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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
EASTERN REGIONAL OFFICE

Case Reference	:	**CAM/34UE/LDC/2013/0019**
Property	:	**1-12 Bridge House, Bridge Street, Rothwell, Kettering, Northants NN14 6JW**
Applicant	:	**Bridge House Property Management Ltd** **Represented by Mr John Socha of Orchard Block Management Services Ltd (managing agent)**
Respondent	:	**Heather Marie Porter (Flat 3) and the other leaseholders of Flats 1 to 12, as listed in the Application and noted on the Tribunal File** **Neither attending nor represented**
Date of Application	:	**25th September 2013**
Type of Application	:	**Dispensation under section 20ZA of the Landlord & Tenant Act 1985 from the consultation requirements set out in section 20 and in the Service Charges (Consultation Requirements) (England) Regulations 2003**
Tribunal	:	**Tribunal Judge G M Jones** **Mr R Thomas MRICS**
Date and venue of Hearing	:	**21st October 2013 at Kettering Magistrates Court**

DECISION

ORDER

UPON HEARING Mr John Socha of Orchard Block Management Services Limited (Managing Agent) for the Applicant

AND the Respondents having been served with the Application but not appearing or making written representations

IT IS ORDERED THAT: -

1. The Applicant is hereby granted dispensation under section 20ZA of the Landlord & Tenant Act 1985 from further consultation under the provisions of section 20 on the following terms: -

   (a) The contract to renew and insulate the main section of flat roof at Bridge House, Bridge Street, Rothwell, Northants shall be awarded to Alderman Roofing Limited or to such other contractor the Managing Agent shall select at a price not exceeding Alderman's quotation of £10,976.40 inc. VAT;

   (b) The total costs of the project (excluding reasonable costs of supervision) shall not exceed £12,000 inc. VAT;

   (c) Work shall begin as soon as is reasonably practicable;

   (d) The Managing Agent shall use its best endeavours to ensure that the renewal and insulation of the roof is carried out in a good and workmanlike manner and with sound and suitable materials;

   (e) The Managing Agent shall use its best endeavours to keep the leaseholders informed as to the overall cost of the said works and as to progress thereof.

2. No order as to costs.

Tribunal Judge G M Jones
Chairman
1st November 2013

REASONS

0. BACKGROUND

The Property

0.1 Bridge House is a block of 12 small flats in the former Rothwell Working Men's Club, an Edwardian building dating from 1931, which has been extended at the rear to provide additional accommodation, and combined with the adjoining house. The original Club building appears to have had a flat leaded roof with a parapet. Currently the main flat roof, which was over-felted when the building was converted in 2003, backs onto a pitched roof. There is another section of flat roof in one corner at the rear of the building, adjoining a small second floor extension. The Club was built on two floors, while the house now incorporated into the conversion was on three floors with a pitched slate roof. Some flats are approached from the front doors in Bridge Street and others from the rear door to the communal car park, which opens onto School Lane. Flat 3 is a first floor flat and is approached from the rear.

0.2 The front elevation of the former Club has wooden-framed sash windows which are in need of decoration. The building is otherwise in reasonable condition except for the main flat roof. Photographs taken by a roofing contractor suggest that part of that roof is in disrepair. It is undoubtedly the case that water is coming through the ceiling of the living room of Flat 3. The inspection took place on a rainy day and, despite a tarpaulin having been spread over the affected area, water was dripping through the ceiling rose in the centre of the room at a steady rate. Urgent repairs are clearly needed. Arrangements of a rather Heath-Robinson character have been made to prevent water from penetrating into the flat below. So far this seems to have worked; but it is unlikely to be effective for much longer.

The Lease

0.3 The sample lease of Flat 3 dated 26th March 2004 grants a term of 999 years at a peppercorn rent from the date of the lease. The Respondent ("BHPM") is the nominated manager in the lease, which contains fairly standard service charge provisions about which no more need be said.

1. THE DISPUTE

1.1 There appears to be no dispute as such in this case. The Management Company BHPM, now owned by leaseholders, acting through Mr John Socha, who runs the Managing Agent Orchard Block Management Services Ltd, seeks dispensation from the statutory consultation processes in order to carry out roofing repairs which, he says, are urgent if further damage is to be avoided. The leaseholders, eleven of whom are non-residents, have been served with the application but none has chosen to make representations or appear before the Tribunal.

1.2 The Applicant has instructed a roofing contractor to take temporary measures to reduce water ingress and also to quote for a permanent repair. The intention is the re-felt the whole of the main flat roof of the former Club building, first stripping off the 2003 felt and the old lead-work and replacing any rotten timbers as necessary. It is considered unlikely that there will be rot in the joists; but there is probably a marine ply covering and some of the sheets are likely to have been ruined.

