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Case Reference : **MAN/00BN/LDC/2013/0026**

Property : **Regency House, 38 Whitworth Street,
Manchester M1 3NR**

Applicant : **CH1234 LLP**

Representative : **Urban Bubble**

Respondents : **The 33 leaseholders of the Property
(see Annex)**

Representative : **N/A**

Type of Application : **Landlord and Tenant Act 1985
- section 20ZA**

Tribunal Members : **Judge J Holbrook (Chairman)
Mr D Bailey FRICS**

Date of Decision : **3 December 2013**

DECISION

ORDER

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the repairs and improvements to the apartment balconies on the upper floors of the Property which are necessary to prevent the ingress of rainwater into the Property.

BACKGROUND

1. On 11 November 2013 an application was made to the First-tier Tribunal (Property Chamber) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The application was made on behalf of CH1234 LLP, the landlord of Regency House, 38 Whitworth Street, Manchester M1 3NR (“the Property”). The Respondents to the application are listed in the Annex to this decision. They are the leaseholders of the 33 apartments within the Property.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern proposed repairs and improvements to balconies serving several apartments on the upper two floors of the Property. The works are said to be necessary to remedy disrepair which is permitting the ingress of rainwater into a number of those apartments.
5. On 14 November 2013 a Deputy Regional Judge of the Tribunal issued directions and informed the parties that, unless it was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence following an inspection of the Property. No such notification was received, and the Tribunal accordingly convened in the absence of the parties to determine the application on 3 December 2013.
6. The Tribunal inspected the Property on the morning of 3 December, prior to making its decision, in the presence of Mr Austin, an employee of the managing agent, and Mr Hassan, the leaseholder of apartment 24. An internal inspection was made of one apartment (apartment 23) and Mr Garcia-Gomez was also present for this part of the Tribunal’s

visit. The weather was dry at the time of the inspection, there having been no significant rainfall during the previous 24 hours.

DESCRIPTION OF THE PROPERTY AND THE GROUNDS FOR THE APPLICATION

7. The Property is a converted Victorian warehouse building in Manchester city centre. There are commercial premises at ground floor and basement levels, with residential apartments on the five floors above. There are duplex apartments on the fourth and fifth floors, the accommodation on the upper (fifth) floor of these apartments occupying space created by the construction of a mansard roof when the Property was converted for residential use. The upper floor of the duplex apartments also gives access to a stone-flagged balcony which, although divided by partitions, runs around the top of the building. The footprint of the fifth floor is effectively smaller than that of the floors below, with the fifth floor perimeter balcony sitting directly above part of the accommodation on the fourth floor.
8. The inspection of apartment 23 (which is one of the duplex apartments) revealed evidence of multiple leakage points, with signs of water penetration into the interior of the apartment through the ceiling directly beneath the balcony on the floor above. The degree of water penetration is such that the occupier has to place a number of buckets on the living room floor to catch the water which leaks through the ceiling whenever it rains.
9. The Applicant provided a copy of a survey report dated 10 September 2013. The report had been prepared by Malcolm Hollis LLP following an inspection carried out to investigate issues of water ingress reported by the Property's residents. In addition, the Applicant provided a copy of a report and cost estimate for remedial works, prepared by GAP Roofing Services Limited, and dated 11 October 2013.
10. The survey report concluded that there are likely to be number of factors contributing to the current problems with water ingress. However, particular issues were identified, including damage to the single ply membrane which is intended to keep water out of the Property; saturated and rotten timbers; a build up of silt and vegetation in gutters; and degraded and perished mortar pointing to brick and stonework.
11. The remedial works recommended by the roofing contractor comprise the replacement of rotten timbers and flashings; waterproofing of brickwork; pointing coping and brickwork; and repairs and improvements to slate side cheeks and centre timber posts.
12. Based on the conclusions of these reports, the Applicant's agent submitted that the proposed works are needed as a matter of urgency as water ingress is occurring in a number of apartments whenever it rains, and this is causing damage. The estimated cost of the proposed

works is £4,000 plus VAT in respect of each balcony requiring attention – and it is understood that there are seven of these.

