



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

Case Reference : **CHI/45UE/LDC/2014/0033**

Property : **1-18 Leicester Court, Newbury Rd,
Pound Hill, Crawley, RH10 7SP**

Applicant : **Crawley Borough Council**

Representative : **Miss A Clarke (Leasehold Services
Manager)**

Respondent : **Various lessees (see list on page 2)**

Representative : **No attendance**

Type of Application : **To dispense with consultation about
major works pursuant to section
20ZA Landlord and Tenant Act 1985**

Tribunal Members : **Judge E Morrison (Chairman)
Mr N I Robinson FRICS (Surveyor
member)**

**Date and venue of
Hearing** : **1 September 2014 at Crawley
Magistrates Court**

Date of decision : **4 September 2014**

DECISION

List of Respondents

Mr D and Mr S Patel (Flat 1)
Miss J McColl (Flat 9)
Mr P J Richardson (Flat 14)
Mr K Denizer (Flat 15)
Miss G Field (Flat 16)
Miss C E Coles (Flat 17)
Mr D Singleton (Flat 18)

The Application

1. Under an application dated 8 August 2014 the Applicant lessor applied under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for dispensation from the consultation requirements provided for by section 20 of the Act. The Respondents are the long lessees of their respective flats in the block.

Summary of Decision

2. The consultation requirements provided for by section 20 of the Act are dispensed with as regards the works identified in the application, on condition that any costs of or associated with the application are not to be recovered from the lessees of the 1-18 Leicester Court.

The Lease

3. The Tribunal was shown a sample lease. Paragraph 1 of the Ninth Schedule imposes an obligation on the lessor "To keep in good and substantial repair and condition (and whenever necessary rebuild and reinstate and renew and replace all worn or damaged parts) (i) the main structure of the Property including all foundations thereof all exterior and all party walls and structures and all walls... including all roofs and chimneys and every part of the Property above the level of the top floor ceilings..."

The Inspection

4. The Tribunal inspected the exterior of the property on the morning of the hearing, accompanied by Miss A Clarke, Mr J Pavey and Mr G Tarran, who attended on behalf of the Applicant. Leicester Court is a 3 storey purpose-built block of flats constructed about 15 years ago. It has a hipped and pitched roof with 8 small gables, three on each side and one each end. The Tribunal noted that some roof tiles had been replaced and that much if not all of the hip and ridge tiles had been re-

bedded. The gables, fascia boards and soffits all appeared to be a stained timber recently redecorated and each of the gables had a mock king post truss design. The Tribunal was advised that the trusses and posts had recently been repaired/replaced as necessary. Also noted were Juliette type balconies with galvanised painted steel railings which were in poor decorative order, as was the front door.

Procedural Background

5. Directions were issued on 14 August 2014 providing for an urgent determination of the application.

Representation and Evidence at the Hearing

6. The Applicant had prepared a statement of case and a Bundle for the hearing, which incorporated other relevant documents including statements from two Respondents, Miss McColl and Mr Richardson. Miss Clarke, the Applicant's Leasehold Services Manager, attended the hearing along with Mr J Pavey, a surveyor employed by the Applicant in its Planned Maintenance Team, and Mr G Tarran, a building surveyor employed by a company that works in partnership with the Council. Miss Clarke took the lead in presenting the Applicant's case at the hearing, assisted by her colleagues. None of the Respondents attended the hearing.

The Law and Jurisdiction

7. By section 20 of the Act and regulations made thereunder, where there are qualifying works, there is a limit on the amount recoverable from each lessee by way of service charge unless the consultation requirements have been either complied with, or dispensed with by the Tribunal. In the absence of any required consultation, the limit on recovery is £250.00 per lessee.
8. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI 2003/1987. Schedule 3 sets out the requirements where the works fall within the scope of a qualifying long term agreement. The lessor must serve each lessee with a notice describing the proposed works, stating why they consider the works to be necessary and the estimated cost, and inviting observations. The lessees then have 30 days to make observations with respect to the proposed works or the estimated costs. The lessor must have regard to these observations and provide a written response within 21 days.
9. A lessor may ask a tribunal for a determination to dispense with all or any of the consultation requirements and the tribunal may make the

determination if it satisfied that it is reasonable to dispense with the requirements (section 20ZA).

