

10590



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

Case Reference : BIR/41UG/LDC/2014/0007
Property : 1-24 Waterford Court, Elworthy Close, Stafford, ST16 3QT
Applicant : Waterford Court Management Company Limited
Representative : Castle Estates (Property Management Services) Limited
Respondents : The Lessees of Waterford Court:
Flat 1 Ms T. Jackson
Flat 2 Mr T. Groom
Flat 3 Ms Y. Durrant
Flat 4 Mrs B. Wickett
Flat 5 Mr D. Harrison
Flat 6 Mr Scifo
Flat 7 Miss K.L. Rose
Flat 8 Mr and Mrs Hall
Flat 9 Dr. R. Ram
Flat 10 Mr and Mrs Bruce
Flat 11 Mr A. McGuire
Flat 12 Ms R. Kalonji
Flat 13 Mr and Mrs Snape
Flat 14 Mr and Mrs Powell
Flat 15 Mr M. Baradaransattarzadeh
Flat 16 Ms C. and Ms A. Nash-Smith
Flat 17 Mr and Mrs Duffield
Flat 18 Miss S. Tennakoon
Flat 19 Mr and Mrs Jones
Flat 20 Mr and Mrs Wynne
Flat 21 Miss A. Pius
Flat 22 Prof. G. Lovegrove
Flat 23 Mr S. Copnell
Flat 24 Ms S. Vasileva

Representative : Not represented.
Type of Application : Application for dispensation of consultation provisions pursuant to s.20ZA of the Landlord & Tenant Act 1985
Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS (Chair)
P.J. Hawsworth (Lawyer)
Date of Hearing : None. Decision on written submissions.
Date of Decision : 18 DEC 2014

DECISION

Introduction

- 1 The Landlord ("the Applicant") has applied to the First-tier Tribunal (Property Chamber) (FTT) for an order to dispense with the consultation requirements in Section 20 of the Landlord & Tenant Act 1985. This section requires a landlord to consult with tenants before placing a contract to undertake any 'qualifying works' that would cost each tenant more than £250 and there are Regulations setting out a timetable and procedure to be followed for consultation.
- 2 However, the Act envisages that there may be occasions where for various reasons a landlord may be unable to consult, for example in cases of emergency, and there is provision in section 20ZA for a landlord to apply to the FTT for 'dispensation' to override the consultation requirements. An application can be made before or after works are carried out.
- 3 In this case, the Applicant has applied for dispensation on the ground that work needs to be carried out urgently and the respondents are the 24 tenants.
- 4 The Applicant sent a written submission to the FTT but although it included a consultant's report, it did not include contractors' estimates and the FTT referred the application back to the Applicant to obtain estimates before reaching its decision. Tenders have now been obtained and considered and the Tribunal's findings are set out below.

Facts Found

- 5 The Tribunal inspected the property on 9th October 2014 with Miss Sanghera on behalf of the managing agents, Castle Estates.
- 6 The property comprises two separate blocks of flats built in the late 1960s or early 1970s. They are each four storey high with three wings radiating from a central staircase and service area. They are concrete frame construction with brick infill panels to the elevations between concrete floors and with flat roofs to each wing.
- 7 The Tribunal noted damage to exposed concrete where reinforcing bars were clearly visible and steel props had been added as a precautionary measure to support the concrete frame. Other defects noted including damaged decking, gutters and downpipes that needed attention to protect the fabric of the building.

Relevant Law

- 8 The Applicant provided the Tribunal with a sample lease for Flat 20 and it is understood that all the leases are in similar form. The Lease was granted for 999 years from 1st January 1991 although this was clearly not the original date of construction and it is understood that the flats had originally been in public ownership.
- 9 According to the Lease the repairing liability for the main structure of the buildings including the foundations, walls, roofs and services was the landlord's responsibility under clause 2 of the Seventh Schedule to the Lease, subject to re-imburement of the cost by the tenant under clause 4(e) of the Fifth Schedule.

