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

Case Reference : **LON/00 AU//LDC/2018/0005**

Property : **Property 70-78 York Way,
London N1 9AG**

Applicant : **York Central Residents Association**

Representative : **Forsters LLP**

Respondents : **All residential long leaseholders of
70-78 York Way,
London N1 9AG**

Type of Application : **Application under section 20ZA to
dispense with consultation
requirements**

Tribunal Members : **Ms M W Daley
Mrs A Flynn MRICS MA**

**Date and venue of
Paper determination** : **12 February 2018 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **12 February 2018**

DECISION

Decision of the tribunal

- 1. The Tribunal grants the Applicant dispensation from the consultation requirements in respect of Major Works to the roof**
- 2. The Grant of the Dispensation from the Consultation requirements is not a determination of the reasonableness or payability of the service charges of £117,380.00 for the total cost of the roof works. Any issues concerning the cost of this work have not been determined by this Tribunal.**

The application

- 1.** The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 (the "1985 Act") from all of the consultation requirements imposed on the landlord by section 20 of the 1985 Act.
- 2.** The application is in respect of work to be carried out to the roof of the premises known as **70-78 York Way**, ("The Premises").
- 3.** The only issue for the Tribunal 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 are recoverable or payable.
- 4.** The application to the tribunal was dated 5 January 2017 and directions were given this matter on 9 January 2018.

The background

- 5.** The property is a former warehouse converted into residential accommodation and maintains most of its original structure. There are 21 residential flats, commercial units on the ground floor and a number of storage units. Flat 7.1 is the top floor flat on the seventh floor of the Property, it is built in a steel frame construction with glass walls and is surrounded by a terrace on all sides. Flat 7.1, also has a small 8th floor terrace with a small glazed conservatory.

6. All of the Respondents own a share of the freehold of the Property through the Applicant Company. There are 21 Respondents/ leaseholders.
7. The directions dated 9 January 2018, provided for the Applicant to prepare a bundle for the tribunal's use and serve one copy on any respondent who has indicated that they oppose the application with two copies to the Tribunal.
8. The Respondents were directed to make a response to the application stating whether or not they agree to the dispensation being given or not.
9. Eleven leaseholders indicated their consent to the works being carried out. Of the remaining leaseholders, they did not reply, accordingly no actual objection was raised.
10. The matter was listed for a paper determination.

The Paper Determination

11. The Applicant provided the Tribunal with a bundle of documents in compliance with the amended directions on 31 January 2018.
12. The background to the application was set out in Paragraph 9 of the Applicant's Statement of full grounds for dispensation. The Applicant stated that -: "There have been incidences of water ingress from flat 7.1 into Flat 6.1 for about 10 years. In 2014 the roof surface of Flat 7.1's terrace was resurfaced following a consultation procedure. 10. The water ingress substantially worsened in 2017 specifically affecting Flat 6.2 Ashby Building Surveyors were instructed on 25 August 2017 by the owners of flat 6.1 and provided a report on 16 November 2017..."
13. The report which was included within the bundle stated at paragraph 6.1 of the conclusions that-: "The roof drainage systems on the building are not adequate, and do not meet the design requirements of BSEN12056-3:2000...6.4 We would recommend that repairs are carried out on this roof, which in our view needs complete re-covering. This should not only address the issues of water ingress at 6th floor, but also prevent the lower levels of water ingress which are leading to damp timberwork, which will inevitably lead to premature timber decay, and potentially to the outbreak of fungal infections such as dry rot, which will be complex and expensive to address."

14. The Applicant served Section 20 Notices on 22 December 2017, explaining that the substantial work could not be undertaken until March 2018. Temporary patch repairs were undertaken to flat 6.1 in December 2017 (unsuccessful) and further work in January 2018 which has prevented further water penetration.
15. However the Applicant instructed their own surveyor in January 2018 who has recommended (amongst other items) that the following work, inspecting and renewing any defective substrate to roof 7.1, that the margins should be revised to provide a drip detail, all gullies should be adjusted and that building regulation compliant work to renew roof coverings and building insulation should be provided. There was also work to be undertaken to the window/wall soffit junction and waterproofing to the terrace of 7.1. The report from Celador Consulting Ltd ("CCL") which was dated 7 January 2018, was provided in the bundle
16. Following the report, CCL were instructed to obtain tenders from four contractors. A tender report was provided on 22 January 2018, which included the details of the three tenders that were received:-
 - BSV Projects Ltd £117,380.00
 - Commercial Property Contracts Ltd £81,140.00
 - MyHaus Design & Build Ltd £74,689.20
17. The Applicant provided the Respondents with copies of the Tender report, together with the recommendation to instruct MyHau Design & Build Ltd who provided the lowest tender.
18. The Applicant noted that the responds received from the leaseholders in response to this application and also those who had responded to the tender report all expressed support for the work being undertaken.
19. In their Statement of Case, the Applicant in paragraph 20 states:-

"...The Applicant is concerned that these repairs will not stand for a significant period of time and therefore water ingress into flat 6.1 may recur. Further internal damage to the Property may be caused, which may not be currently visible. The Applicant therefore cannot delay the Works in order to carry out the full consultation procedure which would take at least a further two months."
20. The Applicant therefore asks that dispensation be granted unconditionally.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Annex 2

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.[...] [FN1]
[FN1] ss.20-20ZA substituted for s.20 subject to savings specified in SI 2004/669 art.2(d)(i)-(vi) by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 151