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

Case Reference : **LON/00AJ/LDC/2014/0079**

Property : **Greystoke Court, Hanger Lane,
Ealing, London W5 1EN**

Applicant : **Mr Raymond Andersen Green**

Representative : **Mr Bates of Counsel**

Respondent : **The leaseholders as per the
schedule attached to the
application**

Representative : **Mr Dhall (Flat 21)
Mr Daruwalla (Flat 4)
Ms Murray (Flats 34 and 44)**

Type of Application : **For dispensation of the
consultation requirements under
section 20ZA**

Tribunal Members : **Judge O'Sullivan**

Date of Decision : **16 July 2014**

DECISION

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") for the dispensation of any or all of the consultation requirements. The property concerned is described in the application as a block of purpose built flats with two blocks and a total of 47 self-contained units which is known as Greystoke Court, Hanger Lane, Ealing, London W5 1EN (the "Property") and the application is made against the various leaseholders in the schedule attached to the application form (the "Respondents").
2. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with.
3. The Applicant seeks dispensation in respect of qualifying works (pre-painting repairs, painting and decorating of soffits, fascias and architraves). In short the tribunal is informed that works are currently being carried out to the building under a major works contract and these unforeseen works would be more economically carried out within that current contract.

The background

4. The application was dated 16 June 2014. Directions were made dated 19 June 2014 which provided for the Applicant to serve a copy of the directions on all Respondents and for them to then indicate whether they consented to the application and wished to have a hearing.
5. The directions provided that this matter would be considered by way of a paper determination unless a hearing was requested. A hearing was requested and took place at 1.30pm on 16 July 2014.
6. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

The hearing

7. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act.
8. At the hearing the Applicant was represented by Mr Bates of Counsel. Also attending for the Applicant were Mr Henry of Paul Henry Limited, a surveyor and Ms Ahmad, a surveyor, of David Adams Surveying.

The Applicant's case

9. The Applicant had filed a bundle in accordance with the directions. It also relied on a statement of case dated 9 July 2014.
10. The works stated to be required can be summarised as follows;
 - *Stripping paint from fascia and soffits*
 - *Renewal of soft wood architraves*
11. The Applicant estimates the cost of the further works to be in the region of £15,000. This is comprised of costs estimated in the region of £7,500 together with a contingency and professional fees.
12. The tribunal heard that major works are currently taking place at the Property which comprise of external repairs and redecorations. Consultation took place in relation to those works and in response to leaseholder concerns the works were split into two phases. The first phase (works to the back block) took place in 2012 and the second phase (works to the front block) commenced in May 2014. The first phase has been completed on time and on budget. The second phase is understood to be nearing completion. On 1 April 2014 the landlord wrote to the leaseholders to advise them that since the specification had been drawn up in 2011 there may well be unforeseen costs.
13. On or around 22 May 2014 the Applicant says that following an inspection it became clear that simply repainting the fascias and soffits would be insufficient and that they would need to be stripped and repainted. In addition the softwood architrave detail was identified as being in a poor state and in need of replacement. An email was circulated to the leaseholders on 7 June 2014 informing the leaseholders of the need for the additional works and identifying the scope of the works required.
14. The tribunal has been provided with copy correspondence between the landlord and the leaseholders. Photographs showing the condition of the fascias and soffits were also included in the bundle.
15. The Applicant says that the proposed qualifying works came to light since the current works commenced and it is prudent to carry out those works at this stage. Dispensation is sought in order to save the leaseholders the cost of producing a detailed specification, further professional fees in consulting the leaseholders further and the costs of erecting scaffolding. The estimated saving is £20,000. It is also said that the works are likely to be carried out at a cheaper rate by the current contractor as they are already on site and are familiar with the Property. Further it is said that the proposed qualifying works are to be

carried out as soon as practicable so as to prevent further damage and thereby increase the cost of the works.

16. Counsel stressed that the landlord derived no benefit from whether the works were carried out now or at a later date. The only advantage to the works being carried out at this stage was to reduce the costs the leaseholders would be asked to pay. In addition he denied the suggestion that the works had somehow been forced on the leaseholders.

The Respondents' position

17. Objections to the application had been received from the Greystokes Residents Association, Mr Daruwalla of Flat 4 and Ms Murray of Flats 34 and 44.
18. The leaseholders did not challenge the necessity for the proposed works. It appeared to be accepted by some of the leaseholders that the renewal of the soft wood architraves was not included in the original specification and were valid works. However all the leaseholders challenged the proposed stripping and repainting of the fascias and soffits on the basis that this item was already included in the original specification.
19. Mr Dhall was concerned at how the issue had been handled by the landlord. He submitted that the leaseholders felt they were being forced into the extra works. He suggested that the landlord should have been aware of the necessity of the additional works at an earlier stage and should have entered into a dialogue earlier. If he had done so, Mr Dhall considered they could well have reached agreement. The leaseholders felt helpless and had not been able to obtain competitive quotations to satisfy themselves the proposed additional costs were reasonable. Further from the information they had it was thought that the costs were in fact higher because the works were being carried out "*out of sequence*".
20. The leaseholders also suggested that there had been an element of malicious mismanagement by the landlord in how this matter had been handled although no evidence was produced in support of this contention.
21. It was also said that the addition of the supplemental items were an attempt by the contractor to make an extra profit at the end of the contract and that that these costs could have been avoided if the contractor had acted in good faith and included the work originally.

The Tribunal's decision

22. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the additional works outlined above.

Reasons for the Tribunal's decision

23. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
24. In making its decision the tribunal had regard to the fact that dispensation is sought as there are current major works at the property and the scaffolding is in place. The tribunal agrees that in carrying out the works now rather than engaging in a further consultation process the cost to the leaseholders will be reduced. It also notes that the leaseholders accept that the additional works are necessary.
25. The tribunal finds that there is no evidence that there was any wilful intent on the part of the contractor or landlord to increase profit as alleged.
26. Several leaseholders objected to the application on the grounds of the unreasonableness of the proposed cost. In addition it was said that some of the proposed additional works are already included in the original specification. These are not matters which the tribunal may take into account on an application under section 20ZA. The Tribunal is not making any assessment of the reasonableness of the charges. A challenge to those charges may be raised pursuant to section 27A of the 1985 Act in the future and this could include a challenge that the costs were not reasonably incurred as the works already formed part of the priced specification.
27. The tribunal hereby orders that the Applicant shall serve a copy of this decision on each leaseholder.

Application under s.20C

28. At the hearing, the leaseholders applied for an order under section 20C of the 1985 Act. The grounds for the application were that the landlord has made this application prematurely and the need for it may have been avoided by talks with the leaseholders. Taking into account the determinations above, the tribunal is minded to decline to make any order under section 20C. However the parties are invited to make written submissions in relation to the section 20C application which

should be received by 8 August 2014. The tribunal will make its decision in the week commencing 11 August 2014.

Name: S O'Sullivan

Date: 16 July 2014