Home. The development is arranged in essentially two interlinked blocks over 2 storeys. The roof finish is a mixture of mono pitched tile clad and flat roofing systems.

3. The Applicant seeks a determination to dispense with the consultation requirements of the Act for the following reasons:

    a) Both blocks have very poor roof coverings and water continues to leak through and it is no longer cost effective to repair these areas.
    b) Block 1 has water leaking into flats 12, 14A, 17A and the corridor. It is not possible to carry out temporary repairs in respect of these areas.
    c) In Block 2, flats 27, 29 and 34A show evidence of water leaks with evidence of considerable leaks to flat 34A and water staining to the common parts.
    d) The common parts to both blocks have water dripping from the damaged flat roofs onto concrete steps which is a potential hazard which could lead to serious injuries.
    e) Water is running down the light fittings in some areas of the communal parts causing repair and lighting issues.

4. The Application included a copy of the initial Notice of Intention to Carry Out Work under the consultation procedures under section 20 of the 1985 Act dated 27 April 2012 which the Tribunal understands had been served on all Leaseholders.

The Lease.

5. The Tribunal was provided with a copy of a specimen lease relating to the development (in respect of flat 12). Clause 6 – Tenant's Covenants with the Landlord states the following under 6.1:

    "To pay the Rent on the date hereof (or an annual proportion where appropriate) and each year on the first day of June thereafter, the Estate Charge and the Building Service Charge in the manner set out in the Fifth and Sixth Schedules....."

The Fifth Schedule of the lease – Estate Services and Costs – outlines the services and responsibilities of The Landlord in respect of effectively the external areas of the development, the scope of charges falling under Estate Management Costs and under the Estate Charge the method of payment and accounting relating to the same.

The Sixth Schedule – Building Services and Costs states the following under Part I Building Services:

> *"1 To maintain repair and where necessary renew:*
> *1.1 the main structure of the Building including the basement foundations and the roof of the Building"*

The Lease therefore compels the Leaseholder to pay a proportion of the costs of repairing and renewing the roof relating to the development. The proportion is stated within the Lease.

The Law.

6. Section 20 (3) of the Act and Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 provides that where the qualifying works on a building or any other premises result in a contribution in excess of £250 being payable by any one tenant, the costs recoverable will be limited to the appropriate amount if the landlord does not consult. A Leasehold Valuation Tribunal ("LVT") has power under section (1) (b) of the Act to dispense with the consultation requirements. Accordingly to section 20ZA (1) of the Act, when an application is made to dispense with all or part of the consultation requirements with respect to qualifying works, a LVT may make the determination if it is satisfied that it is reasonable to dispense with the requirements.

7. It should also be noted that the dispensation power of the LVT only applies to the statutory consultation requirements and does not confer any power to dispense with any contractual consultation provisions which may be contained in the lease.

8. Section 20ZA of the 1985 Act does not expand upon or detail the circumstances when it may be reasonable to make a determination dispensing with the consultation requirements. While this application is being made to deal with an urgent situation, it is a fact that most applications to dispense with the consultation requirements are made on a retrospective basis. However, similar principles apply in pre-emptive applications which are the likelihood of prejudice to, or the degree of prejudice suffered by, the tenant. In *Eltham Properties v Kenny* (2008) L & TR 14 at Paragraph 26, the Lands Tribunal held that:

   "When an application is made under section 20ZA (1) of the 1985 Act the LVT may make the determination to dispense with all or any of the consultation requirements "if satisfied that it is reasonable to dispense with the requirements." The determination is thus one for the LVT's discretion, and the issue in this appeal is whether the LVT in making its determination approached the matter correctly in law. What it had to do was to consider whether it was reasonable to dispense with the consultation requirements. However, the LVT stated that "the legislation is clearly intended to make sure that landlords observe the consultation requirements and fail to do so at their financial peril." This language suggests strongly that the LVT approached the matter on the basis that the legislation was to be applied as a punitive measure in order to punish landlords who failed to comply with the consultation requirements and that the dispensation power was to be exercised with this in mind. That was, in my judgement, an incorrect approach. What the LVT had to determine was whether it was reasonable to dispense with the consultation requirements, and the reasonableness of dispensation is to be judged in the light of the purpose for which the consultation requirements were imposed. The most important consideration is likely to be the degree of prejudice that there would be to the tenants in terms of their ability to respond to the consultation if the requirements were not met"

9. *Eltham Properties v Kenny* was also approved by the Lands Tribunal in the case of *The Leaseholders of 37 Flats at 30 – 40 Grafton Way (MRX/185/2006)* at paragraph 33 in which the President of the Lands Tribunal held that:

   "The principal consideration for the purpose of any decision on retrospective dispensation must, in our judgement, be whether any significant prejudice has been suffered by a tenant as a consequence of the landlord's failure to comply with the requirement or requirements in question. An omission may not prejudice a tenant if it is small, or if, through material made available in another context and the opportunity to comment on it, it is rendered insignificant. Whether an omission does cause significant prejudice needs to be considered in all the circumstances. If significant prejudice has been caused we cannot see that it could ever be appropriate to grant dispensation."

