



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

Case References : **CHI/21UG/LDC/2015/0027**

Property : **18-20 St Leonards Road Bexhill on
Sea East Sussex TN40 1HN**

Applicant : **Yetamax Property Company Ltd**

Representative : **Godfrey John & Partners**

Respondents : **Mr C Hills
Mrs J Smith
Miss A Copper**

Representative : **Mr Hills on his own behalf**

Type of Application : **S20ZA Landlord and Tenant Act
1985**

Tribunal Members : **Judge F J Silverman Dip Fr LLM
Mr A Mackay FRICS**

**Date and venue of
hearing** : **20 July 2015
Eastbourne Magistrates Court**

Date of Decision : **22 July 2015**

DECISION

The Tribunal determines that it will not exercise its discretion to dispense with the consultation requirements imposed by s.20 of the Landlord and Tenant Act 1985.

REASONS

1. The Applicant landlord seeks a determination of its application for dispensation from the consultation requirements imposed by s. 20 of the Landlord and Tenant Act 1985.
2. The Application to the Tribunal was made on 4 June 2015.
3. Directions were issued by the Tribunal on 12 June 2015.
4. The hearing of this matter took place at Eastbourne Magistrates Court on 20 July 2015 at which the Tribunal considered the Applicant's application and accompanying documents together with the oral representations made by Mr Hills, one of the Respondent tenants. At the hearing the Applicant was represented by Mr G John of Godfrey John & Partners. A bundle of documents prepared by the Applicant (page numbers referred to below) was supplied to the Tribunal for its consideration.
5. The Directions issued by the Tribunal on 12 June 2015 had been sent by the Applicant to all Respondents asking them to respond and to indicate whether or not they opposed the application. No replies were received by the Tribunal in the requisite form but Mr Hills had sent an email to the Tribunal indicating his intention to attend the hearing. None of the other tenants attended the hearing.
6. Although the application states that the building comprises six flats and one shop it is common ground that there are five residential flats situated above three ground floor retail units. The Applicant owns the freehold of the building and two of the flats. The remaining three flats are held on long leases by the Respondents named in this application.
7. The Tribunal inspected the property immediately before the hearing. Mr John for the Applicant was present at the inspection and Mr Hills was present during the inspection of his own flat. The building of which the property forms part comprises five self contained flats which are situated above three retail shops on the corner of St Leonards Road and Eversley Road in Bexhill. The property is close to the central shopping area of the town and within walking distance of the sea front and railway station. Limited on street parking is available in nearby streets. None of the flats have any outside space. The property is of conventional brick and slate construction with a

lead covered cupola topping the corner turret and is assumed to date from the closing years of the nineteenth century. Flats 1 and 2 together form the first floor of the building, flats 3 and 4 are found on the second floor and the fifth flat occupies the third floor of the building. Access to the flats is via an inset door with entry phone adjacent to the ground floor shop on St Leonards Road. The hall, staircases and common parts of the building were grubby, poorly maintained and unwelcoming. The Tribunal inspected the interior of Flat 4, owned by Mr Hills, where the plaster on the exterior wall of the main living room had been stripped off to expose the brickwork of the outside wall. Some evidence of fungal growth was apparent as was the poor state of the brickwork. The Tribunal also inspected the interior of Flat 1 on the first floor (owned by the Applicant and currently vacant) where damp penetration on the exterior wall (immediately below the corresponding area in flat 4) was noted. The exterior of the upper floors of the building was in a poor state of repair and decoration with missing pointing and some cracked brickwork. The Tribunal was shown some of the metal down pipes which had been replaced in part or diverted by the Applicant in order to provide a temporary solution to damp penetration from suspected leaks in the pipework. Limited pedestrian access to the rear of the building is via a small alleyway leading off Eversley Road. This area houses the waste bins and was dirty and unpleasant. From the rear of the building a makeshift fire escape composed of scaffolding and steep ladders could be seen. A further area of scaffolding was also present at the rear of the ground floor shop on Eversley Road where, the Tribunal was informed by the Applicant's representative, a large amount of render had recently fallen off the wall of the building.

8. Following receipt of a letter from Mr Hills dated 15 November 2014 the Applicant had carried out investigations and commissioned a report (page 28) which revealed that the property was infested with dry rot which required substantial remedial treatment to the interior of Flat 4. There was a possibility that Flat 1, beneath Flat 4, and the ground floor shop premises had also been affected by the fungus.
9. An estimate for the proposed works was obtained by the Applicant's representative and was sent to the tenants for their comments. A s20 notice was served on the tenants on 12 June 2015. By the date of the hearing the time for consultation on the s20 notice had expired but the Applicant's representative had taken no further steps to progress the works.
10. The Applicant has a repairing obligation in respect of the structure, exterior and common parts of the premises imposed on it by Clause 5(4) of the lease dated 14 November 1985.
11. The Applicant sought the Tribunal's consent to dispense with the consultation requirements imposed by s20 Landlord and Tenant Act 1985 in respect of the works necessary to eradicate the dry rot.
12. The Applicant's representative said that in addition to the dry rot works which were the subject of the present application it was proposed to carry out repair works to the exterior of the building in order to eliminate the source of the damp which had caused the dry rot. He was in the process of obtaining estimates for these works

which would then be the subject of a further s20 procedure. In answer to a question put to him by the Tribunal, he accepted that the works to the exterior of the building should precede rather than follow the dry rot treatment and that a guarantee for the dry rot treatment was unlikely to be forthcoming unless the cause of the damp in the building had first been eradicated.

13. The Applicant's representative wished to proceed with the works as soon as possible because of the danger of the rapid spread of the fungus. He was not however able to demonstrate that the works were so urgent that they merited the dis-application of the normal consultation procedures, part of which he had in any event already completed.
14. Mr Hills, as the tenant who is the most affected by the dry rot, said he was anxious to have the works completed as soon as possible because his present living conditions with bare brick walls and the prospect of having the living room floor lifted and re-laid was disruptive to his domestic life. He would however prefer to postpone the dry rot works until after the remedial works had been carried out to the exterior of the building in order to be assured that the problem had been solved and would not recur.
15. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) provides:

"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* (emphasis added)."

16. The Tribunal understands that the purposes of the consultation requirements is to ensure that leaseholders are given the fullest possible opportunity to make observations about expenditure of money for which they will in part be liable.
17. Having considered the submissions made by both parties the Tribunal is not satisfied that the works proposed to be carried out by the Applicant are sufficiently urgent and, at this stage of the proposed repair programme, necessary, to permit them to exercise their discretion in the Applicant's favour.
18. This determination does not affect the tenants' rights to apply to the Tribunal challenging the payability or reasonableness of the service charges.
19. The Tribunal recommended that the Applicant should seek legal advice about the terms of the various leases of the building to check in each case, the liability to repair and obligation to pay service charges and the interrelation between the repairing and payment obligations between the domestic and commercial leases.

Judge F J Silverman as Chairman
Date 22 July 2015

Note:
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.