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

Case Reference : **LON/00AU/LDC/2015/0025**

Property : **242-244 St Johns Street, London
EC1V 4PG**

Applicants : **MML Investments Limited**

Respondents : **The Long leaseholders of 242-244
St Johns Street**

Type of Application : **Application under section 20ZA to
dispense with consultation
requirements for a scheme of
Major work**

Tribunal Members : **Judge Daley
Mr T Sennett FCIEH**

**Date and venue of
Paper Determination** : **22 April 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **22 April 2015**

DECISION

Decision of the tribunal

- 1. The tribunal grants retrospective dispensation in respect of the major works relating to the cost of carrying out repairs to the skylight including the provision of access in the sum of £3972.00 (including VAT) on the terms set out in paragraph 7 of the Tribunal's decision below.**
- 2. The Tribunal makes an order under section 20 C of the Landlord and Tenant Act 1985.**

The application

1. The applicant by an application dated 16 January 2015 sought dispensation under section 20ZA of the Landlord and Tenant Act 1985 from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act¹.
2. The premises which are the subject of the application are a flat roof four storey end of terrace building which was converted into 7 individual leasehold dwellings built in approximately 2008.

The background

3. An application was made to the Tribunal for dispensation with the requirements to consult pursuant to Section 20ZA of the Landlord and Tenant Act 1985. Directions were given by the Tribunal on 19 February 2015 for the progress of this case, which was listed for a paper determination in the week commencing 20 April 2015.
4. Paragraph B & C direction 2 state as follows-: "... B. *The application concerns works already carried out to repair a leaking skylight .C. The application does not give any detail as to the cost of the works or the reasons why a temporary solution to the problem could [not] be found pending full consultation in respect of the works...the Applicant must send to each leaseholder and to the tribunal (a) Statement of Case which: i. sets out the full costs of the works and the cost to each leaseholder ii a short explanation as to why a temporary repair or other measures could not have been undertaken pending full*

¹ See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987)

consultation on the works...” Applicant should clarify this in their statement...

5. The Directions also provided at direction 3 that -: If the Respondents wish to respond to the application (whether supporting it or opposing it) they should by no later than 27 March 2015 complete the attached form ... and send it to both the Applicant and to the Tribunal.
6. The Directions also provided that unless either of the parties objected the application could be determined on the basis of written representations rather than proceeding to a hearing.
7. The Applicant's sent a bundle of documents for the determination which included a statement of case, together with a response from the Respondents, a quotation for the cost of the work together with an invoice for the cost of the work and a copy of a lease for the premises.

The Applicant's case

8. The Applicant in their application stated that a leak had been identified from the skylight directly above the common areas; this leak was causing water to flow down the walls and drip down the structure of the building to the entrance of the common areas. “ *...An initial survey was carried out as a matter of urgency based on the above which identified a faulty seal in the skylight which would have to be fixed by way of height maintenance team, truck mounted access platform, access via mobile weight anchor and polysulphide re-seal.*”
10. The Applicant further stated that dispensation was sought due to the urgent nature of the work which had a direct effect on the fabric of the building and was causing a considerable slip/trip hazard.
11. In the Applicant's statement of case dated 5.March 2015, the Applicant provided a schedule of the work undertaken including the arrangements for access via a mounted access platform with mobile weight anchor on the flat roof section.
12. The cost of the work was £3,972.00 inclusive of VAT, the apportionment of the works varied from 11.28 %(£447.94) for flat 1, to 17.92% (£711.87) for flat 7.
13. In answer to the issues identified by the Tribunal, the Applicant stated “*...The Claimant avers that there were not any temporary measures which could have been put in place pending full S20 consultation with the tenants. The reason for*

this is that any temporary repairs would have cost the equivalent of the costs incurred in carrying out the full repairs...Attention is also drawn to the location of the leak itself. The leak in the skylight was located directly above the common areas towards the entrance door. This would have caused a severe slip/trip hazard to residents..."

14. The Applicant did not provide details of any pre-work surveyor reports; however a copy of a post work report which set out the scope of the work and also provided two photographs showing the area around the failed seal to the skylight before and after works were carried out. The report is dated 14 January 2015.

