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**HM COURTS & TRIBUNALS SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

**S. 20ZA of The Landlord and Tenant Act 1985 (as amended)
(Application to dispense with consultation requirements)**

Case Number:	CHI/45 UH/LDC/2012/0010
Property:	West Mansions Heene Terrace Worthing West Sussex BN11 3NT
Applicant:	West Mansions Residents Association Company Limited & Nuclei Properties Limited
Respondent:	The lessees of the Property
Dates of Hearing:	15th April and 25th May 2012
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Lady Davies FRICS (Surveyor Member)
Date of the Tribunal's Decision:	25th May 2012

BACKGROUND

1. This is an application made by the Applicant pursuant to S.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with the consultation requirements contained in S.20 of the Act.
2. The work covered by this application is to remedy structural defects to the southwest corner of the property as more particularly described in a schedule of works dated the 22nd April 2012 prepared by Choice Design & Construction Ltd. ("The Works").
3. On the 14th March 2012 the Tribunal gave directions for the Applicant to serve on the Respondents a statement of case with copies of documents in support and if any of the Respondents objected to the application then they should file a statement in reply setting out their objections and they should attend the hearing.
4. The Applicant filed a written statement of case and attended the hearing with six copies of their hearing bundle.
5. The lessees of Flat 24 filed a statement of case objecting to the application and at the hearing they were represented by Mr M Blair. A small number of other lessees attended the hearing but made no formal representations.

INSPECTION

7. West Mansions is a 5/6 storey block of flats built circa 1850 situated on a small slip road overlooking the sea front of Worthing with ornamental gardens at the front. There is permit and paid parking on the seafront and in the slip roads and to the side flanking the property. The block is rendered to the front and side with facing brickwork to the rear. The external condition of the property is poor with cracked rendering to the front. The rendered elevations are peeling and are currently scaffolded with cross members on the upper stories where the building and the cornice and the eaves have become unstable. The common parts are bare and basic and fitted with an entry phone system and a lift. The committee inspected Flats 19 and 20 on the third floor where disrepair and structural damage were noted.

THE LAW

8. S.20 of the Act limits the service charge contribution that lessees have to make towards "qualifying works" if the relevant consultation requirements have not been complied with or dispensed with by a Leasehold Valuation Tribunal.
9. Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 1987 ("the Regulations") provide that if a lessee has to contribute more than £250 towards any qualifying works then if the landlord wishes to collect the entire costs of those works the landlord must either carry out consultation in accordance with S. 20 of the Act before those works are commenced, or obtain an order from the Tribunal dispensing with the consultation requirements.
10. The consultation requirements are set out in the Regulations and it is not proposed to set these out here. However, they include the need for the landlord to state why they

consider the works necessary and for further statements setting out their response to observations received, and their reasons for the selection of the successful contractor. A tenant has the right to nominate an alternative contractor and the landlord must try to obtain an estimate from such a nominee.

11. Under S. 20ZA (1) of the Act, the Tribunal is given discretion to dispense with the consultation requirements. This Section provides:

Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any 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 those requirements.

12. The test is one of reasonableness. Is it reasonable in the circumstances of the case to dispense with all or any of the requirements? The decided cases have established that it is not necessarily the conduct of the landlord that has to be reasonable rather it is the outcome of making the order which has to be reasonable taking into account all the circumstances of the case. The Tribunal should also have regard to any prejudice that a lessee might suffer in the event of dispensation being granted.

THE EVIDENCE

13. The relevant evidence submitted to the Tribunal on behalf of the Applicant consisted of the following documents:

- i. The application
- ii. Specimen lease
- iii. 2 letters from the planning department of the Worthing Borough Council
- iv. Structural engineers initial report dated 15.11.2011
- v. Structural engineers further report dated 18.1.2012
- vi. Estimate from South Coast Builders
- vii. Estimate from Future Management & Construction Limited
- viii. Specification of Works from Choice Design & Construction dated 22nd April 2012 endorsed by BBP structural engineers.
- ix. Copy correspondence and company documentation and minutes.

