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**HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

LANDLORD AND TENANT ACT 1985, Section 20ZA

Property : Crescent Court, Cardigan Place, Blackpool, FY4 1SS
Applicant : Crescent Court (Blackpool) Association Limited
Respondents : The Lessees of the 72 flats comprising Crescent Court
Case number : MAN/00EY/LDC/2013/0011
Dates of Application: 2 May 2013
Type of Application : Application for a determination under Section 20ZA (1) of the Landlord and Tenant Act 1985 to dispense with the consultation requirements in relation to specified qualifying works
The Tribunal : Mr P J Mulvenna LLB DMA (chairman)
Mrs A E Franks FRICS
Date of decision : 27 June 2013

ORDER

That the consultation requirements in relation to the qualifying works specified in the application be dispensed with pursuant to Section 20ZA (1) of the Landlord and Tenant Act 1985.

DETERMINATION AND REASONS

INTRODUCTION

1. Crescent Court (Blackpool) Association Limited ('the Applicant') acting through Homestead Consultancy Services Limited ('Homestead') lodged an application on 2 May 2013 for a determination under Section 20ZA (1) of the Landlord and Tenant Act 1985 to dispense with the consultation requirements in relation to qualifying works at Crescent Court, Cardigan Place, Blackpool, FY4 1SS ('the Property') specified in the Application in the following terms:

'Envelope building in cladding, box in the balconies, replace communal doors, replace the roof, remove and replace utility pipes with more durable plastic piping, insulate cavities, install biomass boiler to provide hot water and heating to all flats.'

2. The Property comprises three purpose-built blocks containing a total of 72 flats constructed in or around 1960. Having regard to the nature of the application, the Tribunal did not inspect the Property.

3. The Applicant has a freehold interest in the Property and has engaged Homestead as the managing agents for the Property.
4. The Respondents (a list of whom is contained in the Appendix hereto) each have a leasehold interest in the one or more of the flats at the Property held for a term of 999 years from 1 January 1960. The Tribunal was provided with a copy specimen lease which related to Flat 70.

THE PROCEEDINGS

5. Directions were issued by Mr A Robertson, sitting as a procedural chairman, on 20 May 2013. The parties have substantially complied with the Directions.
6. The substantive hearing of the application was held on 27 June 2013 at the Backpool Hilton Hotel. The Applicant was represented by Mr D Benham, together with Ms S Jackson and Mr K Oldham, all of Homestead. The following Respondents were present in person: Mr G P Modi (Flat 1), Mr G W Denton (Flat 11), Mr R Hillman (Flat 18), Mrs M Lyons (Flat 27), Mrs J Geary (Flat 30), Mr R & Mrs J Taylor (Flat 37), Miss M Neiman (Flat 38), Mr J & Mrs M Fisher (Flat 48) and Ms C Phillips (Flat 68).
7. The Tribunal heard oral evidence and submissions from Mr Benham on behalf of the Applicant. Mr Benham responded to questions raised by a number of the Respondents present. In particular, he responded to questions from Mr Modi who expressed concern to the Tribunal as to the difficulties in assessing the reasonableness of any payments due from the Respondents because of some of the uncertainties at the present time of the outturn costs of the works. He confirmed, however, that he was not opposed to the application to dispense with the consultation requirements.
8. The Tribunal also had before them the documentary evidence provided by the parties.

THE LAW

9. The material statutory provisions in this case are contained in the Landlord and Tenant Act 1985 ('the Act'). Section 20 of the Act requires consultation by a landlord with tenants in relation to qualifying works.
10. Section 20ZA (1) of the Act provides that 'Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the 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 the requirements'

THE EVIDENCE, SUBMISSIONS & THE TRIBUNAL'S CONCLUSIONS & REASONS

11. The Tribunal heard evidence from Mr Benham as to the circumstances which had given rise to the present application. That evidence has not been challenged and is supported by documentation submitted by or on behalf of the Applicant. In reliance on the evidence now before them, the Tribunal find the following material facts.
12. The Property was constructed in or around 1960. About five years' ago concern began to be expressed as to the condition of the Property which was showing signs of deterioration, including instability. The condition gave rise to

dissatisfaction with living conditions and reduced the market value of the individual flats at the Property. The principal causes were thought to be the location of the Property which was susceptible to adverse weather conditions from the sea and the construction methods.

