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

Case Reference : **LON/00AY/LDC/2013/0142**

Property : **10 Gypsy Hill, Upper Norwood,
London SE19 1NL**

Applicant : **Southern Land Securities Limited**

Representative : **Hamilton King Management
Limited**

Respondent : **Mr & Mrs N Downes
Mr J Thornberry
Mr S N Pelly & Ms S Grady
Mr G Hodge & Mr J Carpenter**

Representative :

Type of Application : **To dispense with consultation
requirements of section 20 of
Landlord and Tenant Act 1985**

Tribunal Members : **Judge Pittaway
Mr D Jagger**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **12 February 2014**

DECISION

Decision of the tribunal

The Tribunal is satisfied that it is reasonable to grant the application and dispense with the consultation requirements imposed by section 20 Landlord and Tenant Act 1985 ("the Act") in relation to works to the basement (lightwell) retaining wall and railings.

The application

1. The Applicant landlord seeks dispensation from some or all of the consultation requirements imposed by section 20 Landlord and Tenant Act 1985 ("the Act") in relation to certain qualifying works at a cost of £7,735.00 plus VAT.
2. The application relates to works that have already been completed to an exterior wall and railings (the "**Works**") during a works contract which was already on site. The matter came before the Leasehold Valuation Tribunal whose decision was subsequently appealed to the Upper Tribunal. On 12 November 2013 the Upper Tribunal (Lands Tribunal) (LRX/170/2011) determined that the Applicant had not complied with the Consultation Regulations and that a further section 20 notice should have been served in respect of the Works.
3. An application was received by the Tribunal to dispense with the consultation requirements provided for by section 20 Landlord and Tenant Act 1985 on 9 December 2013 which described the Works as "works to exterior wall showing signs of movement and to secure railings which had come loose." The application stated that dispensation was sought of all or any of the consultation requirements for the following reason

"The works were required as the wall and railings could potentially be a hazard to the tenants and the public walking past the Property"

And that the Applicant had thought that the Works fell within the earlier section 20 notice until it had received the decisions of the Tribunal and Upper Tribunal.
4. Directions were issued by the Tribunal on 13 December 2013 and copied to the Respondent leaseholders.
5. The Tribunal has received written confirmation from the leaseholders of flat 4 that they object to the application. There has been no response from the remaining leaseholders.
6. The parties having received 28 days notice of the Tribunal's intention to determine the matter without a hearing, and no party having requested an oral hearing (Mr Hodge initially indicated that he wished there to be a hearing but subsequently confirmed that this was a mistake), the Tribunal has determined this matter without a hearing on the basis of

the papers before it, namely the Application and a Statement of Case from Mr Hodge.

7. The relevant legal provisions are set out in the Appendix to this decision.

The background

8. By reason of the previous decisions, particularly that of the Upper Tribunal which was attached to the Application and to Mr Hodge's statement of case, the Tribunal understand that the Applicant is the freeholder of a four storey terraced house at 10 Gypsy Hill London SE19 and the respondents are the long lessees of the flats in the Property, under leases of the Property which require the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge.

The Qualifying Works

9. The qualifying works in respect of which the Applicant seeks to dispense with all or any of the consultation arrangements are described in the Application (and referred to above at paragraph 3), which the Tribunal understand are the works referred to as the additional works in the decision of the Upper Tribunal.

Inspection

10. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

Reasons for the tribunal's decision

11. Having considered all of the documents provided, the tribunal is satisfied that it is reasonable to dispense with the consultation requirements because the Application stated that the works were required to remedy a potential hazard to the tenants and passers-by, and this is not denied in the only statement of case received. Mr Hodge objects to the works being undertaken without due consultation but he does not dispute the reason given by the Applicant for having undertaken the Works.
12. There is no evidence before the Tribunal that the tenants would be prejudiced by dispensation with the consultation requirements (indeed the tenants of only one flat have returned the "Form for leaseholders" attached to the Tribunal's Directions) and the Tribunal is satisfied that they will not be so prejudiced.

13. In all the circumstances the Tribunal therefore considers it is reasonable to grant the application and to dispense with the consultation required under the Act in respect of the Works.
14. It should be noted by the parties that this determination does not affect the right of the leaseholders under section 27A of the Act to challenge the payability (other than by reason of non-compliance with the consultation requirements as permitted by this decision) or reasonableness of the cost of the works to be recovered under the service charge provisions of their leases

Application under s.20C and refund of fees

15. No application has been made for a refund of the fees that the Applicant paid in respect of the application¹.
16. No application was made for an order under section 20C of the 1985 Act.

Name: Judge Pittaway

Date: 12 February 2014

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
- (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

- (a) an amount prescribed by, or determined in accordance with, the regulations, and
- (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 20ZA

(1) 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 dispense with the requirements.

(2) In section 20 and this section—

- “qualifying works” means works on a building or any other premises, and
- “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

Service Charge (Consultation etc) (England Regulations) 2003

[**Schedule 1 to the Regulations** contains the consultation requirements for qualifying long term agreements other than those for which public notice is required.]

[And/or]

[**Schedule 2 to the Regulations** contains the consultation requirements for qualifying long term agreements for which public notice is required.]

[And/or]

[**Schedule 3 to the Regulations** contains the consultation requirements for qualifying works under qualifying long term agreements and agreements to which regulation 7(3) applies.]

[And/or]

[**Part 1 of Schedule 4 to the Regulations** contains the consultation requirements for qualifying works for which public notice is required.]

[And/or]

[**Part 2 of Schedule 4 to the Regulations** contains the consultation requirements for qualifying works for which public notice is not required.]