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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	: CHI/21UD/LDC/2013/0056
Property	: Medlow Court, 56-59 Eversfield Place, St Leonards, East Sussex TN37 6DB
Applicant	: Brinor Investments Ltd
Representative	: Mrs J Overill of Estate Management Ltd
Respondents	: Mr AEB Payne and others
Representative	: None
Type of Application	: Section 20ZA of the Landlord and Tenant Act 1985 Application to dispense with consultation procedure
Tribunal Members	: Judge A Johns (Chairman) Mr N I Robinson FRICS (Surveyor Member)
Date and venue of Hearing	: 4 December 2013 Bexhill Town Hall, Bexhill-on-Sea
Date of Decision	: 12 December 2013

DECISION

Introduction, procedure and law

1. This is an application by Brinor Investments Ltd as landlord to dispense with the consultation requirements in s.20 of the Landlord and Tenant Act 1985 ("the Act") in relation to works to strengthen the roof of Medlow Court, 56-59 Eversfield Place, St Leonards, East Sussex TN37 6DB ("the Building"). The Building comprises 22 flats and the leaseholders of each were named as respondents to the application.

2. The application is made under s.20ZA of the Act which provides that the Tribunal may make the determination to dispense with all or any of the consultation requirements if satisfied that it is reasonable to dispense with them.

3. Directions were given on 6 November 2013. Those provided that if any respondent wished to contest the application they must attend the hearing and should do so prepared to identify any prejudice said to be suffered if consultation is dispensed with, for example by being asked to pay for inappropriate works or for more work than is necessary or more than would be appropriate as a result of the failure to comply with the consultation requirements.

4. That direction reflected the recent clarification of the law by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14, namely that the purpose of the consultation requirements is to ensure that tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, and that the Tribunal's focus on an application under s.20ZA must be the extent, if any, to which the tenants are prejudiced in either respect by the failure of the landlord to comply with the requirements.

Inspection and hearing

5. The Tribunal had the benefit of an inspection immediately before the hearing. It was attended by Mrs Overill for the landlord as well as Mr Baxter, the landlord's surveyor, and Mr Overill of Peter Overill Associates (being the firm employing Mr Baxter). No leaseholders attended.

6. The Building is made up of what were two six storey (including basement and roof level) houses probably built toward the end of the 19th century but later converted, probably in the 1960s, into flats. The conversion included creating two flats on the fourth floor at what would originally have been roof level. That seems to have involved the almost complete replacement of the original pitched roof by a mansard style roof with a very shallow pitch and protruding dormer windows front and rear.

7. The Tribunal was able to view the roof from rear scaffolding, access to which was gained through a window in Flat 22 on the top floor. Mr Baxter, surveyor for the landlord, pointed out the areas of defect to the Tribunal referred to in the structural engineer's report in the application bundle, though the roof structure was not exposed.

8. The hearing followed the inspection. Mrs Overill attended as representative for the landlord together with the landlord's surveyor, Mr Baxter. Mr Overill of Peter Overill Associates was also present.

9. No leaseholders attended to object to the application. Nor was any written objection received by the Tribunal. On the other hand, the leaseholders of Flat 2, being Mr Munday and Ms Lipson, wrote to the Tribunal consenting to the application. And the Tribunal was also handed at the hearing an email dated 29 November 2013 from the leaseholder of Flat 8, Jean Nicholson, which was supportive of the landlord. Ms Nicholson wrote that "I can see how hard you have worked with Clarke's Roofing contractors to try and quantify and minimise the additional costs arising during the project. I accept that the additional strengthening works to the main roof are needed". She also referred in the email without disapproval to the note of adjustment to costs provided by the landlord which showed the contractor's quoted figure of £7500 plus VAT for the strengthening works which are the subject of this application. Ms Nicholson is secretary for the Building's informal residents' association and the email was expressed to be copied to the other leaseholders for whom she had an email address.

10. Mrs Overill explained, using the documents in the helpful application bundle, the way in which this application for dispensation had come about. The landlord had consulted the leaseholders, following the process in s.20 of the Act, on the recovering of the roof. The outcome of that process was that Clarke Roofing Southern Ltd, the contractor nominated by a leaseholder Ms Nicholson, was engaged to carry out the work; having given the lowest quote in the sum of £48,110 plus VAT.

11. On the roof structure being exposed, the contractor identified deflection in that structure due to lack of support and suggested by an email of 25 September 2013 that a structural engineer be invited to report. A report dated 7 October 2013 was obtained from structural engineers H T Partnership following their inspection of 30 September 2013. That report identified two structural problems and set out the two corresponding remedies required. The problems were first, that there was no beam across the dormers to support the rafters, and second, that the purlin and ridge board were inadequate to support their loads. The remedial work required was first, additional joists to strengthen those existing, and second, diagonal bracing between the purlin and ceiling binder to form a timber truss.

12. Mr Baxter insisted on and obtained from the contractor a breakdown of the suggested additional cost for such strengthening works of £7500 plus VAT. He was satisfied with that breakdown. And the figure was significantly lower than an alternative verbal estimate in the sum of £9000 plus VAT obtained by Mr Baxter from a contractor that had carried out other exterior work to the Building.

13. It became apparent that by the date of the hearing the strengthening works had been carried out. That was in order, as Mrs Overill explained, to beat the winter weather and to reduce the costs of scaffold hire.

Discussion

14. The Tribunal is satisfied that it is reasonable to dispense with the consultation requirements for the strengthening works.

15. No leaseholder even sought to identify any prejudice arising out of a failure to consult. And the Tribunal is satisfied that there is none. It is clear that the works were necessary. That is apparent from the structural engineers' report which was

obtained at the suggestion of the tenant-nominated contractor and reflected in Ms Richardson's email of 29 November. There is nothing to suggest that the works were done poorly or at inappropriate cost. On the contrary, the work was done by the tenant-nominated contractor, that contractor provided the lowest quote for the main works, its estimate for these additional strengthening works was justified by a breakdown, and the figure of £7500 plus VAT was significantly lower than the other estimate obtained. The Tribunal was also told by Mrs Overill and accepted that Estates Management Ltd was very happy with the quality of the work of this contractor, previously unknown to Mrs Overill, and that Estates Management Ltd had since used them at other properties under its management.

Summary of decision

16. The decision of the Tribunal is therefore that the consultation requirements are dispensed with.

Appeal

17. 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.

18. 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.

19. 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.

20. 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.

Judge A Johns (Chairman)

Dated 12 December 2013