12480

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/24UB/LDC/2017/0035
Property	:	11 Dankworth Road, Brighton Hill, Basingstoke, RG22 4LJ and 6,482 other properties in the Eastern, Midland and Southern Regions
Applicant	:	Stonewater Housing Limited
Representative	:	Capstick Solicitors
Respondents	:	The lessees of the 6,483 properties
Representative	:	
Type of Application	:	To dispense with the requirement to consult lessees about a long-term agreement
Tribunal Member(s)	:	Judge Tildesley OBE
Date and Venue of Hearing	:	6 October 2017 Hearing by Means of a Conference Call
Date of Decision	:	20 October 2017

DECISION

The Application

1. This is an application for dispensation from the consultation requirements provided for in section 20 Landlord and Tenant Act 1985.

2. The Applicant is a registered proprietor of social housing and a non-profit making organisation with charitable status. The Applicant owns over 30,000 properties and arose as a result of a merger between two separate social landlords: Raglan and Jephson.

3. Following the merger, the Applicant reviewed the procurement of cleaning and gardening services. The Applicant found that these services were disjointed, of variable quality, and potentially more expensive than they needed to be. Given those circumstances the Applicant decided to go out to tender for grounds maintenance and cleaning services. The Applicant was required to advertise the tender in the Official Journal of the European Union because of the value of the contract. The Applicant also carried out a section 20 consultation with its long leaseholders in respect of its intention to enter in qualifying long term agreements (QLTAs) for grounds maintenance and cleaning services. Under the consultation procedures for QLTAs which are advertised in the Official Journal leaseholders are not given the right to nominate contractors but they have the right to comment on the notice of intention and the proposal. The landlord is obliged to have regard to the comments.

4. The Applicant awarded the contracts in December 2015 and commenced on 1 April 2016. The contracts were in 12 lots in six areas with each area having a cleaning and gardening lot. This enabled the Applicant to rationalise and standardise the service, reducing the number of contractors from 120 to 12.

5. After the contracts had been running for some time the Applicant realised that inadvertently it had failed to consult with those former Raglan Housing Association weekly assured tenants whose tenancy agreements included a weekly variable service charge for cleaning and gardening services. Under the new arrangements some of those former Raglan tenants were required to pay more than £100 per annum for these services.

6. On discovering its error the Applicant informed the affected tenants of its failure and that it would be applying to the Tribunal for dispensation from the consultation requirements. If the Applicant did not make this application, the maximum contribution that it could recover from each tenant through the service charge for these services would be £100 per annum.

7. The Applicant made the application for dispensation on 5 June 2017. On 13 July 2017 the Tribunal issued directions requiring the Applicant

to send a copy of the application form and attachments and the directions to each leaseholder. The Applicant confirmed that he had complied with the Tribunal's request.

8. The Tribunal directed each leaseholder to complete a pro-forma indicating whether s/he consented or disagreed with the application and whether s/he required a hearing or content for the application to be dealt with on the papers. The leaseholders were required to return the pro-forma to the Tribunal by no later than 7 August 2017. Those leaseholders who objected to the application were given the right to make a further statement explaining their objections which they were required to serve on the Applicant by no later than 21 August 2017.

9. The Tribunal directed the Applicant to prepare the hearing bundle and to send a copy of the bundle by 28 August 2017 to each leaseholder who filed a detailed response.

10. The Tribunal received pro-formas from 27 leaseholders, 23 of whom objected to the application, whilst four agreed with the application. Twelve of the 23 objectors lived in Southwood Close, Bickley Kent. Three leaseholders requested a hearing. The remaining leaseholders were content for the Tribunal to make determination on the papers.

11. The Tribunal decided to hold a hearing by means of a conference call on 6 October 2017. The Tribunal gave notice of the hearing to 25 leaseholders and the Applicant.

12. Mr Daniel Skinner of Capsticks solicitors for the Applicant and Mr Andrew Shaw of 14 Southwood Close attended the hearing by means of a conference call.