14. The relevant evidence submitted to the Tribunal on behalf of the lessee of flat 24 consisted of the following documents:

- i. copy letters dated 19.5.11, 30.11.2011, 2.4.12, 2.4.12 and 24.4.2012.
- ii. Respondent's tender analysis.

HEARING

15. Laura Scott, the secretary of the West Mansions Residents Association Company Limited began her evidence by summarising the background to the application. She

told the Tribunal that in the final quarter of last year a program of works was commissioned to carry out external repairs and redecoration. During the course of these works the Applicant was advised of the existence of structural damage to the southwestern section of the building. The damage consisted of a number of cracks suggesting significant structural damage.

16. The Applicant commissioned BBP structural engineers to carry out a survey of the building to assess the extent of this damage. BBP delivered their initial findings in a report dated 13th December 2011. A more detailed report was delivered by BBP on the 18th January 2012. This report concluded that the problems were presently confined to the southwest corner of the third floor of the building. The brickwork was suffering from the ingress of damp and weather to the extent where the joists were non-effective and the wall was now leaning significantly outwards. The report concluded that the situation gave them cause for concern as to the stability of this part of the structure and for the safety of passers by.
17. The report recommended that this area be taken down to the level of the cornice below the windowsill level and rebuilt to match the existing. The cornice on the top of the wall should be taken down and replaced with a lightweight fibreglass type so as to avoid any further tendency for the wall to lean outwards. The report also identified movement in the area of the large window to the third floor stairwell with recommendations for its repair.
18. The Tribunal was told that the Applicant had approached two building companies to tender for the works necessary to repair the damage. South Coast Builders had provided a quote of £53,737 to carry out the work and Future Management & Construction Ltd had quoted £66,487. The Applicant proposed to instruct South Coast. South Coast were members of the Federation of Master builders and had the necessary expertise to handle large scale works.
19. Laura Scott contended that in view of the serious nature of the repair work it was necessary to proceed as a matter of urgency even though statutory consultation had not taken place. In view of the urgency of the situation and the risk to passers-by she invited the Tribunal to make an order dispensing with the consultation requirements in relation to the remedial works so that the chosen contractor could start work using the scaffolding, which remained in situ from the 2011 contract.
20. Mr Blair representing lessees of Flat 24 attended the hearing to voice his objection to the application. He objected to the application on the grounds that the tenders received for the rebuilding work were in his words "totally inadequate for such major works, and that the tendering process had not been handled in a professional manner." Whilst he accepted that rebuilding work needed to be carried out urgently, he contended that it was of the utmost importance that the project was professionally managed from the outset using the services of a qualified surveyor and overseen at all stages to ensure that it was being carried out in a satisfactory manner. He was concerned, given the information currently to hand and the history to date, that this essential work may be awarded to an unsuitable contractor and not properly supervised.
21. Mr Blair had a number of observations to make on the way in which the Works had been put out to tender. One of these was that whilst two companies had provided estimates, these estimates were not based on the same specification of work. In addition he contended that the specification of Works did not cover all the recommendations made in the structural survey by BBP.

22. For all of these reasons he considered that the lessees would be prejudiced if the Applicant was allowed to proceed with the work without going through a formal process of consultation as provided by statute.
23. After the parties had concluded giving their evidence and submissions, the Tribunal adjourned the hearing for an hour so that it could carry out a preliminary review of the documents supplied and consider the evidence. Having carried out this exercise the Tribunal reconvened and raised with the parties its concerns. In summary these were that the Tribunal was not satisfied that the specification of works necessarily addressed the problems identified in the surveys of BBP. The specification of Works had been drawn up by the builder who would carry out the work and had not been seen or approved by BBP. In these circumstances there was a significant risk that the Respondents would be prejudiced if a dispensation order were to be made on the evidence then before the Tribunal.
24. Ms Scott accepted the point and by consent the hearing was adjourned to allow time for a revised specification to be drawn up by a surveyor which would include only the urgent works required and that this specification would be reviewed and approved by BBP.
25. Directions were given by the Tribunal for the above documentation to be filed with the Tribunal and served on each lessee, with the lessees having the opportunity to make further representations if so advised. The hearing was rescheduled to continue on the 25th May 2012.
26. The Tribunal reconvened on the 25th May 2012 and was pleased to note that the Applicant had complied with the above directions. Ms Scott handed to the Tribunal the original of a revised specification of Works, which had been endorsed by BBP. She confirmed that the author of the revised specification, who was professionally qualified, would be retained to oversee the Works and she agreed that it had been helpful to have further time in which to produce a more satisfactory specification of work approved by the structural engineers.
27. Mr Blair also attended the second day of the hearing and after some initial reservations confirmed that he was now satisfied with the specification of Works and was also satisfied that proper arrangements would be put in place for the Works to be supervised by a suitably qualified person. In these circumstances he withdrew his objection to the application and confirmed that he consented to an order being made to dispense with the consultation requirements.

