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

Case Reference : CAM/42UF/LDC/2013/0022

Property : 15 St Nicholas Close, Bury St Edmunds IP32 7AX

Applicant : Havebury Housing Partnership

Respondent : Mr Michael Stephen Stockdale

Application : Application for permission to dispense with
consultation requirements in respect of qualifying
works, pursuant to s20ZA of the Landlord & Tenant Act
1985

Tribunal Members : Judge Reeder
Mr R Thomas MRICS (valuer member)

Date of inspection : 17 November 2014

Date of hearing : 17 November 2014 (The Grange Hotel, Thurston)

Date of Decision : 17 November 2014

Date Written : 27 November 2014

DECISION

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DECISION

1. The Tribunal grants permission, pursuant to section 20ZA of the Landlord & Tenant Act 1985, to dispense with the consultation requirements in respect of works carried out to the roof and rear barge boards serving 15 St Nicholas Close, along with 14 St Nicholas Close in November 2014.
2. The applicant has confirmed that it will not seek to re-charge the costs of and occasioned by this application as a service or administration charge payable by Mr Stockdale.

REASONS

The application, parties, premises & relevant works

3. This matter comes before the Tribunal pursuant to an application by Havebury Housing Partnership, lessor of 15 St Nicholas Close, Bury St Edmunds IP32 7AX. The application was made on 22 October and received by the Tribunal on 27 October 2014.
4. By that application Havebury Housing Partnership seeks permission, pursuant to section 20ZA of the Landlord & Tenant Act 1985, to dispense with the consultation requirements in respect of works carried out to the roof and rear barge boards serving Nos 14 (ground floor) and 15 (upper floor) St Nicholas Close in November 2014.
5. The applicant is the freehold owner of St Nicholas Close, and of the reversionary interest in 15 St Nicholas Close.
6. The respondent, Mr Stockdale, is the leasehold owner of 15 St Nicholas Close pursuant to a lease dated 11 October 1999. This is a first (top) floor flat situated directly above a ground floor flat, being 14 St Nicholas Close. Mr Stockdale does not himself occupy the flat which is let on assured tenancy pursuant to the Housing Act 1988.
7. The applicant is the freehold owner of the ground floor flat at 14 St Nicholas Close which is let on an assured tenancy pursuant to the Housing Act 1988.
8. The roof and barge board structures which have been the subject of works serve both of these flats.
9. The relevant works, in respect of which dispensation is sought, comprise the replacement of a number of ridge tiles (being not more than 5) and associated lead apron work (being approximately 1 linear metre) and re-pointing to the roof immediately above 14 and 15 St Nicholas Close, along with the replacement of the entirety of the barge boards (being approximately 10 linear metres) to the rear gable end immediately above 14 and 15 St Nicholas Close.
10. Those works were carried out in one day on or about 12 November 2014 by the applicant's contractor 'Messrs Cambridge Felt Roofing'.

The inspection by the Tribunal

11. The Tribunal has made an external visual inspection of 14 & 15 St Nicholas Close from the ground floor rear gardens. This provides a vantage point to see some but not all of the work carried out. We have been assisted during that inspection by Michael Watley, maintenance co-ordinator for the applicant, Terri Hammond, leasehold & service charge manager for the applicant, and the respondent Mr Stockdale.
12. Accordingly, the precise details of the works actually carried out have been provided by Mr Michael Watley, maintenance co-ordinator for the applicant. His evidence is not disputed and is accepted by the Tribunal.

The hearing before the Tribunal

13. The application has been ably presented by Terri Hammond, leasehold & service charge manager for the applicant. She, along with her colleague Liz Row, manages the applicant's leasehold properties. She has been assisted by evidence from Michael Watley, maintenance co-ordinator for the applicant.
14. Mr Stockdale did not wish to attend the hearing and accordingly, as a matter of fairness and of proportionality, the Tribunal allowed him to state his views on the works and associated application during the inspection. He accepts the defects which arose as are described and did require urgent remedial action. He accepts that the remedial works actually carried out appear to be appropriate, and that the resulting cost appears to be reasonable. He is in a good position to form such views as he is himself engaged in the building trade. He confirms that there has been no further water penetration into 15 St Nicholas Close since completion of the works despite inclement weather which has provided "a good test". He does not claim that he is or will be caused any prejudice by the consultation dispensation sought.
15. The Tribunal has been provided with a hearing bundle comprising the lease, core documents relating to the relevant works, and correspondence to Mr Stockdale in relation to those works. In addition, during his evidence Mr Watley has referred to his maintenance file records for the property in order to confirm the precise details of actual work done and actual resulting costs.