13. A building survey was commissioned from Restoration Design Partnership, Southport, ('RDP') and their report dated 2 June 2008 contained a comprehensive description of the issues which needed to be addressed and a recommended schedule of works to address those issues.
14. Subsequently, following consultation with the tenants, competitive tenders were obtained. It was evident that the works could only be undertaken at a cost of around £28,000 per flat. That was considered to be unacceptable and no contract was let. Subsequent attempts to address the issues on a more modest basis did not secure prices which were significantly lower than the original.
15. Following the introduction by the Government of ECO grants, the Applicant now has a quotation from Regain Energy Systems Limited ('Regain') to undertake the works on a grant-aided basis. The works, which would continue to have a value of around £28,000 per flat, could now be undertaken at a cost of £8,000 to each lessee. Moreover, there were prospects of easing payments by way of loans or other methods for qualifying tenants. It is not practicable to obtain quotations from other contractors on a similar basis. The window of opportunity is narrow and failure to act within that window will risk loss of the grant. It is expected that the contract will need to be let in August/September 2013 to secure the grant.
16. The Respondents have been advised of the Applicants' intentions and there has been approval of the way forward, albeit on an informal basis and not from the whole or even a majority of the Respondents.
17. The Tribunal has considered the application against the background of the facts found and has had regard to the decision of the Supreme Court in *Daejan Investments Limited -v- Benson and others* [2013] UKSC 14 in which it was concluded that:
 - (a) The test to be applied is 'Would the flat owners suffer any relevant prejudice and, if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?'
 - (b) The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.
 - (c) In considering applications for dispensation, the LVT should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.
 - (d) The LVT has the power to grant dispensation on appropriate terms and can impose conditions.
 - (e) The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the LVT should look to the landlord to rebut it.
 - (f) The onus is on the leaseholders to establish:
 - (i) what steps they would have taken had the breach not happened and

- (ii) in what way their rights under (b) above have been prejudiced as a consequence.
 - (g) Where relevant prejudice has been established, the LVT should, in the absence of some good reason otherwise, require the landlord to reduce the amount of service charges claimed to compensate the leaseholders fully for that prejudice.
 - (h) Essentially, the LVT is to reconstruct what would have happened had the consultation been followed properly and in deciding what conditions to impose the LVT should adopt a 'sympathetic' approach to the leaseholders.
18. In applying the above to the facts as found, the Tribunal observes that no relevant prejudice has been established by the Respondents. Indeed, none of the Respondents attempted to establish a relevant prejudice. The Tribunal notes that there was a consultation under Section 20 of the Landlord and Tenant Act 1985 in respect of the initial proposals; there has been correspondence and meetings with the Respondents as to the present intentions; the Respondents are all aware of the present application; eleven of the Respondents appeared at the hearing before the Tribunal. None of the Respondents has opposed the application to dispense with the consultation requirements.
19. The Tribunal recognizes that the majority of the Respondents have not engaged with the Tribunal and that there are inherent dangers in drawing an inference that they are in favour of the application, or indeed, of the proposals to undertake the works: silence is not acquiescence. Nonetheless, they have all had a chance to engage with the process and, if any did have misgivings, they have missed an opportunity to have them aired and addressed.
20. The Tribunal was assisted in reaching their decision by the evidence and submissions of Mr Modi. He made it clear that he was not opposed to the application to dispense with the consultation requirements, but he did express apprehension as to the eventual outcome. His apprehension was based on two principal factors: first, what he saw as a payment of £26,400 to RDP for a 'charge by a company to submit a draft estimate for a work'; and, secondly, the absence of a detailed breakdown of the costs included in the Regain quotation. These observations appear to be the kind of issues contemplated in point (b) of the conclusions drawn by the Supreme Court in *Daejan* above. The Tribunal have, therefore, given close consideration to the issues raised by Mr Modi.
21. The first factor appears to have been based on a misunderstanding by Mr Modi of RDP's position. They did not submit a draft estimate for the work in the sense that they were potential contractors. RDP are surveyors and they were commissioned to carry out a survey of the Property. They did this and, as part of their report, produced a schedule of recommended works with estimated costings. The money paid to them was a fee for the investigative survey and report.
22. The second factor is material. The reasonableness of the costs can only be assessed with the detailed information mentioned by Mr Modi. The Tribunal accepts, however, that, as explained by Mr Benham, that information will not be available until the discussions with Regain have been brought to a conclusion. The Tribunal is also conscious that the Respondents will, effectively, be receiving

