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

Case Reference : **LON/00BE/LDC/2013/0150**

Property : **High Trees Mansion, 28 Crescent
Wood Road, London SE26 6RU**

Applicant : **Tapestart Limited (Freeholder)**

Representative : **Mr Justin Bates of Counsel**

Respondent : **The Leaseholders of High Trees
Mansion**

Representative : **Mr T Gough flat 19 and Mr R
Cushen flat 18**

Type of Application : **For dispensation of the
consultation requirements under
section 20ZA**

Tribunal Members : **Judge E Samupfonda
Mrs J Davies FRICS**

**Date and venue of
Hearing** : **26 February 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **13 March 2014**

DECISION

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the dispensation of any or all of the consultation requirements. The property concerned is described as a large detached Victorian house, which at some stage had a large side extension added. In about 2004 it was divided into self contained flats on four/five floors (the “Property”.) The application is made against the various leaseholders in the schedule attached to the application form (the “Respondents”).
2. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with. The Applicant states that following a section 20-consultation process that took place in early autumn of 2013 work started on 13 October 2013 to carry out repair and external decorations. The s20 Notice estimated that the work would cost £79,933.00. After commencing work, it became clear that substantial extra work would be required which changed the scope of the works significantly beyond what had been planned and consulted upon with costs now estimated at £525,769. It is these remedial “Additional Works” that form the subject of this application.

The background

3. The application was received on 23 December 2013. Directions were made dated 17 January 2014. The leaseholders of the subject property objected to the application.

The hearing

4. The matter was considered at a hearing on 26 February 2014. Mr Bates of Counsel represented the Applicant. A number of leaseholders attended the hearing. Mr Gough and Mr Cushen represented the Respondents.
5. The Tribunal did not inspect the Property and neither party requested an inspection.

The issue

6. The only issue before the tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act in respect of the additional works.

The Applicant's case

7. The Applicant had filed a bundle in accordance with the directions. The tribunal was informed that Daniel Renovations, a contractor nominated by one of the leaseholders had been awarded the contract to carry out the work. After exposing some brickwork, it became evident that additional works were required. The Applicant commissioned a report from Jarvis Blake and Glenwright Limited. Their report dated 17 October 2013 advised that "repairs need to be undertaken as soon as possible to avoid the building significantly deteriorating into an unsafe condition" and "a delay to comply with section 20 consultation would be very ill advised." The leaseholders were notified that the cost of the original and additional works including fees would be £525,769 instead of £79,933 as estimated in the s20 Notice. The Applicant then issued this application on 20 December 2013.
8. Mr Bates informed the tribunal that the additional works had commenced in mid January 2014. He referred the tribunal to the case of Daejan Investments Ltd v Benson and Others [2013] UKSC 14 in particular paragraph 44 where it was explained that " Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements"
9. Mr Bates' submissions were fully set out in his skeleton argument. In summary he submitted that the tribunal should dispense with the consultation requirements in respect of the additional works because the Respondents had not demonstrated that they would suffer any prejudice by the landlord's failure to comply with the requirements in respect of those works. He submitted that relying on the surveyor's reports, the work was necessary and was not of the Applicant's own making. He highlighted the fact that the leaseholders acknowledged that the work was necessary and they did not want it to stop.

The Respondents' position

10. Mr Gough and Mr Cushen on behalf of the leaseholders opposed the application on the basis that they believed that the additional works were foreseeable and evident at an earlier date. They were of the view that the Applicant should have known how bad the cracks were from a number of sources e.g. a previous LVT decision in 2010 noted that " the paintwork and render was in surprisingly poor condition for such a recent conversion," David Evans, property manager visited the property in January 2011 and noted "works needed to the external cracks" and the report by Antony Peterson, Chartered Surveyors in February 2011

produced a schedule of defects. They believed that delay increased the scope of the work and had caused the work to be more extensive. They stated that the repairs identified by Mr Evans and the Peterson report was not carried out due to a lack of funds. They stated that they did not see the full Springfield report upon which the original set of works was based but only received its Appendix. They did however say that they had the best for the building at heart. For that reason they recognised that the work was necessary and they did not want it to stop. They raised concerns and problems regarding payment, which had been recognised by the Applicant who was prepared to offer terms to suit circumstances.

The Tribunal's decision

11. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the additional works.

Reasons for the Tribunal's decision

12. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
13. In making its decision the tribunal had regard to the Jarvis Blake & Glenwright Ltd report, which identified the need to proceed with the work as a matter of urgency. Whilst the tribunal acknowledged that there would be a significant increase in the cost, there was insufficient evidence upon which the tribunal could determine the extent to which the leaseholders would be prejudiced by the Applicant's failure to comply. The leaseholders were informed that it is now necessary for the work to be carried out and indeed they accept that this is so. Both parties agree that the work is appropriate. Furthermore, there was no evidence to show that the delay had led to an increase in the scope of the work or that the leaseholders would be required to pay more than what was appropriate. The concerns raised in relation to the issues of delay and the possible impact on costs were not matters that were relevant to the question before this Tribunal.
14. In making this decision the tribunal would stress that it is not making any assessment of the reasonableness of the charges and a challenge to those charges may be raised pursuant to section 27A of the 1985 Act in the future.
15. The tribunal hereby orders that the Applicant shall serve a copy of this decision on each leaseholder.

Name: Judge E Samupfonda

Date: 13 March 2014