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**HM Courts
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Service**

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property	Oxford House, Friday Street, Henley on Thames RG9 1AL
Applicants	Investfront Ltd (Freeholder).
Respondents	The Leaseholders of 6 flats at the property
Case number	CAM/38UD/LDC/2013/0002
Date of Application	3rd January 2012
Type of Application	Application to dispense with consultation requirements in respect of major works (Section 20ZA) and for an order under Section 20C of the Landlord and Tenant Act 1985 as amended (the Act)
Tribunal	Robert Brown FRICS Derek Barnden MRICS Jeremy Sims
Hearing	31st January 2013 at Hotel du Vin, New Street, Henley on Thames RG9 2BP

DECISION

1. The Tribunal confirms its oral determination given on 31st January 2013 that it is reasonable to dispense with the statutory consultation requirements of Section 20 of the Landlord and Tenant Act 1985 in relation to the repairs to stonework on the front elevation.
2. The Tribunal confirms its oral determination given on 31st January 2013 making an order under section 20C of the Act preventing the Applicant from recovering the costs of these proceedings by way of the service charge.

REASONS

Background

3. On the 3rd January 2013, the Tribunal received the application under Section 20ZA of the Act for dispensation from all or any of the consultation requirements contained in Section 20 in relation to structural repairs to the front elevation.
4. Notice of the application together with information from the Residential Property Tribunal Service was given to the leaseholders of the 6 flats at the property. A Directions Order was made on the 10th January 2012 including a direction that any Leaseholder who wanted to make representations does respond by 4.00 pm on the 18th January 2013. Written responses were received from Harley Street Properties Ltd (Unit 2) dated 19th January 2012 and a joint response from the leaseholders of Flats 1, 2, 3, 3a, 3b and Studio Flat dated 18th January 2013.
5. The Tribunal considered that this matter was urgent enough to warrant an abridgement of the normal 21 day notice period for a hearing in accordance with Regulation 14(4) of the **Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003**.

The Law

6. Section 20 of the Act limits the amount which tenants can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a Leasehold Valuation Tribunal. The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003** ("the Consultation Regulations"). These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. The landlord's proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then has to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal; to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations.
7. 20ZA of the Act allows a Leasehold Valuation Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable.

The Facts Found

8. A project to refurbish the front elevation had commenced on 12th August 2012 following the preparation of estimates and service of notices under the usual section 20 procedure. This procedure is not an issue before this Tribunal.
9. Upon commencement of the works, with the benefit of scaffold access, it was identified that since the original survey had been carried in 2010 that active movement of the mullions and associated stonework (over and above the work originally planned) had occurred which needed to be addressed.
10. As a result the surveyor supervising the work Mr C Lewington of Bennington Green recommended an immediate structural survey is undertaken because of the potential risk to residents and the public.
11. That survey was undertaken by Mr F Boyce of Howes Atkinson Crowder LLP and a report issued on 5th September 2012.
12. The Leaseholders were notified of these developments on the 24th October 2012 when they were also advised that an insurance claim was to be submitted.
13. On the 6th December 2012 the managing agent Mr a Dunmall of John Mortimer Property Management Ltd was notified that the claim would not be met as the relevant defect was a result of fair wear and tear.

14. On the 10th January 2013 the leaseholders were notified that the insurance claim had been unsuccessful and that application had been made to the Leasehold Valuation Tribunal for dispensation from the notice procedure under section 20 of the Act had been made and a provisional date for the hearing was set for 31st January 2013.
15. On the 10th January 2013 Bennington Green reported to John Mortimer PM Ltd with the anticipated costs of the additional works required (some £58,361.70 including VAT).

The Leases

16. The determination of this Tribunal relates to the statutory requirements under the Landlord and Tenant Act 1985. It does not extend to overriding any contractual obligations the parties may have under the leases.

The Inspection

17. The members of the Tribunal inspected the property in the presence of Mr Dunmall, Mr Lewington and Mr M Shephard (M A Shephard Builders Ltd) on behalf of the Applicant and Mr M Wren (Flat 2), Mr M Broome (Studio), Mrs A Adshead (Flat 3b) representing the Respondents.
18. They found it to be a block of flats over shops built in the mid to late 19th century of brick and stone construction under a slate roof.
19. The Tribunal were shown the deteriorating state of the stonework to the windows which appear to form part of the structural support of the building

The Hearing

20. The hearing was attended by same persons who attended the inspection. Also present and observing were Mr D Wheeler, Area Manager of John Mortimer Property Management Ltd and Messrs B and D Hartley commercial tenants of Unit 2.

Dispensation

21. Mr Dunmall assisted by Mr Lewington explained the history of the project (as outlined above) and that in order to save further costs and delays (in particular the continued hire of scaffolding to protect the public from falling masonry) the need for dispensation from the notice procedure for major works under section 20C.
22. During questions by the Respondents and the Tribunal it became apparent that the particular issues of the Respondents did not particularly relate to the issue of dispensation before the Tribunal.
23. Accordingly the hearing was adjourned.
24. At the reconvene, the Respondents indicated they had no objection to the issue of dispensation acknowledging the need to proceed urgently with the works.

Section 20C Costs

25. The Respondents had made application under section 20C of the Act for an order preventing the Landlord from recovering the costs of these proceedings by way of the service charge.
26. Mr Dunmall, on behalf of the Applicant said they had no intention of recovering the costs of these proceedings from the leaseholders.

Conclusions

27. The Tribunal considered all the written and oral evidence presented.


28. The Tribunal place no weight on the letter from Harley Property Developments; although clearly an interested party they are not a party to these proceedings.

Dispensation

29. By agreement of the parties an order dispensing the notice requirements under section 20 of the Act is made.
30. The reasonableness of the cost and standard of the work proposed is not an issue before this Tribunal. This application only asks the Tribunal to dispense with the consultation requirements. It is not an application to consider the reasonableness of the works or the reasonableness or payability of the service charge which will arise from this expenditure. If there is any dispute about those matters, then it will have to form the basis of an entirely separate application under section 27A of the Act.

Section 20C

31. By agreement of the parties an order, under section 20C of the Act, is made preventing the Applicant recovering the costs of these proceedings (in so far as they may recoverable under the service charge provisions of the leases).


Robert Brown
Chairman

Dated..... 13th February 2013