



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case Reference : LON/00AJ/LDC/2018/0036

Property : 109 The Vale, London, W3 7RG

Applicant : Ms T Barber

Representative : Brady Solicitors

Respondent : Miss C Jest & Miss C Krajewski

Representative : Summers Solicitors

Date of Application : 8th February 2018

Type of Application : Dispensation with consultation

Tribunal : Mr I B Holdsworth MSc FRICS

Date and venue of hearing : 21st March 2018
10 Alfred Place London WC1E 7LR

DECISION

The Tribunal determines to allow this application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 in respect of the works described in the Specification dated 16th October 2017 prepared by Neale Robinson Contractors reference Est/ 161017A in the sum of £28,950 exclusive of VAT, provided these works fall under the Landlord's obligations contained in the leases of the flats.

The Parties are responsible for their own costs incurred with this application.

The Application

1. The applicant made an application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act (the “**Act**”). The application affects a single leaseholder at 109 The Vale, London, W3 7RG (the “**Property**”). The two other long leasehold properties in the premises are owned by the freeholder.
2. The applicant asserts that it was necessary for remedial works to be carried out at this property to rectify longstanding defects.
3. The property is a converted house comprising three residential flats, one with two bedrooms and two with three bedrooms. The building has a communal hallway and shared front door.
4. The applicant intends to charge the respondents one third of the costs of carrying out the necessary works to rectify the longstanding defects. The Tribunal notes that the only issue which we are required to determine is whether it is reasonable to dispense with the statutory consultation requirements.

This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of Section 27a of the Act.

Response to the Application

5. On 15th February 2018, the Tribunal gave directions. These were revised on 7th March 2018 after a request for an extension of time. The Tribunal notified the parties that they would determine the application on the basis of written representations unless any party requested an oral hearing. No oral hearing was requested.
6. The parties are represented by legal advisers. The applicant is represented by Brady Solicitors Ltd and the respondents by Summers Solicitors LLP.
7. The applicant has filed an extensive bundle of documents in support of its application. This includes a statement by the applicant and a statement in response to the application by the respondents. The applicant has included a reply to the respondents’ statement.

Statutory Duties to Consult

8. The obligation to consult is imposed by Section 20 of the Act. The proposed works are perceived as qualifying works. The consultation procedure is prescribed by Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the Consultation Regulations”). Leaseholders have a right to nominate a contractor under these consultation procedures.

9. The Landlord is obliged to serve leaseholders and any recognised tenants association with a notice of intention to carry out qualifying works. The notice of intention shall, (1) describe the proposed works, (2) state why the Landlord considers the works to be necessary, and (3) contain a statement of the estimated expenditure. Leaseholders are invited to make observations in writing in relation to the proposed works and expenditure within the relevant period of 30 days. The Landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The Landlord shall respond in writing to any person who makes written representations within 21 days of those observations having been received.

10. Section 20ZA (1) of the Act provides:

“Where an application is made to the appropriate 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.”

Background

11. The freehold of the property was transferred to Ms Barber, the Applicant, in 2006. She has also acquired the long leases to Flat No 1 and Flat No 3. Flat No 2 is held on a long lease by Claire Mary Jest and Caroline Mary Krajewski, the Respondents.
12. The Respondents purchased the property in September 2015.
13. The Tribunal are told that at the date of purchase of Flat No 2 the leaseholders were advised of pending remedial works. At tabs 7.2, 7.3 and 8 of the bundle there are emails which contain evidence that the purchasers were advised of likely repair costs.
14. The Tribunal are told that in 2014 a Section 20 Notice was issued on the leaseholders. This advised of the intention to carry out repair works to the rear of the property. These works were subsequently not carried out.
15. The Tribunal are provided with evidence that during 2017 there were a number of exchanges between the applicant and the Respondents about the need to carry out the remedial works to the rear of the property. Some of these works had already been made known to the leaseholders at the time of purchase.
16. The applicant obtained a quote for carrying out repairs to long standing defects from Neale Robinson, a building contractor, who is known to the Applicant and has previously carried out work on her behalf. The cost of the remedial works was quoted at £34,740 inclusive of VAT.

17. The leaseholders at Flat No 2 were made aware of the intention to carry out these works and sought alternative quotations from two contractors, KCM Construction Ltd and Francor. There was some difference in the scope of works specified by the lessees of Flat No 2 from that issued by the Applicant freeholder.
18. Details of the contractor quotation returns are shown below in table 1.