CONSIDERATION

28. In the opinion of the Tribunal the Works do constitute "qualifying works" within the meaning of the Act. As the contribution required from the Respondent pursuant to the service charge provisions in the leases will exceed the threshold of £250, there is an obligation on the Applicant under Regulation 6 to consult in accordance with the procedures set out in the Regulations.
29. The evidence put before us establishes: -
- (i) There is structural damage to the southwest corner of the building.

- (ii) Urgent and extensive repair work is necessary to avoid further damage to the building.
- (iii) There is a need to repair the structural disrepair urgently as a number of the flats are currently uninhabitable.
- (iv) There is a health and safety issue as the building abuts the highway and pedestrian pavement and there is a danger that masonry could fall and injure passers by.
- (v) A specification of Works drawn up by a surveyor and approved by structural engineers is now in place.
- (vi) Appropriate arrangements are being formulated to ensure that the works will be professionally supervised.

30. The Tribunal first considered the terms of the lease and in particular the repairing covenants contained therein. The lease places an obligation on the management company to maintain the exterior of the property subject to receiving contributions from the Respondents. The Tribunal was thus satisfied that the Applicant is obliged to carry out the Works and the Respondents are obliged to contribute towards the cost of the Works.

31. In the Applicant's statement of case it is contended that the Works are of an urgent nature and the delay that will result if the statutory consultation procedure takes place will result in further damage to the building and represent a health and safety hazard.

32. The Applicant seeks dispensation on the grounds that further delay is not in the interests of the Respondents and that dispensation is reasonable in all the circumstances of the case.

33. The Tribunal is satisfied that the building is in urgent need of extensive repair work and that any further delay is likely to be detrimental to the building. At least two flats in the building are no longer habitable as a direct consequence of the disrepair.

34. The Applicant has the benefit of two reports from structural engineers and as a result of this hearing now have a specification of urgent works to be carried out which has been seen and approved by a structural engineer. Arrangements are also being made to ensure that the Works are professionally supervised.

36. During the course of the hearing the only Respondents who had initially opposed the application moved to a position of supporting it. Mr Blair confirmed that he was now satisfied as the scope of the Works had been considered and described by a surveyor and endorsed by the structural engineers who had authored the two earlier reports. In these circumstances he had indicated to the Tribunal that the lessees of flat 24 were prepared to forgo their statutory consultation rights. The Tribunal had no records of any other lessees objecting to the application.

37. Having regard to the existence of the revised specification of Works, the Tribunal is now satisfied that none of the Respondents will suffer prejudice as a result of the failure to consult and indeed that it is in their interests that the Works are carried out without delay.

38. Taking all the circumstances into account and for the reasons stated above, the Tribunal is satisfied that it is reasonable for it to grant dispensation from all the requirements of S. 20 (1) of the Act in respect of the Works and it so determines.
39. The Tribunal makes it clear that this dispensation relates solely to the requirement 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 Respondents under S.27A of the Act to deal with the resultant service charges. It simply removes the cap on the recoverable service charges that S. 20 would otherwise have placed upon them.

Signed _____
Mr. RTA Wilson LLB

Dated 12th June 2012