The Inspection.

10. The Tribunal carried out an inspection on 17 May 2012. Present at the inspection were David Holliman, Building Surveyor, of CP Bigwood on behalf of the Applicant, James Syson, a Respondent and Leaseholder of flats 16A and 34A and Alana Turner of Willow Properties, letting agents, who was present to facilitate access to some of the flats.

11. The Tribunal inspected internal areas relating to flats 12, 14A and 34A and also the first floor communal corridors. Extensive water ingress was noted to several areas particularly the first floor corridors.

12. The Tribunal also inspected where possible the external roof coverings. It noted defects to some of the tiled areas and also where temporary repairs have been made.

13. The Tribunal were provided with a survey report prepared by Mr Holliman in respect of the roof which illustrated the defects relating to the same.

The Hearing.

14. Present at the Hearing were Diana van Aperen, David Holliman and Amy Wesley of CP Bigwood on behalf of the Applicant and James Syson, a Respondent and Leaseholder of flats 16A and 34A. Mr Syson indicated that he acted on behalf of 25 Leaseholders and that collectively they were forming a group to be known as Lanchester Gardens Leaseholders Association. The inaugural meeting of the Association was to be held in the week following the Hearing.

15. No written representations were received from the Respondents.

16. On behalf of the Applicant, Ms van Aperen advised that CP Bigwood were appointed Managing Agents in respect of the development in October 2010.

17. At handover there was no evidence of any roof leaks. Hence Ms van Aperen stated that the initial intention was to carry out temporary repairs to the roof whilst funds were accumulated to carry out either a more comprehensive repair or renewal as required. However, in January 2011, a leak was reported to flat 34A. The contractor who carried out the repair indicated that the roof coverings to both blocks were in poor condition and that the roof was effectively "worn out".

18. Continuing she stated that, after more leaks were reported, David Holliman was in April 2012 instructed to prepare a survey report in respect of the roof. This is referred to in paragraph 13

above. The report recommended extensive repairs to many elements of the roof including the gutters.

19. CP Bigwood obtained quotations from Beacon Roofing for the repairs recommended. These were as follows:

Repair to Roof One	£17,300 plus VAT
Repair to Roof Two	£11,760 plus VAT
Total	£29,060 plus VAT

20. In her conclusions, Ms van Aperen stated that, in her opinion, the repairs to the roof were of an emergency nature and should be carried out with any delay. When questioned she confirmed that the Dispensation was sought in respect of repairs required for all sections of the roof relating to the development.

21. The Tribunal asked Mr Syson for his opinion as to the condition of the roof. He said that he was unaware of the extent of the defects relating to the same until in February 2011 when he accompanied Mr Holliman on a site inspection. He said that he was "shocked" at the condition of the roof. He confirmed to the Tribunal that he accepted that the repairs were of an emergency nature. Further he also confirmed that on an informal basis, the leaseholders he represented were aware that urgent repairs were required to the roof. He was however of the opinion that further quotations for the roof repair should be obtained and also that some form of consultation should take place with the Leaseholders Association.

Determination.

22. It was clear to the Tribunal during the site inspection that extensive repairs were required to many areas of the roof relating to Lanchester Gardens and the survey report provided endorsed this opinion. Extensive water ingress was noted to many areas of the development including certain flats and the communal areas with Health and Safety implications for residents.

23. Whilst the Tribunal did not have the opportunity of questioning any Respondents other than Mr Syson, the view formed from the Hearing was that many Leaseholders accepted that the repairs were of an urgent nature

24. The Tribunal therefore considered that compliance with the consultation requirements at this stage would be impractical and prejudicial to the Leaseholders of Lanchester Gardens.

25. The Tribunal was satisfied that the works were required on an urgent basis and that on the evidence provided it was reasonable to dispense with the consultation requirements on the basis that the Applicant proceeded to carry out the works immediately.

26. At the Hearing the Parties indicated that they would co-operate to obtain further quotations and the Tribunal would strongly support this approach.

27. The Parties should note that this determination does not prevent any later challenge by any of the Respondent Leaseholders under sections 19 and 27(A) of the 1985 Act on the grounds that the costs of the works when incurred had not been reasonably incurred or that the works had not been carried out to a reasonable standard.

28. In making their Determination the Tribunal had regard to their inspection, the submissions of the parties, the relevant law and their knowledge and experience as an expert Tribunal, but not any special or secret knowledge.

V WARD BSc Hons FRICS Chairman

Date of release:

30 MAY 2012