



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

Case Reference : **MAN/00BW/LDC/2014/0003**

Property : **10 & 22, Tintern Avenue, Astley M29 7WL
73, 87 & 95, Abbey Road, Astley M29 7WN**

**Applicants
Represented by** : **Tintern Abbey Residents Association
: D.E.M Management**

Respondents : **Ms. M.Burns (10, Tintern Avenue)
Mr.&Mrs.Owen (22, Tintern Avenue)
Mr.J.Lowe (73, Abbey Road)
Mr.M.Barron (87, Abbey Road)
Ms.G.Gorton (95, Abbey Road)**

Type of Application : **Landlord and Tenant Act 1985 (“the Act”) –
Section 20ZA**

Tribunal Members : **Mrs.C.Wood
Mr.I.James**

Date of decision : **27 May 2014**

DECISION

Decision

1. The Tribunal determines as follows:
 - (i) that the Respondents have been prejudiced by the lack of consultation and it is not satisfied that it is reasonable to dispense with the consultation requirements in respect of the works carried out in Autumn 2011 to replace the soffits, fascias, guttering and downpipes at the Properties; and,
 - (ii) that the Applicant was entitled under the terms of the Underlease to replace the flat entrance porch roofs with pitched roofs and to charge the costs of such works as service charge;
 - (iii) that, if the Applicant had acted in discharge of its obligations under paragraph 4(i)(a) (rather than leaving the replacement works to the discretion of the leaseholder), then the works to replace the flat entrance porch roofs with pitched roofs would have constituted “qualifying works” for the purpose of s20 of the Act and consultation, or an application for dispensation under s20ZA, would have been required;
 - (iv) that, in such circumstances, dispensation from the consultation requirements would have been granted.

Background

2. By an application dated 3 February 2014, the Applicant sought a determination that it was reasonable to dispense with the consultation requirements in respect of the following works:
 - (i) replacement of soffits, fascias, guttering and downpipes carried out to the Properties in Autumn 2011; and,
 - (ii) replacement of flat entrance porch roof with a pitched one.
3. Pursuant to directions dated 11 February 2014, the following documentary evidence was submitted:
 - 3.1 Applicant’s Statement of Case together with Appendices 1-22 (“the Applicant’s Statement”);
 - 3.2 Reply by Mr.& Mrs.Owen (22, Tintern Avenue) (“Mr.&Mrs.Owen’s Statement”);
 - 3.3 Reply by Mr.Barron (87, Abbey Road), (“Mr.Barron’s Statement”).
 - 3.4 No party requested a hearing and the matter was therefore determined on the documentary evidence.

Evidence

4. In the Applicant’s Statement, the Applicant set out the background circumstances to the works including the reasons why in both cases they were considered to be necessary; the consultation which had taken place with shareholders of the Applicant and with leaseholders; the processes undertaken to obtain estimates for the works; in the case of the replacement of the soffits,

fascias, guttering and downpipes, the commissioning of the works; and, in the case of the replacement of flat roofs with pitched roofs, an explanation of the circumstances in which these works will be carried out by the Applicant: specifically, it is stated that it is at the leaseholder's discretion if, and when, to replace their roof; although reference is made to the quotation from the Applicant's preferred contractor, Colin Fitton, of £780 for a 2 entrance porch replacement, it is also stated that each leaseholder is free to obtain their own quotes and use their own contractor subject to the roof matching those already completed. The only exception to this is where the roof was considered to be dangerous and the leaseholder could not be contacted; in those circumstances, the Applicant would carry out the works and re-charge the cost to the leaseholder as service charge. This had been the case in respect of one of the Properties, namely, 95 Abbey Road.