Determination

13. The 1985 Act provides tenants with safeguards in respect of the recovery of landlord's costs in connection with services that are subject to QLTAs. Section 19 ensures that the Applicant can only recover those costs that are reasonably incurred on services that are carried out to a reasonable standard. Section 20 gives tenants an additional safeguard when the services are subject to a QLTA which is defined as any agreement made on behalf of a landlord for a period of more than 12 months. When these circumstances exist, the additional safeguard is that the Applicant is required to consult in a prescribed manner with the tenants about the QLTA. If the Applicant fails to do this, the tenant's contribution is limited to £100 per annum, unless the Tribunal dispenses with the requirement to consult.

14. This determination is concerned with the additional safeguard of section 20. The question for the Tribunal is whether the requirement to consult on the QLTA for grounds maintenance and cleaning services should be dispensed with. Section 20ZA of the 1985 Act is the authority which enables the Tribunal to dispense with the requirement

for the Applicant to consult with the tenants on the costs on the QLTA for gardening and cleaning services. The dispensation may be given either prospectively or retrospectively. In this case the Applicant is asking for retrospective dispensation.

15. 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 tenants under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.

16. The correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the tenants would suffer relevant prejudice if unconditional dispensation was granted. Relevant prejudice is either paying for inappropriate services or paying more for those services than appropriate. The factual burden is on the tenants to identify any relevant prejudice which they claim they might have suffered. If a tenant shows a creditable case for prejudice, the Tribunal would look to the Applicant to rebut it, failing which it should, in the absence of good reason to the contrary, require the Applicant to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice.

17. Turning now to the evidence the Tribunal has considered the parties' representations included in the hearing bundle and Mr Skinner and Mr Shaw's representations at the hearing.

18. After hearing from Mr Shaw and having regard to the written representations from the other residents at Southwood Close, **the Tribunal decided that the application in respect of Southwood Close residents should be adjourned for three months to enable the Applicant to meet with the residents to discuss their concerns.** The Tribunal directs the Applicant to advise the Tribunal by no later than **15 January 2018** of the outcome of its discussions and whether it wishes to proceed with its dispensation application in respect of the tenants of Southwood Close Bickley.

19. The Tribunal proceeded to evaluate the responses from tenants outside Southwood Close. One response complained about the poor standard of services. One response was from a former tenant complaining about matters not directly related to the QLTA for grounds maintenance and cleaning services. One response complained about the increased costs for grounds maintenance. One response nominated a councillor to speak on her behalf. The Tribunal understands that the Applicant contacted the Council concerned which identified worries with the quality of the services and with anti-social behaviour. The Tribunal observed that the remaining objectors did not submit a detailed statement of their concerns.

20. The Tribunal is satisfied that with the exception of the residents at Southwood Close, the tenants who objected to the application have not identified any relevant prejudice that they would suffer if unconditional dispensation is granted. Those tenants who complained about the cost and the quality of the current services have the right to make an application under section 27A of the 1985 Act to the Tribunal to determine whether the costs of the current services are reasonable. A decision on dispensation does not prevent a tenant from challenging the reasonableness of the costs of the ground maintenance and cleaning services.

21. The Tribunal observes that the overwhelming majority of the affected tenants did not respond to the Application.

Decision

22. With the exception of the Southwood Close residents, **the Tribunal, therefore, dispenses with the consultation requirements** in respect of the QLTAs for Lot 2: East (N & E) Cleaning – Pinnacle; Lot 4: East (N & E) Grounds Maintenance – John O'Connor; Lot 6: South West (South) Cleaning – Pinnacle; and Lot 7 South East (South) Grounds Maintenance – John O'Connor.

23. The Applicant has indicated that it would not recover its legal costs in connection with these proceedings through the service charge. The Tribunal makes an order under section 20C of the 1985 Act preventing the recovery of the legal costs through the service charge.

24. The Tribunal shall send this decisions to any tenant who objected to the application. The Applicant shall be responsible for sending the decisions to the remaining tenants, and to provide the Tribunal with a signed certificate that this has been done and the date on which it was done.

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