Contractor works estimates			
Contractor	Net estimate	vat	Total inclusive of vat
Neale Robinson	£ 28,950.00	£ 5,790.00	£ 34,740.00
KCM			
Rendering	£6,550.00	£ 1,310.00	£ 7,860.00
Repointing	£9,950.00	£ 1,990.00	£ 11,940.00
Francor			
Rendering	£6,310.00	£ 1,262.00	£ 7,572.00
Repointing	£9,830.00	£ 1,966.00	£ 11,796.00

19. The quotation received from Neale Robinson is significantly greater than that received from the other two contractors. The opinion of the freeholder is that repointing of the brickwork is necessary to rectify damp penetration in the long term and for this reason the rendering option was disregarded.
20. The freeholder determined on 30th October 2017 to instruct Neale Robinson to carry out the remedial works. The reasons for this decision are provided in an email dated 15th November 2017 included in the bundle at tab 2.8.
21. The works proceeded and we are told they were completed on 2nd February 2018.
22. The applicant has sought to recover one third of the costs from the Respondents under the terms of the lease. The Respondent has refused to pay on the premise that the necessary consultation requirements were not followed by the landlord prior to carrying out the works.
23. Details of the consultation carried out by the landlord are provided in the Applicant's statement at tab 2 of the bundle. It is acknowledged in Applicant's submission that she did not provide a formal notice in writing to the Respondents at the required dates to comply with the consultation procedure. She describes in her submission the dialogue and consultation that took place with the Respondents over this matter.

She asserts that despite not following the defined Notice process she did undertake through exchanges with the Respondent sufficient consultation to ensure that necessary works would be completed *'to a reasonable standard and at a reasonable cost'*.

Determination

24. The Supreme Court's decision in the case of *Daejan Investments Ltd v Benson and Ors* [2013] 1 W.L.R. 854 clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.
25. The Tribunal addressed its mind to any financial prejudice suffered by the leaseholder's due to the failure to consult. The Tribunal note that the Neale Robinson quotation is significantly greater than the alternative contractors. It is acknowledged that Francor, one of the alternative contractors submitted a works quotation after commencement of the scheme. KCM the other contractor that submitted a price quotation had carried out works previously at the property. This work was not carried out to the satisfaction of the freeholder. They also did not have appropriate public liability insurance or health and safety compliance.
26. It is appropriate for the selection of a contractor to be made on more than the submitted cost of the quotation. Any assessment must consider the likely quality of works, together with timeliness of delivery and likelihood of compliance with all necessary contractual and statutory obligations. These matters are material to contractor selection.
27. It is the opinion of the Tribunal that the appointment of Neale Robinson contractor by the freeholder to carry out the specified works was based upon appropriate and reasonable criteria.
28. The Tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted under the 2003 Regulations. The Tribunal has reviewed the exchanges and informal consultation that has taken place. Consultation and exchange had taken place between the parties over the months leading up to the contractor appointment. The most obvious failure is the lack of statement of reasons for the appointment of Neale Robinson as contractor. The email dated 15th November 2017 provided at Tab 2.7 does offer reasons for the contractor selection, albeit retrospectively after appointment of the contractors on 30th October. Earlier e mails dated 23rd and 24th October exhibited in the bundle offer an explanation to the Respondents of the works specification and contractor selection prior to appointment.

29. In view of the circumstances under which the works were specified and contractor appointed, the Tribunal does not consider that the leaseholders, in losing the opportunity to formally make observations on the works specification and to comment on the statement of reasons, suffered any financial or other prejudice.
30. The Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case.
31. In the circumstances, the Tribunal makes an order that the consultation requirements are dispensed in respect of the works described in the specification reference Est/ 161017A dated 16th October 2017 in the sum of £28,950 plus VAT of £5,790 subject to these works falling under the Landlord's obligations under the leases of the flats.

Costs

32. The Respondents seek a determination as to their costs incurred in this application. In accordance with the guidance offered in *Daejan Investments Ltd v Benson and Ors* {2013} 1 W.L.R. 854 and the grant of dispensation to the Applicant the Tribunal determines that the Respondents costs estimated at £6,750 +vat of making the response to this application are to be borne by the Respondents.

Chairman: Ian B Holdsworth Valuer Chairman

Dated: 26th March 2018