the benefit of works having a value of £28,000 per unit at a cost of £8,000 each. Whilst there might still be residual argument as to the value of individual component parts of the works, the overall benefit is considerable.

23. It was this last aspect which weighed heavily with the Tribunal. The evidence is that the condition of the Property has deteriorated and is continuing to deteriorate. It is likely that the deterioration will not only continue but will accelerate unless something is done to arrest the deterioration. The effect of that would, in time, be catastrophic. The value of the flats would continue to decline and the potential for structural danger and unfitness for habitation become real possibilities.
24. It is evident that the works have not been commenced before now because the Respondents, who would ultimately bear the cost, were unable, or at least not prepared, to contribute £28,000 each to the cost. The present proposal represents a way forward which, whilst not reducing the Respondents' respective contributions to a negligible amount, does give a comparatively more affordable option. The Tribunal accepts the evidence that failure to act swiftly will put the grant at risk and, with it, the opportunity to restore the Property to a condition which provides a reasonable place to live and protects the Respondents' assets. The saving which will accrue to each of the Respondents is analogous to the compensation in point (g) in *Daejan* above, although there is no relevant prejudice in this particular case to trigger a compensatory payment.
25. Having considered all the evidence, the Tribunal has reached the conclusion that it would benefit both the Applicant and the Respondents to take advantage of the grant which is being made available. There is unchallenged evidence that delay will put the proposals at risk. Consultation will inevitably give rise to delay and, therefore, potential risk. The Tribunal have decided for all the above reasons that it would be reasonable to dispense with the consultation requirements.

COSTS

26. The Tribunal has power to award costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides:

'(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.'

27. The Tribunal did not consider that any of the prescribed circumstances arose in this particular case and concluded that it would not be appropriate to award costs to either party.

28. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides:

'(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).'

29. The Tribunal has reviewed all the evidence in this case and has determined that it would not be appropriate to make an order for reimbursement in the circumstances of this case.

Signed.....

