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

Case Reference : **CHI/00ML/LDC/2013/0057**

Property : **9 Portland Place, Brighton, East
Sussex, BN2 1DG**

Applicant : **Lyndale Development Company**

Representative : **Deacon & Co**

Respondent : **Mr P.H. Edwards (9a)
Miss D.K. Winters (GFF)
Mr D. Lloyd (FFF)
Miss V. Robbins (Flat 3)
Mr & Mrs Pearce (Flat 2)**

Type of Application : **Section 20ZA of the Landlord and
Tenant Act 1985 (the 1985 Act")
(Application for dispensation of the
consultation requirements of Section
20 of the 1985 Act and the
Consultation Regulations)**

Tribunal Members : **Judge J.B. Tarling
Mr R.A. Wilkey FRICS (Surveyor)**

**Date and venue of
Hearing** : **Wednesday 13th November 2013
Thistle Hotel, Brighton**

Date of Decision : **15th November 2013**

DECISION

DECISION

1. The Tribunal determines to dispense with all the consultation requirements contained in Schedule 4 Part 2 paragraphs 8-13 of the Service Charges (Consultation Requirements)(England) Regulations 2003 and the Section 20 procedure in relation to the additional repairs and associated works to the rusted steel lintel above the ground floor flat windows in the rear addition to the property.

REASONS

INTRODUCTION

2. This is an application by the freeholder/landlord of the building, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the consultation requirements in respect of qualifying works.

THE LAW

3. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
4. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a First Tier Tribunal, Property Chamber (Residential Property) (“a First Tier Tribunal”).
5. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.
6. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying work have to exceed an appropriate

amount which is set by Regulation and at the date of the application is £250 per lessee.

7. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI2003/1987. These requirements include amongst other things a formal notice procedure, obtaining estimates and provisions whereby a lessee may make comments about the proposed work and nominate a contractor.
8. S.20ZA provides for a First Tier Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

THE LEASE

9. The Tribunal was provided with a copy of lease for the First Floor Flat at 9 Portland Place Brighton dated 7th August 1987 between Lyndale Development Company (the Lessor) and David Lloyd (the lessee) (“the Lease”)
10. There are provisions in Clause 5(4)(i) of the Lease for the landlord to *“maintain repair redecorate and renew (i) the main structure and in particular the foundations roof fire escape (if any) drains sewers chimney stacks chimneys and pots gutters and rainwater pipes of the building”*
11. No party challenged the right of the landlord to carry out the proposed repairs or that those repairs were within the landlord’s covenant to repair and were subject to the service charge regime set out in the Leases of the five flats.

BACKGROUND

12. On 8th November 2013 the Tribunal issued Directions for the conduct of the case. In view of the urgency expressed in the application, the matter was listed to be dealt with on the fast track and for an urgent

Hearing. The directions provided, inter alia, for the provision by the applicant of a bundle containing copies of all documents, witness statements and reports which the applicant relies on in support of its application. If the Applicant has prepared a Section 20 Notice and any attached specification or tender documents such documents shall be included in the hearing bundle. In due course, the matter was listed for a Hearing on 13th November 2013

13. Urgent Repairs were required to the rusted steel lintel above the ground floor flat windows in the rear addition to the property. In the application the Applicants Managing Agents were concerned as to the structural stability of the corroded steel beam. In view of this the application was dealt with urgently by the Tribunal.

REPRESENTATIONS

14. The Application was accompanied by some preliminary documents and further documents were produced by the Applicants Managing agents at the Hearing.
15. The Respondent Lessees did not produce any documents either before or at the Hearing.

INSPECTION

16. The Tribunal Members carried out an inspection on the morning of the Hearing, 13th November 2013. The property comprises a large terraced building which had been converted into five self-contained flats. There was one Flat in the basement with its own self-contained entrance leading off the front pavement, and four other flats on the Ground, First, Second and Top Floors to which access was gained through the main front door.
17. The Tribunal Members were accompanied at the Inspection by Mr Marcus Staples BSc, MRICS, DIP PROP INV and Cindy Kruger from the Landlord's Managing Agents, Deacon & Co. One of the Lessees Ms D.K. Winters of the Ground Floor Flat was also present at the inspection. The Tribunal Chairman spoke to Mr D. Lloyd the Lessee of

the First Floor Flat and invited him to attend the inspection, but he declined to do so.

18. The Tribunal Members inspected the rooms within the rear addition of the Ground Floor Flat and were shown the work that had already taken place. This comprised hacking off plaster from walls and ceilings and exposing the steel lintel in the outside wall of the WC and Kitchen in the rear addition above the windows. The steel lintel was rusted and in poor condition. In one area the rust had eaten through the steel and holes had formed in it.