- 10 The cost of repairing the main structure thus, is a service charge item within the ambit of section 18 of the Landlord & Tenant Act 1985 and accordingly, the consultation provisions in s.20 would normally apply.
- 11 The dispensation provision in section 20ZA of the Act states:
'Where an application is made to a leasehold valuation tribunal (now transferred to the FTT) 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.' (Our italics).
- 12 Furthermore, as referred to by the Applicant, there has been recent case law on the subject in the Supreme Court, *Daejan Investments Ltd. v Benson et al.* [2013] UKSC 14, setting out matters to be taken into account by Tribunals when considering applications such as this.

Submissions

- 13 **Applicant**
The Applicant provided a Schedule of Works and Specification prepared by GCA Consulting Civil and Structural Engineers recommending various repairs to the buildings.

The specification was put to tender and three tenders obtained:

| <u>Contractor</u> | <u>Tender</u> |
|----------------------------------------------|----------------------|
| Think Contracts | £191,866.00 plus VAT |
| Makers | £187,418.00 plus VAT |
| On Site Specialist Management Services (OSM) | £ 72,970.37 plus VAT |

The Applicant is proposing to accept the tender from On Site but after adding in the cost of VAT and a provisional sum to cover the cost of access equipment and unforeseen items, they are requesting dispensation for £100,000.

- 14 **Respondents**
The Tribunal wrote to each Respondent at the address provided but received no submissions.

Decision

- 15 The Tribunal has reached its decision based on the written submission and expert report submitted by the Applicant.
- 16 The approach for the Tribunal to take when considering an application for dispensation is set out in the Supreme Court's judgement in *Daejan* above. In summary, the approach to be adopted is as follows:
- 1 The Tribunal should identify the extent to which tenants would be prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations;
 - 2 That no distinction should be drawn between "a serious failing" and "technical error or minor or excusable oversight" save in relation to the prejudice it causes;

- 3 That the financial consequences to the landlord of not granting a dispensation is not a relevant factor when the Tribunal is considering how to exercise its discretion under section 20ZA and
- 4 The nature of the landlord is not a relevant factor
- 17 In addition, the Tribunal has power to grant dispensation on such terms and subject to such conditions as it thinks fit, provided that any such terms and conditions are appropriate in their nature and effect.
- 18 The Tribunal finds that the proposed work is necessary to protect the fabric of the building and that the scope of the repairs is within the landlord's repairing obligation in the lease.
- 19 Applying the tests above and principles set out in *Daejan*, the Tribunal finds that the tenants would not be prejudiced by granting dispensation of the consultation requirements of the Landlord & Tenant Act 1985 and that it would be reasonable to grant on the following terms and conditions:
- 1 A global limit on costs of £100,000 including VAT;
 - 2 OSM is to be the preferred contractor but the tenants are to be supplied with copies of tenders and estimates before the work commences;
 - 3 the Applicant is to arrange a meeting with the tenants specifically to discuss the proposals before any instructions are given to OSM to start work;
 - 4 the tenants are to be given bi-monthly written reports of how work is progressing and if any tenant expresses concern or misgiving then further consultation with the tenants is to take place and reasonable regard should be had to any representations the tenants may choose to make.
- 20 By way of clarification, the dispensation above takes full effect only when all the conditions above have been reasonably complied with. Should any issue arise as to compliance with conditions it should be raised in a subsequent application to determine the reasonability of service charges for the year in question including the work under Section 27A as referred to below.
- 21 The Tribunal emphasises that the purpose of this decision is to consider the application to dispense, not to consider whether the cost is reasonable or reasonably incurred under section 19 of the Act or anything that may prejudice a later application to decide if service charges are reasonable under section 27A of the Act if an application were made.

Application to the Upper Tribunal

- 22 If any party is dissatisfied with this decision they may apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property), within 28 days of the date this decision is sent to the parties.

I.D. Humphries B.Sc.(Est.Man.) FRICS

Date:

13 DEC 2014