P J Mulvenna,
Chairman

27 June 2013

Various @ Crescent Court, Blackpool

Flat	1	Crescent Court	Mr G.	Modi
Flat	2	Crescent Court	Mrs R.	Woodruff
Flat	3	Crescent Court	Mrs S.	Henshaw
Flat	4	Crescent Court	Mrs T.	Henshaw
Flat	5	Crescent Court	Miss R.	Aitken
Flat	6	Crescent Court	Mr B.	Neal
Flat	7	Crescent Court	Mr C.	Neal
Flat	8	Crescent Court	Mr & Mrs J.	O'Meara
Flat	9	Crescent Court	Mr S.	Elsender
Flat	10	Crescent Court	Mr C.	Farnworth
Flat	11	Crescent Court	Mr & Mrs G.	Denton
Flat	12	Crescent Court	Mrs O.	Whittle
Flat	13	Crescent Court	Mr & Mrs J.	Sweeney
Flat	14	Crescent Court	Miss F.	Middleton-Geldard
Flat	15	Crescent Court	Mr S.	Whyte
Flat	16	Crescent Court	Mr & Mrs J.	Sweeney
Flat	17	Crescent Court	Ms J.	Shaw
Flat	18	Crescent Court	Mr & Mrs R.	Hillman
Flat	19	Crescent Court	Ms	Bates
Flat	20	Crescent Court	Ms H.	Jenvey
Flat	21	Crescent Court	Mr P.	Ashton
Flat	22	Crescent Court	Mr T.	Withington
Flat	23	Crescent Court	Mr P.	Wrigley
Flat	24	Crescent Court	Mr B.	Faulkner
Flat	25	Crescent Court	Mrs P.	Edwards
Flat	26	Crescent Court	Mr J.	McCarthy
Flat	27	Crescent Court	Mrs M.	Lyons
Flat	28	Crescent Court	Ms B.	MacDaid
Flat	29	Crescent Court	Mr P.	Webster
Flat	30	Crescent Court	Mr & Mrs J.	Geary
Flat	31	Crescent Court	Mr G.	Brown
Flat	32	Crescent Court	Mr P.	Floyd
Flat	33	Crescent Court	Mr R.	Meadowcroft
Flat	34	Crescent Court	Mr S.	Naylor & Ms M. Johnson
Flat	35	Crescent Court		J W Ratcliffe Limited
Flat	36	Crescent Court	Ms T.	Goss
Flat	37	Crescent Court	Mr & Mrs R.	Taylor
Flat	38	Crescent Court	Miss M.	Neiman
Flat	39	Crescent Court	Mr V.	Byde
Flat	40	Crescent Court	Mr R.	Paddock
Flat	41	Crescent Court	Mrs C.	Rowe
Flat	42	Crescent Court	Mr P.	Fieldhouse & Ms C. Timmins
Flat	43	Crescent Court	Mr R.	Martin
Flat	44	Crescent Court	Mr G.	Halstead
Flat	45	Crescent Court	Mrs I.	Smith
Flat	46	Crescent Court	Mrs J.	Bridge
Flat	47	Crescent Court	Mr & Mrs M.	Maney
Flat	48	Crescent Court	Mr & Mrs J.	Fisher
Flat	49	Crescent Court	Mr R.	Wild
Flat	50	Crescent Court	Mr & Mrs J.	Blanthorn
Flat	51	Crescent Court	Mr F.	Hunt
Flat	52	Crescent Court	Mr & Mrs M.	Maney
Flat	53	Crescent Court	Mr & Mrs M.	Smith
Flat	54	Crescent Court	Mr F.	Gouldsbrough & Mr R. Davison
Flat	55	Crescent Court	Mrs E.	Summers

Various @ Crescent Court, Blackpool

Flat	56	Crescent Court	Mr & Mrs M.	Maney
Flat	57	Crescent Court	Mrs S.	Bateson
Flat	58	Crescent Court	Mr & Mrs M.	Maney
Flat	59	Crescent Court	Mr & Mrs I.	Timperley
Flat	60	Crescent Court	Mr J.	Hardman and Ms J & Ms E. J. Hardman
Flat	61	Crescent Court	Mrs J.	Hewitt
Flat	62	Crescent Court	Mr & Mrs I.	Lavelle
Flat	63	Crescent Court	Mrs E.	Busfield
Flat	64	Crescent Court	Mr H.	Piperides
Flat	65	Crescent Court	Mr D.	Pulford
Flat	66	Crescent Court		The Estate of Mrs K. Bateson
Flat	67	Crescent Court	Miss K.	Barlow
Flat	68	Crescent Court	Ms. C.	Phillips
Flat	69	Crescent Court	Mr & Mrs K.	Halstead
Flat	70	Crescent Court	Mr P.	Jones
Flat	71	Crescent Court	Mr & Mrs G.	Fagan
Flat	72	Crescent Court	Messrs J & D	Kenyon