16. The hearing has concentrated on the provisions of the lease, the nature and extent of the defect as reported, whether remedial works were urgently required, the remedial works actually carried out, the resulting costs and so service charge liability, and whether Mr Stockdale has or will be caused any prejudice by the consultation dispensation sought.
17. Mr Stockdale's tenant reported to him that rainwater was penetrating through the roof into the kitchen near to the location of electrical installations. Mr Stockdale reported the same to the applicant. This situation became known to the applicant on or about 22 September 2014. Correspondence and emails between 23 September and 23 October 2014 evidence the arrangements made for inspections and works.
18. Initially, the applicant sent an in-house electrician to inspect and check electrical safety. It has confirmed that no service charge is to be levied for this. In addition, two in-house building/roofing staff inspected and reported back to Mr Watley. It has confirmed that, again, no service charge is to be levied for this. These inspections confirmed water penetration, the need for urgent works to the roof to remedy the same, and identified the works which were likely to be required. The barge board works, whilst not urgent, were included as scaffolding would be erected to get to the rear roof and so give access to the bargeboards. In short this opportunity provided an overall cost saving in the long term.
19. Given the urgency, the applicant did not apply the normal tender process but allocated the job to Messrs Cambridge Felt Roofing Ltd, a known and trusted contractor who have worked for them for approximately one year. It can be seen from an email dated 21 October 2014 that the contractor inspected and quoted a price of £1641.10 + VAT. This presumed that extensive work to the lead valley was needed.
20. Mr Stockdale was kept informed of the inspections and arrangements for works by Liz Row, the applicant's property advisor by telephone and email. A letter from her to Mr Stockdale dated 23 October 2014 details the defects inspected, works proposed, likely costs based on the 21 October quotation, the urgency, and the applicant's intention to apply to the Tribunal for a dispensation order pursuant to s.20ZA of the 1985 Act.
21. Ms Hammond states that Mr Stockdale was content with the process and its outcome. This has been confirmed by Mr Stockdale at the inspection.

22. In the event that actual work required differed to that earlier presumed, and the resulting costs is less than the estimate notified to Mr Stockdale.
23. The actual works comprise the replacement of a number of ridge tiles (being not more than 5) and associated lead apron work (being approximately 1 linear metre) and re-pointing to the roof immediately above 14 and 15 St Nicholas Close, along with the replacement of the entirety of the barge boards (being approximately 10 linear metres) to the rear gable end immediately above 14 and 15 St Nicholas Close. Those works clearly do fall within the landlord's repairing covenants under the lease and fall to be recharged as relevant costs.
24. The actual relevant resulting cost is £644.64 inclusive of VAT. Mr Stockdale's service charge contribution will be £322.32 (being 50% of the actual cost shared equally with 14 St Nicholas Close) plus £48.35 (being a 15% management fee) pursuant to covenants 3.1 and 3.3(b)(ii) of the lease. Mr Stockdale does not take issue with the actual works costs or the management fee. This is unsurprising as, on the information before the Tribunal, both seem to be reasonable.

The Law

25. Section 20 of the Landlord & Tenant Act 1985, which is supplemented by section 20ZA, provides for mandatory consultation with tenants, and limits the sum recoverable by a landlord to "the appropriate amount" in the event of non-compliance. The appropriate amount is currently £250 for each tenant, irrespective of the cost of the work or services, but that draconian limit is avoided if the statutory consultation requirements are dispensed with by a leasehold valuation tribunal.
26. The consultation requirements referred to in section 20(1) are now found in the Service Charges (Consultation Requirements) (England) Regulations 2003.
27. Provision for dispensation is made by section 20ZA(1) of the 1985 Act, as follows:
"Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any part of the consultation requirements in relation to any qualifying works..., the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

28. The Tribunal is mindful of the judicial guidance given on the approach to be taken on dispensation applications by the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 and by the Upper Tribunal (Lands Chamber) in *OM Property Management Ltd* [2014] UKUT 0009(LC) and so considers -

(1) Whether, and if so to what extent, the tenant would relevantly suffer if unconditional dispensation was granted. The word relevantly in this context refers to a disadvantage that the tenant would not have suffered if the consultation requirements had been fully complied with but which they will suffer if an unconditional dispensation were granted.

(2) The factual burden is on the tenant to identify any relevant prejudice which it claims he will or might have suffered.

(3) Once the tenant has shown a creditable case for prejudice, the LVT should look to the landlord to rebut it, failing which it should, in the absence of a good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice.

(4) It is not sensible or convenient to distinguish between a serious failing and a technical, minor or excusable oversight, save in relation to the prejudice it causes. The gravity of the landlord's failure to comply, the degree of its capability, the nature of the landlord and the financial consequences of its failure to comply are not relevant considerations for the Tribunal per se; their relevance will depend upon the prejudice which each such factor causes.

(5) That the Tribunal could grant dispensation on such terms as it thought fit, providing that they were appropriate in their nature and effect, including terms as to costs.

(6) The very fact that Section 20ZA(1) is expressed as it is means that it would be inappropriate to interpret it as imposing any fetter on the LVT's exercise of the jurisdiction beyond what can be gathered from the 1985 Act itself, and any other relevant admissible material.

(7) Further the circumstances in which a Section 20ZA(1) application is made could be almost infinitely various, so any principles that can be derived should not be regarded as representing rigid rules.

Determination

29. The Tribunal determines that no relevant disadvantage or prejudice has been caused to Mr Stockdale. Indeed, he does not seek to identify any and is content with the procedure and outcome. The nature of the defect and the resulting urgency form a proper basis for the course of action taken. The applicant has kept Mr Stockdale informed of developments throughout that course of action.
30. The Tribunal is satisfied that it is reasonable to grant dispensation in relation all of the consultation requirements in respect of all of the qualifying works as described in this Decision. The Tribunal does not impose any conditions to that dispensation.

Recovering the costs of the proceedings before the Tribunal

31. The applicant has confirmed in clear terms to the Tribunal that it will not seek to recover the costs of and occasioned by this application from Mr Stockdale. In the circumstances the Tribunal records this and makes no order.

Stephen Reeder
Judge of the First Tier Tribunal

27 November 2014