



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

Case Reference : **CHI/00HA/LDC/2014/0001**

Property : **11 Broad Street, Bath, BA1 5LJ**

Applicant : **Bath and North East Somerset Council**

Representative : **No attendance**

Respondent : **The Lessees**

Representative : **No attendance**

Type of Application : **Application under Section 20ZA of the Landlord and Tenant Act 1985 for the dispensation of all of the consultation requirements provided for by Section 20 of the Landlord and Tenant Act 1985**

Tribunal Members : **Judge D Archer (Chairman)
Mr S Hodges (Chartered Surveyor)**

Date and Venue of Hearing : **Paper Hearing**

Date of Decision : **16 April 2014**

DECISION

For the reasons set out below, the Tribunal makes a determination to dispense with all of the consultation requirements in relation to emergency repair works carried out at 11 Broad Street, Bath on 2 December 2013 because the Tribunal is satisfied that it is reasonable to do so.

REASONS

Background

1. Bath and North East Somerset Council is the current proprietor of the freehold reversion of 11 Broad Street, Bath ("the property") and is the Applicant in this application. The Respondents are the leasehold owners of the flats that fall within the Property. They are Colin Tanner and Megan Byham Tanner (Flat 1), Suzanne Feltham of Somer Community Housing Trust (Flats 2 and 3) and Nikki Kershaw of Fired Earth Limited (ground floor retail premises). The property comprises three residential flats, the ground floor retail premises and basement storage.
2. On 9 January 2014 the Applicant applied to the Tribunal for a dispensation of all of the consultation requirements provided by section 20 of the Landlord and Tenant Act 1985 ("the Act"). A call had been received from the tenant of the second floor flat regarding damp penetration causing damage to wall plaster. Visual inspection externally from ground level and internally from the third floor flat above did not identify the problem. Scaffolding was erected up to roof level in the area of damp to inspect, identify the cause and repair. On opening up to the roof eaves the rafter ends were found to be rotten along with the timber wall plate beneath. The scaffold was extended along the entire rear elevation to determine the extent of the problem. It became evident that the entire roof structure at wall plate level was affected. Investigation of the dormer roof detailing identified a flashing detail to the side to be the main source of the water ingress. Repair works were carried out consisting of replacing all rot affected timbers in new treated sections and the flashing detail was replaced. The total cost of the repair works was £5550.72 excluding VAT.
3. The application was accompanied by a copy of the leases of the flats within the property. The Tribunal issued directions on 16 January 2014 stating that the application shall stand as the Applicant's case. The Respondents had until 6 February 2014 to

contest the application (and submit a statement and supporting documents) or had until 30 January 2014 to consent to the application. Completed leaseholder consent forms were duly submitted from all of the Respondents confirming that they supported the application for dispensation from full consultation for the damp penetration works.

4. The application was listed for hearing on 27 February 2014. The Respondents were notified of the date, time and venue of the hearing by letter from the Tribunal.

The Law

5. Section 20ZA of the Act provides that 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 do so. Qualifying works means works on a building or any other premises.

6. In **Daejan Investments Limited v Benson (2013) UKSC 14**, the Supreme Court held that Sections 19 to 20ZA of the Act are directed towards ensuring that tenants of flats are not required to pay for unnecessary services or services that are provided to a defective standard or to pay more than they should for services which are necessary and are provided to an acceptable standard. The consultation requirements are intended to reinforce and give practical effect to those two purposes. Dispensation should not be refused solely because of a serious breach or departure from consultation requirements and in the absence of substantial prejudice to the tenants. The factual burden of proving substantial prejudice is upon the tenants but the Tribunal should be sympathetic to tenants.

The Leases

7. The Tribunal had before it a copy of a lease for Flat 1 dated 29 April 1996, a copy of the lease for Flat 2 dated 18 May 2007 and a copy of the lease for Flat 3 dated 18 April 2005. The relevant repair covenant for Flat 1 appears at pages 21-22 of the lease (the Eight Schedule) and requires the lessor to keep the main structure of the property (including all roofs and chimneys and every part of the property above the level of the top-floor ceilings) in good and substantial repair, decoration and condition. The relevant repair covenant for Flat 2 appears at pages 26-27 of the lease (paragraph 6.2) and requires the landlord to make good any disrepair to the building. The relevant repair covenant for Flat 3 appears at page 23 of the lease (paragraph 6.3) and requires the landlord to make good any disrepair to the building.

Inspection

8. The Tribunal decided on 2014 that a property inspection was unnecessary because there was sufficient information on the papers to justly determine the application.

The Hearing

9. The Tribunal proceeded by way of a paper hearing.

The Evidence

10. The evidence submitted by the Applicant on 9 January 2014 included the following;

- 1) The application form signed by Ms Moira Baker for the Applicant.
- 2) A copy of the leases.

The Applicant later submitted on 20 February 2014 an initial assessment of works from a building surveyor dated 24 October 2013 with three photographs of the roof prior to any works, a works order (dated 2 December 2013)/ invoice for works completed and an outline of emergency works dated 20 February 2014.

Conclusions

11. The Tribunal finds that all of the leaseholders have consented to the emergency works. There is no dispute as to the need for the works or the cost of the works.

12. The Tribunal finds that the property was inspected by a building surveyor employed by the Applicant, Mr Robin Slee, on 24 October 2013. Mr Slee took three photographs which show that the dormer windows had no lead flashing inserted onto the dormers. There were only the lead soakers, dressed under the roof tiles. A channel was being created for water to flow under the tiles and down the external wall. That had completely washed away the bottom timber batten.

13. Mr Slee identified necessary works to 10 and 11 Broad Street. The works included lifting the bottom three rows of tiles, inspecting the condition of the felt and timber battens, placing in damaged sections of battens and replacing damaged sections of felt, brushing loose moss and debris to the rear elevation, lifting the bottom row of vertically hung tiles to both dormers and inspecting the existing

lead soakers, securely fixing code 4 lead flashings to the timber dormer window structure dressing over the roof tiles and ensuring a suitable overlap to the flashings, re-hanging vertical tiles to the dormers and replacing damaged sections of timber fascia boards.

14. The Tribunal accepts that the works were carried out on 2 December 2013, as set out in paragraph 2 above. There is no evidence before the Tribunal that the works were not required as a matter of urgency. There is no evidence that the works were not carried out to the correct standard.
15. The Tribunal finds that the proposed works are qualifying works within the meaning of the Act. The proposed works are permitted and required under the three leases that were produced to the Tribunal. There is no evidence of multiple quotes for the work but the Tribunal is satisfied that the total repair cost is reasonable.
16. The remaining issue is whether the dispensation will cause any substantial prejudice to the Respondents. The Tribunal finds that all of the proposed works are necessary to ensure that the property is maintained in a good state of repair and to avoid further damp penetration. There is no evidence of any potential or actual substantial prejudice to the Respondents arising from dispensation. The Tribunal finds that it is reasonable to grant dispensation.
17. The Tribunal finds that all of the requirements of Section 20ZA of the Act are met and therefore makes a determination that dispensation from all of the consulting requirements is granted.

Appeals

18. 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. 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 ground of appeal, and state the result the party making the application is seeking.

Judge D Archer (Chairman)
Dated: 22 April 2014