1.3 Mr Socha explained to the Tribunal that, when a leak was reported to him in September 2012, he arranged a repair by Alderman Roofing at a cost of £330 + VAT. A further leak was reported in October 2012 and a further repair carried out at a cost of £245 + VAT. This kept the roof watertight for a further 12 months. The roofers however told him the roof needed major work. A quotation was sought from Alderman Roofing, as Mr Socha had previous experience of the firm and had found them good and reliable. He quotation was in the sum of £10,976.40 inc. VAT, which was well over the consultation threshold and more than Orchard had in hand (£8,082.02).

1.4 Unfortunately, Orchard lost its maintenance manager on 31st December 2012 and, although a replacement was appointed on 1st March 2013, the repair of the roof was overlooked. On 23rd September 2013 Ms Porter's tenant in Flat 3 reported a leak and shortly afterwards moved out. By this time, the funds in hand were sufficient to cover Alderman's quotation, which Alderman is willing to honour. Mr Socha's view is that the developer (an inexperienced developer who is a Kentucky Fried Chicken franchisee) did not properly address structural issues, including the issue of the roof, when re-developing the building in 2003.

2. THE ISSUES

2.1 There is only one issue before the Tribunal. Should dispensation be given from the whole of the statutory consultation process in order that urgent repairs can be carried out to the leaking flat roof? There is, perhaps, a subsidiary issue, namely, whether dispensation should extend to the whole of the proposed works or only to some lesser works essential to prevent water ingress pending completion of a statutory consultation in relation to the whole roof repair.

3. THE HEARING AND THE EVIDENCE

3.1 Because there is no dispute of fact, there is no need to resolve evidential issues. The Tribunal has set out elsewhere in this Decision its findings of fact. However, two significant matters emerged during the hearing, namely, the matters considered and processes gone through by Mr Socha to ensure that BHPM obtain value for money. He took the view that the roof should be insulated while being re-covered, as there would not be another opportunity to do this work, hopefully for many years. This would involve lifting all the ply boarding, which would also make it possible to assess the condition of the joists. Mr Socha also gave details of his efforts to find alternative contractors in order to obtain a range of quotations. Two companies rejected the job as too small; but recommended Ashvale Roofing Systems Ltd. Their quotation was £10,176 inc. VAT. Orchard's new Maintenance Manager suggested Sure Fix Roofing (Mr C P Bone), who apparently does not charge VAT. His quotation was in the sum of £8,750.

3.2 Mr Socha takes the view that Mr Bone may find this job a little more complex than he is used to, bearing in mind his obviously modest turnover. The other two quotations are at very similar levels and Mr Socha prefers to instruct Alderman Roofing, a firm whose reputation he knows and whose work he has seen (they do work on a regular basis for Travis Perkins and re-roofed his office).

3.3 Mr Socha has written to leaseholders serving section 20 notices and, at the same time, informing them that he intends to seek dispensation from the Tribunal under section 20ZA. As has been noted, the leaseholders have been served with the Application but none has responded and none attended the hearing. Mr Socha calculates that the consultation process takes at least 105 days.

4. THE LAW

Service Charges

4.1 Under section 18 of the Landlord & Tenant Act 1985 (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

4.2 Under section 27A the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for those costs and, if so, the amount which would be payable.

4.3 In deciding whether costs were reasonably incurred the Tribunal should consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease and the 1985 Act, bearing in mind RICS Codes. If work is unnecessarily extensive or extravagant, the excess costs cannot be recovered. Recovery may in any event be restricted where the works fell below a reasonable standard.

Consultation

4.4 Under section 20 of the 1985 Act (as substituted by section 151 of the Commonhold & Leasehold Reform Act 2002 with effect from 31 October 2003) and the Service Charges (Consultation Requirements) (England) Regulations 2003 landlords must carry out due consultation with tenants before undertaking works likely to result in a charge of more than £250.00 to any tenant ("qualifying works") or entering into long term agreements costing any tenant more than £100.00 p.a. This process is designed to ensure that tenants are kept informed and have a fair opportunity to express their views on proposals for substantial works or on substantial long term contracts.

4.5 The consultation requirements vary. In this case the relevant requirements are those set out in Part 2 of Schedule 4 to the 2003 Regulations. The landlord must first provide to the tenants (and, if applicable, to the tenants' association) prescribed information about the proposed works and invite them to put forward a contractor. The consultation period is 30 days. The landlord must have regard to the tenants' observations, which might result in a change in the specification of works.

