



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

Case Reference : **CHI/00HN/LDC/2015/0043**

Property : **Leonard Hackett Court
St Winifred's Road
BOURNEMOUTH
Dorset BH2 6PR**

Applicant : **Hanover Housing Association**

Representative : **Mr Paul Whitehouse
(Retirement Housing Manager)**

Respondents : **The Lessees of 36 flats listed in the application**

Type of Application : **Dispensation from Consultation
Section 20ZA Landlord and Tenant Act 1985**

Tribunal Member : **Mr BHR Simms FRICS**

Date of Hearing : **07 December 2015 – documents only**

Date of Decision : **18 December 2015**

DECISION

DECISION OF THE TRIBUNAL

1. The Tribunal grants the Applicant dispensation from the second stage consultation requirements in respect of the proposed works to one roof elevation in the South block at Leonard Hackett Court, Bournemouth.

THE APPLICATION

2. The Applicant made an application dated 11 November 2015 for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 ("the Act") in respect of proposed roof repairs at the Property.
3. On 01 October 2015 the Tribunal directed that the application is to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 and no party objected to this procedure. The Tribunal proceeded to determine the case on papers alone without a hearing.
4. The Applicant was directed to send the formal Directions to each leaseholder and to confirm that this had been done. The Tribunal received confirmation by email on 12 October 2015.
5. The Tribunal directed the Respondents to indicate whether they agreed with the Application and whether they wished the Tribunal to hold a hearing.
6. The relevant legal provisions are set out in the Appendix to this decision.
7. The Tribunal did not make an inspection of the Property.
8. The Tribunal received a bundle of documents prepared by the Applicant and 17 responses from the leaseholders each supporting the Application.

THE LEASES

9. The Applicant supplied a copy of a lease 23 December 1993 in respect of Flat 23. It is understood that all leases are in a similar form.
10. Under the lease the lessees are required to pay a contribution to the costs incurred by the landlord in carrying out his obligations under the lease as set out in the Schedule.
11. Under clause 5 of the leases the landlord is required to keep in good and substantial repair all parts of the property.

THE PARTIES' REPRESENTATIONS

12. The Applicant explained that in December 2014 the resident of Flat 34 reported a leak from the roof. This was investigated, temporary repairs were undertaken and a schedule of works and specification was prepared for a full repair of the mono-pitched roof. A Notice of Intention, being the first stage of the S.20 consultation procedure, was served on the lessees.
13. Following the consultation process tenders were invited from 4 contractors but only one tender was received. Tenders were requested from a further 5 contractors but again only one tender was received.
14. It has not been possible to obtain multiple estimates and dispensation is sought in order to proceed with the full schedule of work without the second stage of providing a Notice of Estimates in order to prevent further water ingress as the temporary works have been only partially successful.
15. The Applicant supplied full chronological details of the process and copies of the letters to the lessees and the tender process.
16. Of the 36 lessees consulted as part of the Tribunal process 17 replied all expressing support for the landlord's application for dispensation with none requesting a hearing or objecting to granting dispensation.

THE LAW

17. The 1995 Act provides the Respondents with safeguards in respect of the recovery of the Applicants' costs in connection with the works to the property through the service charge. Section 19 ensures that the Applicants can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 gives the Respondents an additional safeguard when the works carried out on the property are qualifying works which are defined as works on a building or any other premises, and the costs of those works would require the Respondents to contribute under the service charge more than £250 in any 12 month accounting period. When these circumstances exist, the additional safeguard is that the Applicants are required to consult in a prescribed manner with the Respondents about the works. If the Applicants fail to do this, the Respondents' contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.
18. This application is concerned with the additional safeguard of section 20. The question for the Tribunal is whether the requirement to consult on the estimates for the proposed works to the property should be dispensed with as only one contractor will tender. The questions of whether the costs of those works will have been reasonably incurred and whether those works are to reasonable standard are not a matter for this particular Tribunal. The Respondents are entitled to put in another application challenging the reasonableness of the costs incurred and the standard of those works if they wish.

19. Section 20ZA of the 1985 Act is the authority which enables the Tribunal to dispense with the requirement for the Applicants to consult with the Respondents on the costs and nature of the proposed works. The dispensation may be given either prospectively or retrospectively. In this case the Applicants are asking for a prospective dispensation.
20. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, it would appear that the Tribunal has a broad discretion. That discretion, however, has to be exercised in the context of the legal safeguards given to the Respondents under sections 19 and 20 of the 1985. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* which decided that the Tribunal should focus on the issue of prejudice to the tenants in respect of their statutory safeguards.
21. Thus the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the Respondents would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the Respondents to identify any relevant prejudice which they claim they might have suffered.

THE FINDINGS

22. Under section 20 the Applicant is required to go through a two stage process of consultation¹. The first stage involved the giving of a notice of intention to carry out the works and this has been done. The Tribunal is satisfied that the Applicants notice of 08 April 2015 meets the requirements for a Notice of Intention.
23. As part of the consultation process the Applicants were required to have regard to any written observations from the Respondents in respect of the proposed works, no observations were received.
24. The second stage requires the Applicants to supply a statement of estimates and a response to any of the Respondents' comments arising from the Notice of Intention. The Tribunal formed the view that the tendering process was at-arms-length and as thorough as it could have been in the circumstances and went some way to mitigate the Applicants' failure to comply with the second stage of the statutory consultation process.
25. In view of the Applicants' admission that it was unable in part to adhere to the statutory consultation process, and as a result were seeking dispensation from those requirements, the Tribunal is obliged to consider whether the Respondents have suffered relevant prejudice from the Applicants' non-compliance. None of the Respondents has expressed prejudice.
26. The Tribunal finds that the Respondents have not suffered any prejudice and to further delay the commencement of the works would in itself cause prejudice in that the roof would continue to leak. Temporary repairs have proved ineffective.

¹ See Part 2 of Schedule 4 to the Service Charges (Consultation Requirements (England) Regulations 2003.

RIGHTS OF APPEAL

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are 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.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]