The Evidence and Arguments

10. The Applicant Council's case was that in January 2014 some roof tiles fell due to storm damage, and the Council decided to undertake emergency remedial works. After erecting limited scaffolding at two corners of the roof only, it became obvious that more extensive roof repairs were required, namely to the concrete ridge and hip tiles, for which full scaffolding to the entire block was needed. Following Section 20 consultation in March/April 2014, the scaffolding was erected by early June and the work completed by 30 June. In the meantime it had been noticed that the timber king posts, trusses and finials to the gables also required repair. The Council then decided that it made sense also to redecorate all the fascias and soffits while the scaffolding was up. This decoration was due to be carried out in 2016 but doing it now would save the cost of full scaffolding (about £10,000) in 2016. The costings for these additional works, the subject of this application, were not obtained until 12 July 2014. The leaseholders were informed of the proposed works and cost by letter dated 6 August 2014. The application for dispensation was made on 8 August 2014. By that date the works were in progress, and they are now complete.
11. On 1 April 2010 the Council entered into a qualifying long term (10 year) agreement with MITIE Contractors for repair and maintenance work to the Council's housing stock. MITIE were therefore instructed to undertake the works.
12. In response to questions from the Tribunal Mrs Clarke and Mr Tarran both accepted that the limited consultation required under Schedule 3 of the 2003 Regulations could have been carried out before the works started if the Council had been diligent.
13. In a written statement Miss McColl, the lessee of Flat 9, pointed out that the Juliette balconies required redecoration. She suggested that this work should also have been done while the scaffolding was up. She wanted to know that she would not be charged again for more scaffolding when that work was eventually done.
14. Mr Richardson, the lessee of Flat 14, had submitted a letter of objection. He pointed out that the fee for the application was £440.00 whereas the total costs over the cap of £250.00 per lessee only totalled £426.00. In response to this Miss Clarke said that the £440.00 fee would not be recharged to the lessees. Mr Richardson also submitted that the Council had had ample time to consult. Finally, he suggested the work to the fascias and soffits was not necessary now, and should have been deferred and done at the same time as repainting of the balconies. In response to this last point and to Miss McColl's statement, Mr Tarran explained that the balcony redecoration, scheduled for 2016, would not require full scaffolding, but only a

collapsible tower scaffold, which would cost much less. It was therefore cheaper to do the high level work now while the scaffolding was already in place. There had been no additional cost for retaining the scaffold for a longer period in order to carry out the works.

Discussion and Determination

15. The Supreme Court has given guidance on how the tribunal should approach the exercise of its discretion under section 20ZA: *Daejan Investment Limited v Benson et al* [2013] UKSC 14. The tribunal should focus on the extent, if any, to which the lessee may be prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the lessor to comply with the regulations. No distinction should be drawn between serious or minor failings save in relation to the prejudice caused. Dispensation may be granted on terms. Lessees must show a credible case on prejudice, and what they would have said if the consultation requirements had been met, but their arguments will be viewed sympathetically, and once a credible case for prejudice is shown, it will be for the lessor to rebut it.
16. Applying those principles to this application, the Tribunal is unable to identify any prejudice that the lessees have suffered or are likely to suffer if dispensation is given. Where a long term qualifying agreement is in place, as here, the consultation requirements are far less onerous than otherwise, and the scope for prejudice is correspondingly much more limited. The lessees do not have the opportunity to nominate contractors or to consider competing estimates. There was no evidence before the Tribunal that the failure to consult will result either in the lessees paying more or in inappropriate work being carried out. There has been no additional cost in retaining the scaffolding to carry out the works. The Council's case for carrying out all high-level works, including the redecoration scheduled for 2016, while the scaffolding was up is going to save the lessees the substantial cost of full re-scaffolding in 2016. Only very limited scaffolding will be required for the balcony redecoration. For these reasons the Tribunal decides that it is reasonable to dispense with the consultation requirements in respect of the works.
17. That said, the Tribunal also finds that there was no good reason why consultation could not have been carried out in good time. The additional works covered by this application should have been incorporated in the earlier section 20 consultation carried out in the Spring, as there is no reason why all high-level work could not have been considered at that time. Costings could have been obtained at an earlier date and even if not available until 12 July 2014 there was no reason why the 30 day consultation process could not have started then. Had there been consultation, this application would not have been necessary. For that reason the dispensation is made subject to the condition that all costs associated with the application should be borne

by the Applicant and not passed on the Respondents notwithstanding that the leases may permit this.

Concluding Remarks

18. This decision relates only to the consultation requirements. It does not determine the reasonableness or payability of future service charges in respect of the works, and the lessees remain free to challenge any or all of those charges under sections 19 and 27A of the Act.

Dated: 4 September 2014

Judge E Morrison (Chairman)

Appeals

1. 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.
2. 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.
3. 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.
4. 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.