The Respondents' case

15. Written representations were received from Mr Scott McGregor of flat 7 dated 23 March 2015, which stated that the representations were *"on behalf and with the consent of all leaseholders at the property..."*
16. The representations included a statement of case which stated that the landlord's application was not supported by the leaseholders on the grounds that the leak to the skylight had first been reported by the leaseholders in 2012, and that the area where the leak had occurred was at the top of the stairs between the 3rd and 4th floors and as such did not present a hazard to a large number of the residents at paragraph 3 the statement of claim stated:- *"Since November 2014 the area next to the leak has in any event been cordoned off whilst renovations to Flat 7 have been carried out and the area concerning the leak has since not been accessed by tenants as a through passage way"*.
17. The Response also stated that access had been offered to the landlord via flat 7 for access to the roof, and that this represented a viable solution as access had been obtained to the roof for repairs in the past.
18. The Respondent stated that in any event the skylight had not been repaired properly as since 16 March 2015, the leak had reoccurred. The Statement of Case concluded by stating *"...the skylight has been defective as a consequence of original building works completed in 2008. Fixing this matter should not be claimed from the Leaseholders service fee as it is not a maintenance matter. Fixing this work should be paid by the Landlord and if possible claimed from the original building contractor..."*

19. In support of their submissions the leaseholders relied upon an email dated 18 May 2014 which referred to the leak to the 'common staircase' (which we reported when we moved into the building end 2012) and a letter dated 7 November 2014 sent prior to the commencement of works at flat 7 which stated- "*In order to protect our own liability with respect to our works shortly to commence we thought it prudent to list these items we are both aware of that are being attended to and pre-existing to our works: Skylight leak in staircase..*"

20. The Tribunal noted that the Applicant had not provided a detailed response to the objections set out by the Respondent, however the Tribunal noted that in this matter its jurisdiction was limited to whether or not it is reasonable to dispense with the statutory consultation requirements and that as such the **application is not concerned with the issue of whether any service charge costs will be reasonable or payable.**

The tribunal's decision

1. The Tribunal considers on a balance of probabilities that it is reasonable to dispense with the statutory consultation requirements of section 20 of the 1985 Act in relation to the work of repairing the skylight, including the cost related to carrying out the work from a mobile platform.
2. The Tribunal has reached its decision on considering the evidence before it, however the Tribunal were concerned that whilst it considered that it was reasonable to grant dispensation, the Respondents had raised real issues concerning the reasonableness of the work, which may indicate that there was some prejudice to the Respondents in the manner in which the work had been undertaken. Had the leaseholders been consulted this may have resulted in the scheme of work being modified.
3. The Respondent had raised issues concerning the reasonableness of the work in relation to (i) whether the work related to maintenance of the building or was a matter which related to the original conversion of the building (which may be covered by warranty) (ii) whether the work had been carried out to a satisfactory standard(iii) whether further and more wide ranging works were needed to the roof of the building which may have been more cost effective than the scheme put in place by the

landlord. The Tribunal noted that there was also an issue concerning whether the works had been urgent if the Respondents allegation that the leak had been ongoing since 2012 was correct.

4. The Tribunal had to consider whether it was reasonable to grant dispensation. The relevant statutory provisions are found in subsection 20ZA (1) of the 1985 Act under heading "Consultation Requirements: Supplementary". That subsection reads as follows: "*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 it is reasonable to dispense with the requirements*".
5. Further guidance is given to the Tribunal in *Daejan Investment Ltd-v-Benson* [2013] UKSC 14 (referred to by the Applicant in the application) The Tribunal in exercising its discretion to grant dispensation have been assisted by the following paragraphs 53-55 of Lord Neuberger's judgment -: *The respondents contend that, on an application under section 20ZA(1), the LVT has to choose between two simple alternatives: it must either dispense with the Requirements unconditionally or refuse to dispense with the Requirements. If this argument is correct, then as the Upper Tribunal held, and the Court of Appeal thought probable, it would not have been possible for the LVT in this case to grant Daejan's section 20ZA(1) application on the terms offered by Daejan, namely to reduce the aggregate of the sum payable by the respondents in respect of the Works by £50,000.*

In my view, the LVT is not so constrained when exercising its jurisdiction under section 20ZA(1): it has power to grant a dispensation on such terms as it thinks fit – provided, of course, that any such terms are appropriate in their nature and their effect.

In the absence of clear words precluding the LVT imposing terms, I consider that one would expect it to have power to impose appropriate terms as a condition of exercising its power of dispensation. The circumstances in which an application could be made are, as already mentioned, potentially almost infinitely various, and, given the purpose of sections 20 and 20ZA, it seems unlikely that the LVT's powers could have been intended to be as limited as the respondents suggest
6. The Tribunal considers that in the circumstances of this case it is appropriate to provide terms upon which dispensation is granted.
7. The Tribunal therefore grants dispensation on the following terms-: That the Applicant shall prior to issuing demands for service charges in relation to this work (A) shall appoint an independent surveyor (such appointment to be agreed by the Respondents) to inspect the roof area and set out in a report (i) whether the work has been carried out to a reasonable standard(ii) whether it is possible to ascertain whether the cost of the work is covered by any warranty,(b) that in the event that there remains a dispute concerning the reasonableness of the cost of the works and whether the work has been carried out to a reasonable standard. That the Applicant shall apply to the Tribunal for a

- (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
 and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,

- (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

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) a leasehold valuation 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.]
1. **S20ZA Consultation requirements: supplementary**
- (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.
 - (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. [...]
2. The relevant Regulations referred to in section 20 are those set out in Part 2 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.