5. The evidence relevant to this application in Mr. & Mrs. Owen's Statement is summarised as follows:
 - 5.1 the lack of any consultation with leaseholders who are not shareholders of the Applicant;
 - 5.2 the obligation of the leaseholder under the terms of their lease to pay one-half of the costs incurred in respect of the Building which would include the costs incurred in respect of the replacement of the soffits, fascias, guttering and downpipes;
 - 5.3 the Applicant's decision to obtain a common price for these works payable by all leaseholders is contrary to the terms of the lease;
 - 5.4 that the works were not necessary;
 - 5.5 that the replacement of the flat porch roof with a pitched roof is an improvement which is not permitted within the terms of the lease;
 - 5.6 that the representation contained in the Applicant's Statement that leaseholders were under no obligation to have the porch roof works done at all and/or that they could choose an alternative contractor to that suggested by the Applicant was a change of position;
 - 5.7 in any event, to the extent that works are required to be done by the Applicant in discharge of its obligations under the lease, they should not be permitting individual leaseholders to do the works, and the cost of the works should be recovered as service charge.
6. In Mr. Barron's Statement, he provides evidence to support his claim that, in respect of his Property, the works to replace the soffits, fascias, guttering and downpipes were not necessary and/or were over-priced.

The Underlease

- 7.1 The relevant terms of the underlease dated 27 October 1976 and made between A. & J. Mucklow (Lancashire) Limited ("the Underlessor")(1) and A. and S. Cronshaw(2) in respect of No. 22, Tintern Avenue, can be summarised as follows:

- (i) under paragraph 4(i)(a) of the Sixth Schedule, the Underlessor agrees to maintain, repair, redecorate and renew the main structure, roof, gutters and rain water pipes of the Building and garage (if any);
- (ii) “the Building”, in respect of No.22, Tintern Avenue, means itself and the first floor immediately above it, and not the entirety of the Block in which it is situated;
- (iii) the leaseholder is required to pay one-half of the costs spent by the Underlessor in fulfilling its obligations under paragraph 4(i)(a) of the Building.

The Law

8.1 Section 20 of the Act provides:

- (1) Where this section applies to any qualifying works...the relevant contributions of tenants are limited...unless the consultation requirements have been either –
 - (a) complied with in relation to the works...,or
 - (b) dispensed with in relation to the works...
- (2) In this section, “relevant contribution”, in relation to a tenant and any works...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...
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

8.2 Section 20ZA(2) of the Act defines “qualifying works” as “works on a building or other premises”.

8.3 Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 prescribes that the appropriate amount for the purposes of section 20(3) of the Act is an amount which results in the relevant contribution of any tenant being more than £250.

8.4 Section 19 of the Act provides that:

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred...on the carrying out of works, only if the...works are of a reasonable standard;

and the amount payable shall be limited accordingly.

Tribunal’s Deliberations

9. In reaching its determinations set out in paragraph 1 above, the Tribunal noted as follows:

- 9.1 although they did not have sight of the underleases for each of the Properties, it was assumed that they were substantially in the same format as the underlease for No.22, Tintern Avenue, (“the Underlease”), and, in

particular, that each of the Respondents was liable to pay one-half of the costs incurred by the Applicant as “Expenses of the Building”;

- 9.2 that, under paragraph 4(i)(a) of the Sixth Schedule to the Underlease the Applicant’s obligation “[T]o maintain repair redecorate and renew...the main structure roof gutters and rain water pipes of the Building...” properly includes the works to replace the soffits, fascias, gutterings and downpipes and also the replacement of the flat entrance porch roofs with pitched ones;
- 9.3 that the effect of the Applicant’s decision to commission the works to replace the soffits, fascias, guttering and downpipes “on the basis of a fixed price per property i.e. all pay the same price regardless of the number of properties in the block...” may be to impose a greater costs’ liability upon them than would be the case under the terms of their Underlease eg where the Property was mid-terrace eg No.22, Tintern Avenue, and resulted in prejudice accordingly;
- 9.4 that, by leaving the roof replacement works to the discretion of the individual leaseholder (save in the case of emergency), the Applicant has not discharged its obligations under paragraph 4(i)(a) of the Sixth Schedule of the Underlease;
- 9.5 if the Applicant had acted in accordance with its obligations under the Underlease, then the roof replacement works would have constituted “qualifying works” under section 20 of the Act and the Applicant should have undertaken consultation or sought dispensation under s20ZA;
- 9.6 the quotation obtained for the roof replacement works meant that the Respondents would pay a contribution to the cost in accordance with the terms of the Underlease ie one-half share. In fact, only one of the Respondents had been required to meet this cost to date.