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

Case Reference : **LON/00BK/LDC/2013/0112**

Property : **St James's Close, Prince Albert
Road, London NW8 7LQ**

Applicant : **St James's Close RTM Company Ltd**

Representative : **Rindall & Rittner Limited**

Respondent : **The leaseholders of the Property
listed in the application**

Representative :

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

Tribunal Members : **Judge Pittaway
Mr P Casey**

Date of Decision : **4 December 2013**

**Determination without an oral
hearing in accordance with
Regulation 31 The Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**

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 required to make a retaining wall at the property safe, whichever of the two options referred to below is adopted.

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 works, which dependent upon their cost, may be qualifying works.

The Applicant has served Notice of Intention to Carry out Works on all the leaseholders but has not otherwise complied with the consultation requirements imposed by section 20 of the Act.

The works will involve either

- (a) Removal of a tree, and rebuilding walls with brickwork, reinstating the soil; or
- (b) Removal of a tree, replacing the wall with pre-cast concrete walling on posts (subject to structural engineer's confirmation), reinstating the soil.

2. The application was received on 16 October 2013 and directions were issued by the Tribunal on 23 October 2013, directing the Applicant to send the Directions to each leaseholder and place a copy in the hall/notice board at the block. The Applicant confirmed to the Tribunal on 29 October 2013 that it had done so.
3. The Tribunal has received written confirmation from the leaseholders of flats 1, 7, 10, 17, 24, 36, 40, 41, 47 that they support the application. Some indicated a preference for one or other of the options referred to above; others did not. On the whole the preference was for option (a). The Tribunal received written objections to the application from the leaseholders of flats 16, 27, 28, 32, 42, 45 and both penthouse. There has been no response from the remaining leaseholders.
4. 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, the Tribunal has determined this matter without a hearing on the basis of the papers before it.

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

The background

6. The Property which is the subject of this application is described in the Application as being a 1930s development consisting of three blocks. Two penthouses were built in 2009. There are stated to be a total of 49 flats at the Property.
7. The Respondents hold long 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.

Inspection

8. No party requested an inspection and the Tribunal did not consider that one was necessary.

Reasons for the tribunal's decision

9. Having considered all of the documents provided, the tribunal is satisfied that it is reasonable to dispense with the consultation requirements. It had regard to the structural engineer's report from Mr S Stark of Stark Associates included with the Application. In this he states that he is concerned as to the immediate risk of collapse of the wall with the risk of serious injury. The Tribunal therefore consider that the work is urgently required for safety reasons.

The Tribunal considered Dr Shirvani's assertion that the "garden wall is not endangering anybody's life" but found Mr Stark's submission that "brickwork gives no warning of collapse" to be more persuasive.

10. There is no evidence before the Tribunal that the tenants would be prejudiced by dispensation with the consultation requirements and the Tribunal is satisfied that they will not be so prejudiced.

The Tribunal notes Dr Shirvani's submission that the work might be carried out for less than the estimate provided by the Applicant but does not consider this sufficiently prejudicial to the tenants to refuse the dispensation.

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

Name: Judge Pittaway

Date: 4 December 2013

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

Regulation 6 provides that for the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.