4.6 After that, the landlord may be obliged to seek an estimate from a contractor or contractors nominated by the tenants. That is likely to occupy a further period of at least 14 days. The landlord must then inform each tenant of the amounts of at least two estimates and the effect of any observations received and the landlord's responses and invite observations on the estimates. All estimates must be made available for inspection. The second consultation period is also 30 days. The landlord must have regard to any observations made. There are other requirements to provide information; but these should not delay the works.

4.7 Landlords who ignore these requirements do so at their peril. Unless the requirements of the regulations are met the landlord is restricted in his right to recover costs from tenants; he can recover only £250.00 or £100.00 p.a. per tenant (as the case may be) in respect of qualifying works. However, it is recognised that there may be cases in which it would be fair and reasonable to dispense with strict compliance.

4.8 Accordingly, under section 20ZA (inserted by section 151 of the Commonhold & Leasehold Reform Act 2002) the Leasehold Valuation Tribunal may dispense with all or any of the consultation requirements if satisfied that it is reasonable to do so. This may be done prospectively or retrospectively. Typically, prospective dispensation will be sought in case of urgency or, perhaps where a tenant is refusing to co-operate in the consultation process. Retrospective dispensation will be sought where there has been an oversight or a technical breach or where the works have been too urgent to wait even for prospective dispensation. These examples are not meant to be exhaustive; there may be other circumstances in which section 20ZA might be invoked.

Costs generally

4.9 The Tribunal has no general power to award inter-party costs, though a general power now exists under Rule 13(1) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 to make costs orders in cases where costs are wasted or a party has acted unreasonably. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal from the tenants through the service charge provisions i.e. he is entitled to recover a contribution to such costs not only from the defaulting tenant but from all tenants.

4.10 However, under section 20C of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. Clearly the manner in which this discretionary power is (or is not) exercised will depend upon the facts of the case. The relevant factors in this case are discussed in section 5 of this Decision.

4.11 In addition, under Rule 13(2) of the 2013 Rules the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees. This power is likely to be exercised in cases where the applicant is substantially successful, unless he has been guilty of unreasonable conduct in connection with the application, e.g. where he has unreasonably rejected a proposal for mediation or a fair and proper offer of compromise.

5. DISCUSSION AND CONCLUSIONS

5.1 The Tribunal is satisfied that repairs to the flat roof need to be carried out as a matter of urgency. If the work is not done soon, there will be further damage to the building and repair costs may escalate. The indications are that leaseholders do not object to Mr Socha's proposal to dispense with the consultation and get on with the work and are content to trust his judgment. Nevertheless, it is obviously a matter of concern that the work should be carried out by a competent contractor, with sound and suitable materials and at reasonable expense. Of course, dispensation does not absolve Mr Socha from the obligation to ensure that the work is carried out to a good standard and that costs are kept in check.

5.2 Fortunately, the Tribunal has expertise in making assessments of this kind. In our judgment, the most economical way forward is to carry out a full and complete repair now; adding insulation will not greatly increase the cost and will benefit the leaseholders for years to come. The decision to award the contract to Alderman Roofing is a reasonable one and their quotation is at a reasonable level for this job, bearing in mind particularly the difficulties of access. Of course, it will be necessary to ensure that the work is supervised; but Orchard appear to have the resources to deal with that. The Tribunal considers that the difference in price between Alderman and Ashvale is immaterial and that it is reasonable to prefer Alderman to Mr Cope, whose turnover is clearly below that VAT registration threshold.

5.3 For the protection of leaseholders, the Tribunal limits the dispensation to expenditure up to £12,000 inc. VAT plus reasonable costs of supervision. If the final cost is likely to exceed that figure, the Applicant must make a further Application to the Tribunal.

Costs

5.4 This Tribunal has a wide discretion to exercise its powers under section 20C in order to avoid injustice to tenants. In many cases, it would be unjust if a successful tenant applicant were obliged to contribute to the legal costs of the unsuccessful landlord or, irrespective of the outcome, if the tenant were obliged to contribute to costs incurred unnecessarily or wastefully. In many cases, it would be equally unjust were non-party tenants obliged to bear any part of the landlord's costs.

5.5 In this case, there is no reason to make an order under section 20C. It is not clear whether Orchard's terms of engagement permit them to charge extra for making the Application; if that is the case, Orchard should be free to make a reasonable charge. Also the application and hearing fees are properly included in the service charge account.

Tribunal Judge G M Jones
Chairman
1st November 2013