19. **HEARING**

A Hearing took place at the Thistle Hotel Brighton on 13th November 2013 which was attended by Mr Staples and Ms Kruger representing the Landlord and both the Lessees Miss D.K. Winters and Mr D. Lloyd. The Tribunal Chairman outlined the limits of the jurisdiction of the current application. This was merely to consider whether or not to grant dispensation to any future Section 20 consultation requirements. The Tribunal was not able at that time to consider what the Lessees were being asked to pay, nor the reasonableness or quality of the proposed works. Those matters would have to be the subject of other proceedings, if matters could not be agreed between the parties.

20. The two Respondent Lessees who were present were asked whether they objected to the dispensation of the consultation provisions regarding this additional proposed works. Miss Winters said she wished the work to proceed without delay and did not oppose the application. Mr Lloyd said he was concerned as to the independence of the Structural Engineer who had given a report. He questioned whether it was necessary to actually replace the steel lintel, rather than simply repair it. The Tribunal Chairman explained that if Mr Lloyd wished to have time to take independent advice from his own Structural Engineer the Tribunal may wish to adjourn the Hearing to

another day to enable such advice to be taken. This might delay the progress of the urgent works.

21. The Structural Engineers Report was by Mead Structures Limited and was contained in a letter dated 18th October 2013 to Deacon Co and was signed by Eur Ing. Richard Wigmore M.Eng (Hons) C.Eng, MICE, MStructE. MBEng. It referred to an inspection on 20th October 2013 and included the following comments:

“2. The steel beam/lintel was noted to be highly corroded the majority of its length, with significant delamination to both the top and bottom flanges, mirroring that noted internally

3. The corrosion was sufficient to have resulted in the loss of parts of the beam’s web and a significant thinning of section elsewhere was noted. In my opinion, this would have been sufficient to have detrimentally affected the load bearing capacity of the beam.

4. The corrosion appeared too severe to retain and treat the beam in-situ and, in my opinion, it should be replaced as recommended under paragraphs 4.4 and 4.5 of our report dated 13th November 2012. Given the limited access to the rear of the property, I would recommend that the beam be replaced on a like for like basis using a spliced galvanised steel beam...”

22. In an email dated 24th October 2013 from the contractors, Lansdowne Building to Deacon & Co, the contractors had set out the additional work and costs for the steel replacement. The additional work was described as:

*“Adapt the scaffolding acro’s and screw jacks
Support the existing structure over the defective beam and internally
through to the floor below.
Isolate the existing cast soil stack and bung. Once work is complete
fit ferco connectors and new upvc soil fittings between.
Remove existing defective beam. Supply and fit a new 203 X 102
UB23 galvanised and spliced for access
Carry out both internal and external timber and cladding work
ready to accept lathes and plasterboard as schedule.”*

23. As the Structural Engineer’s Report and other papers had only been available at the Hearing, the Chairman adjourned the Hearing to enable the two Lessees to read the Report and accompanying documents. When the Hearing reconvened Mr Lloyd said he did not now oppose the application and wished the works to proceed without delay. He agreed the proposed works needed to be done without delay.

CONSIDERATION

24. When considering whether or not to dispense with the requirements, the most important consideration will usually be the degree of prejudice there is to tenants for a failure to comply with the procedure. In this case the matter is extremely urgent as the Structural Engineers report indicated that the present poor condition of the beam has detrimentally affected its load bearing capacity. The Landord’s Managing Agents had acted quite properly in making the application for dispensation to avoid any further delay. The Lessees had agreed that they wanted the work done, they approved of the work

being done by the contractors. In the circumstances it seemed there was no prejudice to the Lessees in granting the dispensation requested.

THE DECISION

25. Taking all the circumstance into account and for the reasons stated above, the Tribunal hereby determines to dispense with all or any of the consultation requirements in relation to the additional works the subject of this application which are the additional works relating to the replacement of the steel beam in the ground floor addition of the property. Full details of these additional works are set out in Paragraph 22 hereof.
26. The Tribunal makes it clear that this Decision is restricted to the Application under Section 20ZA for dispensation. It does not prevent an application being made to the Tribunal by the Landlord or any Lessee under Section 27A of the Act to deal with the liability to pay the resultant service charges, if matters cannot be agreed.

Appeals

27. 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.
28. 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.
29. 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 the time limit, or not to allow the application for permission to appeal to proceed.

30. 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.
31. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.

Dated 15th day of November 2013

J.B.Tarling

J.B. Tarling (Judge)