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LEASEHOLD VALUATION TRIBUNAL

CHI/00HP/LDC/2013/0012

Decision of the Leasehold Valuation Tribunal on application under Section 20ZA of the Landlord and Tenant Act 1985 as amended

Applicant	Proprietary Managements Limited
Respondents	The Lessees – Flats 1-16 Pinebeach Court
Re:	Flats 1-16 Pinebeach Court, 5 Beach Road, Branksome Park, Poole, Dorset BH13 7BX
Date of Application	8 February 2013.
Date of Inspection	28 March 2013
Date of Hearing	28 March 2013
Venue	The Thistle Hotel, Poole
Appearances for Applicant	Mr T Townsend MRICS, Hamilton Townsend, Managing agents
Also attending	Mr AJ Sharp & Mrs AE Sharp (Flat 1)

Members of the Leasehold Valuation Tribunal

	M J Greenleaves	Lawyer Chairman
	A J Mellery-Pratt FRICS	Valuer Member
	J Mills	Lay Member
Date of Tribunal's Decision:	2 April 2013	

Decision

1. The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) from compliance with the consultation requirements of Section 20 of the Act in respect of work being carried out at, Pinebeach Court, 5 Beach Road, Branksome Park, Poole Dorset (the premises) relating to roofing of the rear balconies of flats 15 and 16 PROVIDED THAT by 30 April 2013 the Applicant shall serve on each of the Respondents:
 - a. Full details of all the original costings of the re-roofing works in respect of which statutory consultation procedures were carried out from March to June 2012
 - b. Full details of any savings made in respect of those works;
 - c. Full details of the costs incurred or to be incurred in relation to the additional works the subject of this application and for which Hardie Roofing & Building Limited submitted a quotation dated 29 January 2013;
 - d. A copy of this decision and reasons.

Reasons

Introduction

2. This was an application made by the Applicant, the freeholder of the premises, for dispensation from compliance with the consultation requirements of Section 20 of the Act in respect of repairs and improvements to the roof above the rear balconies of flats 15 and 16 of the premises.

Inspection

3. The Tribunal inspected the premises in the presence of Mr Townsend and, in flat 16, Mrs Monckton and, in flat 15, Miss Pearce.
4. The premises comprise a purpose-built block of 16 flats constructed about 50 years ago. It is one of two blocks in this development. It appears that, as originally constructed, each flat had a balcony at the rear (north side) and that subsequently the balconies had been enclosed with windows and, on the top floor, with roofing so that in respect of flats 15 and 16 the former balconies have been incorporated into their kitchens. Inspection showed that essential roof support structure is now being installed. Each of the 2 kitchens is boarded off against the balcony areas so that the use and amenity of those kitchens is significantly affected.

Hearing

5. Notice of application had been served on all of the Respondents. The hearing was only attended by those referred to above.

6. Mr Townsend, for the Applicant, had prepared a bundle of correspondence, quotations, engineers calculations, a specimen copy lease and other papers and in the course of the hearing also produced copies of letters written to all the Respondents on 8 and 20 February, 2013.
7. He said that the application arose because in the course of re-roofing works started in 2012 the roof over the balconies had been found to be resting on the UPVC windows without any supporting structure. It therefore became necessary to carry out the additional works in accordance with the engineers' calculations and Hardie Roofing & Building Limited's quotation of 29 January, 2013. They wished to proceed urgently with the work, considering it was quicker and more cost-effective to retain the existing scaffolding in place and use the existing contractor in order to proceed with the work more rapidly rather than having to go through the statutory consultation procedure which would also result in the lessees of Flats 15 and 16 being inconvenienced even longer.
8. He had written to the Respondents on 8 February 2013 in which he had noted that the roof frame is resting on the UPVC windows; a steel frame had to be designed and installed and that there would be significant additional costs. Further that they were concerned about delaying the then existing contract "as there will then be further additional costs of hiring the scaffold, there will be significant disruption especially to the top floor flats and there is the ongoing [fear] that the structure will fail or that there will be significant water penetration."
9. The Applicant accordingly made this present application for dispensation from the statutory consultation procedure.
10. The Applicant had written to the lessees on 20 February 2013 in respect of the additional work, requesting a special levy of £400 per flat. This had already been paid by 15 out of the 16 lessees.
11. Mr Sharpe, who had been a director of the Applicant company until recently, said that the Applicant had previously carried out roofing work on the other block in the overall development so the company considered that it should carry out roofing of flats 15 and 16 to the same standard. He also said that the Applicant had been more concerned with maintaining a uniform visual appearance following the work rather than any possible cost savings.
12. In reply to the Tribunal, Mr Townsend said that they had not served any formal notices in respect of the additional works; communications with lessees had been by e-mail but that the Board had met with the top floor owners on 10 February, 2013.
13. Mr Townsend referred to the provisions in the copy lease produced. He submitted that the work being carried out was within the landlord's covenant in clause 4 (2) "to maintain the walls girders and timbers exterior chimney stacks and roofs ... in good and substantial repair and condition making all necessary renewals and replacements as may be required

thereto". He also referred to clause 5 of the lease which contains a lessee's covenant to contribute one-sixteenth part of the costs incurred by the Applicant under clause 4.

Consideration

14. The Tribunal considered all the case papers, the submissions and evidence received at the hearing and the situation noted in its inspection.
15. While the Tribunal considered that the Applicant could have commenced formal consultation procedures, the steps taken by the Applicant to inform the lessees were reasonable. It also accepted that in the circumstances it was reasonable to proceed with the work with the existing contractors without obtaining another quotation/estimate for the work, as to do otherwise might well result in significant additional expense in relation to removal and re-erection of scaffolding and the ability to carry out urgent works within a reasonable time scale.
16. The Tribunal also needs to consider whether dispensation would result in the lessees being prejudiced by either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the applicant to comply with the statutory procedure. The Tribunal considered that the work being carried appeared appropriate and that overall the costs were probably not unreasonable. However, in coming to that conclusion, the Tribunal emphasises that it does not make a formal determination on those issues – see paragraph 17 below.
17. While the Applicant referred the Tribunal to the repairing covenant and payment covenants as mentioned above, the Tribunal records that the present application relates only to the question of dispensation from statutory consultation procedures. It does not relate to whether the work being carried out and the cost of it are reasonable or by whom those costs are payable. Those are matters which come within section 27A of the Landlord and Tenant Act 1985 and there is no such application before the Tribunal.

Determination

18. In all circumstances of the case, the Tribunal considered that it was reasonable to grant full dispensation from the statutory consultation procedures in respect of the additional work subject to the terms stated and made its decision accordingly.

[Signed] MJ Greenleaves

Chairman

Member of the Leasehold Valuation Tribunal
appointed by the Lord Chancellor.