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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/00BU/LDC/2013/0025**

Property : **The Carriages, Booth Road,
Altrincham, Cheshire WA14 4AF**

Applicant : **The Carriages Management
Company Limited**

Representative : **The Guthrie Partnership**

Respondents : **The 25 leaseholders of the Property**

Representative : **N/A**

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

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

**Date and venue of
Hearing** : **Determined on the papers**

Date of Decision : **21 October 2013**

DECISION

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The Tribunal determines that compliance with the consultation requirements is not dispensed with. Accordingly the application is refused.

REASONS

Background

1. On 23 September 2013 The Carriages Management Company Limited applied 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 are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
3. The works in respect of which a dispensation is sought concern proposed repairs and maintenance to the roofs of the buildings and garages which comprise the development known as The Carriages, Booth Road, Altrincham, Cheshire WA14 4AF (“the Property”).
4. The Respondents to the application are the leaseholders of the 25 apartments and houses comprising the Property. The Respondents are listed in an annex to the application.
5. On 3 October 2013 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 to determine the application on 21 October 2013.

Description of the Property and the grounds for the application

6. The Tribunal made an external inspection of the Property on 21 October 2013 in the presence of Ms R O’Neil, an employee of the Applicant’s managing agent. The Property is a residential development of 25 apartments and townhouses. It comprises a conversion (and extension) of a large Victorian house together with three more recent buildings constructed in the grounds of the original house. There are also a number of blocks of garages. Each building (and each block of garages) is of brick construction under a pitched slate roof.

7. In its present form, the Property dates from the 1980s. Located in a prestigious residential area, the Property sits within substantial gardens and is surrounded by trees. It appeared to be maintained to a generally high standard. However, it was also apparent (from a visual inspection from ground level) that a number of roofs have missing or slipped slates and that some side elevations show signs of water having overflowed the gutters above (it was raining at the time of the Tribunal's inspection).
8. The Tribunal was provided with a copy of a roofing survey report on the Property (but not the photographs it referred to) prepared by J Richards Building Services and dated 1 May 2013. In its application to the Tribunal the Applicant indicated that it wished to implement both the essential and non-essential repairs identified in the roofing survey. It was stated that these works are anticipated to last between four and six weeks and, given the previous year's weather in the autumn/winter months, the Applicant wished to avoid further internal issues by undertaking the works as soon as possible in order to make the Property water-tight. The Applicant is concerned that there is a likelihood of wet/snowy weather in the coming months that may result in leaks to the internal areas and further damage to the roofing surfaces.
9. In addition to the roofing survey report, the Applicant produced copies of three estimates for the costs of carrying out the works in question. These ranged in amount from £27,245.00 to £33,500.00 plus VAT.
10. No representations were received from the Respondents.

Law

11. 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.

12. 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.*

13. "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).

14. 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.

15. 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

16. The Tribunal noted the conclusions and recommendations of the roofing survey report. Those conclusions as to the current condition of the roofs are consistent with the Tribunal's own observations and we have no reason to disagree with them. As far as essential repairs are concerned, the roofing survey concluded (stated here in broad terms) that:

- the hip tiles on a number of the building and garage roofs are loose and some have slipped down the roof and overhang the gutter. Left in this state they will eventually fall off the roof.

- Lead flashings have come away from their fixings, and if left in this state will allow water ingress.
 - There are cracked and damaged lead valleys which, if left, will allow water ingress and result in rot to the timbers below.
 - Rainwater goods are blocked with vegetation, causing rainwater to spill over causing rotting timber and staining to the walls. The efficiency of one downpipe is impeded by the presence of TV aerial cables within it.
 - Some gutters are ineffective because they have been incorrectly fitted or repaired and/or because they are full of debris.
17. The Applicant is proposing to carry out works in order to address these items of essential repair. However, it also proposes to carry out some additional, non-essential, works at the same time. This is because (in the Applicant's submission) the cost of staging the works would be prohibitive because of repetitive costs in relation to access equipment, and also because some of the essential and non-essential works are inter-related. This proposed course of action may well make good sense from a property management perspective, but it is clear that the cost of the combined works will be considerable – with the minimum potential liability of each leaseholder to contribute to those costs running to in the region of £1,000.00 (for a townhouse) and £1,500.00 (for an apartment).
18. 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.
19. 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.

20. In the present case, the Tribunal has not been furnished with evidence about the views of the leaseholders. Its decision must therefore be based on an assessment of the urgency of the proposed works. It is clear that only the works described in the roofing survey report as essential repairs (ie., the works summarised in paragraph 16 above) are potentially urgent. However, it is less clear that the need for those works to be carried out swiftly is so pressing that the consultation requirements should be dispensed with. It has been confirmed to the Tribunal that the buildings are not presently experiencing any internal leaks in consequence of the problems identified in the roofing survey. Nor do those problems appear to pose an imminent risk to persons or property (some temporary repairs having been effected at the time of the survey inspection). We also note that the inspection for the roofing survey report was carried out in February 2013. It is not clear why it then took more than two months for the report to be delivered to the management company, but it is clear that the Applicant had had that report for more than four months before applying for dispensation, and that the Property must have been in its present condition for a year or more. Whilst we note the Applicant's concern about the possible effects of bad weather over the coming months, we consider it unlikely that the condition of the Property will significantly further deteriorate during the time it will take for the consultation requirements to be complied with. We therefore conclude that the balance of prejudice favours compliance with the consultation requirements and thus it would not be reasonable to order that they be dispensed with.
21. The fact that the Tribunal has refused to dispense with the consultation requirements should not be taken as an indication that we consider the proposed works to be unnecessary: we make no finding in that regard. Nor do we make any finding as to whether the anticipated service charges resulting from the works will be reasonable or unreasonable; or, indeed, whether they will be payable by the Respondents.

List of Respondents at The Carriages

Name of Respondent	Address
Mr & Mrs I Rowley	1 Cherry Hinton
Mr J M A Gittens & Ms S J Hands	2 Cherry Hinton
Mrs B Lesniewicz	3 Cherry Hinton
Mr S Ashcroft	4 Cherry Hinton
Mr A Lister	5 Walford Lodge
Mrs C Jepson	6 Walford Lodge
The Exors of Miss M Donohoe	7 Walford Lodge
Mr & Mrs Polak	8 Walford Lodge
Mr & Mrs A M Stoll	9 Walford Lodge
Mr & Mrs J H Brownlow	10 Walford Lodge
Mrs K Joseph	11 Oak House
Mr & Mrs G Wallman	12 Oak House
Mr & Mrs Calmonson	13 Oak House
Mr & Mrs A Desai	14 Oak House
Mr & Mrs J Kelsey	15 Oak House
The Exors of Mr A Duffy	16 Oak House
Mr & Mrs Godwin	17 Oak House
Mr & Mrs Stone	18 Oak House
Mr & Mrs Irwin	19 Oak House
Mr & Mrs P Kanas	20 New Oak House
Mr A Pillai	21 New Oak House
Mr & Mrs A Hyams	22 New Oak House
Mr & Mrs R M Parsons	23 New Oak House
Mrs Casson	24 New Oak House
Mr K A Madeley	25 New Oak House