

10431



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

Case Reference : CHI/19UH/LDC/2014/0046

Property : Greenwood House, Sherren Avenue, Charlton Down,
Dorchester, Dorset DT2 9UG

Applicant : Woodlanders Management Limited

Representative : Mr P Connery, Applicant Company Chairman

Respondents : The 56 Lessees of Flats in Greenwood House

Representative : -

Type of Application : Section 20ZA Landlord and Tenant Act 1985
Dispensation with Consultation Procedure

Tribunal Members : Judge MJ Greenleaves
TE Dickinson BSc FRICS

**Date and venue of
Hearing** : 3 November 2014
Weymouth County Court

Date of Decision : 15 November 2014

DECISION

Decision

1. The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) from further compliance with the consultation requirements of Section 20 of the Act in respect of work being carried out at Greenwood House, Sherren Avenue, Charlton Down, Dorchester, Dorset DT2 9UG (the Property) to the extent only of the works specified in the Tender documentation prepared by Brody Forbes Limited, Consulting Engineers under Project Reference 7532 dated September 2014.
2. The above dispensation is made on condition that the Applicant shall keep lessees informed of any additional work beyond the tendered works arising from inspection and the likely costs.

Introduction

3. The Applicant is the owner of the freehold of the property which comprises a building converted into 56 flats on 3 floors, there being 4 staircases serving different groups of flats. The building previously formed part of a much larger building part of which was demolished so that the construction of a gable wall at the South-West end was required. That work was carried out in or about 1998.

Inspection

4. The Tribunal inspected the property in the presence of Mr Connery and Mr Farrant (of Brody Forbes), both internally and from external scaffolding at all levels. The wall is partially demolished. The Tribunal was satisfied that the condition and defects described by Brody Forbes in their letters and reports were correct.

Evidence

5. In addition to the case papers, the Tribunal heard evidence from Mr Connery and Mr Barker on behalf of the Applicant and Mr Farrant. Although all lessees had been given notice of the hearing, none attended and no written objections or observations were received from lessees.
6. The full history and the problems with the wall are set out in a number of reports from Brody Forbes from 6 August 2014 onwards. They resulted from an initial inspection by them on 22 May 2014 and subsequent inspections. Vertical cracking of the gable wall had been found after the storms of the winter 2013/14. Preliminary investigation had found that the entire 1998 gable end wall is of single construction from ground level to gable but unsupported from second floor, and there are no cross walls to tie it to inner block work. So the gable wall is exposed to prevailing winds and is not structurally safe. Indeed, further inspection by Brody Forbes showed that the uppermost storey of the gable end wall had a significant outward bow along its length and that the peak itself was out of plumb.
7. Brody Forbes advised that substantial works were required and prepared the tender documentation referred to above to reflect this.

8. On 3 September 2014 Mr Connery, on behalf of the Applicant, wrote a lengthy and detailed letter to all lessees summarising the position and at paragraph 6 noted that section 20 of the Landlord and Tenant Act 1985 required the Applicant to consult the leaseholders about some of the work and services for which the leaseholders must pay through their charges. He also explained the consequences of non-compliance with the consultation procedure and that because the work was considered urgent, the Applicant would have no alternative but to apply for dispensation with the consultation procedures.
9. On 16 September tenders were received from 4 contractors and these were detailed by Brody Forbes in their letter of 17 September. On the same date (having given notice on 3 September) the Applicant held a meeting of all lessees to discuss the situation in detail. The Tribunal saw the minutes of that meeting which was attended by representatives of about one half of the flats, not all lessees being resident and a few living abroad. Mr Farrant of Brody Forbes attended that meeting to answer questions and it is understood that there have been no objections since to the tendered work being carried out.
10. On 23 September Mr Connery had written or emailed to all lessees with copies of the minutes and a document headed "section 20 consultation" detailing the estimates received from 4 contractors, that the estimates could be inspected at flat 42 and inviting written observations; further that the consultation period would end on 28 September 2014, noting that it had been necessary to reduce consultation period to 7 days due to the urgency of the works.

Consideration

11. In coming to its decision, the Tribunal took into account all of the case papers, its own inspection of the wall and additional evidence from the hearing.
12. The Tribunal was entirely satisfied that the condition of the wall was as stated by Brody Forbes in the various letters and reports and that urgent work was required and that it needed to be carried out before the onset of winter. The Tribunal was satisfied that the Applicant had taken all reasonable steps within the limited time available to consult with all of the lessees. Bearing in mind also that there were no objections from any lessees to the proposed works, the Tribunal was satisfied that all appropriate procedures had taken place so far as time had allowed and that to the extent that statutory consultation procedures had not been fully carried out, they should be dispensed with..
13. The Tribunal made its decision accordingly.
14. The Tribunal emphasizes that the application before it was for dispensation from consultation procedure only so the Tribunal has made no determination as to the cost of the works.

Appeals

15. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
16. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

17. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
18. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.