13. Written representations were received from only one Respondent (Mr Copping of apartment 3) and these expressed support for the application. Mr Hassan and Mr Garcia-Gomez evidently support the application too.

LAW

14. Section 18 of the Act defines what is meant by “service charge”. It also defines the expression “relevant costs” as:

the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

15. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either–

- (a) complied with in relation to the works ... or*
- (b) dispensed with in relation to the works ... by the appropriate tribunal.*

16. “Qualifying works” for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (section 20(3) of the Act and regulation 6 of the Regulations).

17. 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 ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

18. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to:

- give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;

- obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;
- make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
- give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

CONCLUSIONS

19. The Tribunal noted the conclusions and recommendations of the reports referred to above. Those conclusions are consistent with the Tribunal's own observations and we have no reason to disagree with them.
20. The question for the Tribunal is not whether it is necessary for the works to be undertaken, but whether it is reasonable for them to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken. It is reasonable that the consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.
21. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed until the requirements have been complied with. The Tribunal must weigh the balance of prejudice between, on the one hand, the need for swift remedial action to ensure that the condition of the Property does not deteriorate further and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before major works begin. It must consider whether this balance favours allowing the works to be undertaken immediately (without consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in carrying out the works which that will require). The balance is likely to be tipped in favour of dispensation in a case in which there is an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.

22. In the present case, we note that the current problems with water ingress into the apartments on the upper floors of the Property has been ongoing for a number of years. However, the degree of water penetration has become more serious over the last 12 months or so and has reached the point where it is not only a significant inconvenience for the occupiers of the apartments concerned, but also poses a risk to the fabric of the Property due to the worsening of the condition of the balconies. There is thus a degree of urgency which, in our judgment, makes it reasonable to dispense with the consultation requirements so that appropriate remedial action can be taken without further delay.
23. The fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that we consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard.

Annex

Apartment	1	Regency House	Carol Ainscow
Apartment	2	Regency House	Ian Hogg
Apartment	3	Regency House	Mr. Copping
Apartment	4	Regency House	Ms. Alison J. Porritt
Apartment	5	Regency House	Mr. Paul Ogden
Apartment	6	Regency House	Ursula Budd & Micheal McArdle
Apartment	7	Regency House	Miss Yvonn Mukasa
Apartment	8	Regency House	War & FR Spargo
Apartment	9	Regency House	Matthew Thomas Macklin
Apartment	10	Regency House	Mr. Paul Bailey
Apartment	11	Regency House	Lisa Guinness
Apartment	12	Regency House	Mr. S. Picksley
Apartment	13	Regency House	Andrew Kluge
Apartment	14	Regency House	Andrew Kluge
Apartment	15	Regency House	Chris Garman
Apartment	16	Regency House	Mr. Lynex
Apartment	17	Regency House	Dr. Matthew Helbert
Apartment	18	Regency House	James Richard Wright
Apartment	19	Regency House	Mr. Roden & Mrs. Copeland
Apartment	20	Regency House	Vernon Shimwell
Apartment	21	Regency House	Carol Ainscow
Apartment	22	Regency House	Angel Garcia-Gomez
Apartment	23	Regency House	Mr. Schmidt
Apartment	24	Regency House	R J Hassan
Apartment	25	Regency House	Ms Kelly Stewart
Apartment	26	Regency House	Carol Ainscow
Apartment	27	Regency House	Carol Ainscow
Apartment	28	Regency House	Carol Ainscow
Apartment	29	Regency House	CA Papadopoulos & AA Papadopoulos
Apartment	30	Regency House	Ms. P. Rhodes & Ms. S. E. Hacker
Apartment	31	Regency House	Mr. Mark Naylor
Apartment	32	Regency House	Mr Ali Mir
Apartment	33	Regency House	Carol Ainscow