

10589



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

Case Reference : BIR/00CW/LDC/2014/0010

Property : Properties at St Cecilians Okement Drive
Wednesfield Wolverhampton WV11 1XD

Applicant : St Cecilia's RTM Company Ltd

Representative : Pennycuick Collins

Respondents : The Lessees of St Cecilians

Type of Application : An Application under Section 20ZA of the
Landlord & Tenant Act 1985 for dispensation of
the Section 20 consultation requirements.

Tribunal Members : Mr Vernon Ward BSc (Hons) FRICS & Judge DR
Salter

Date of Decision : 23 January 2015

DECISION

Background.

1. The Application requests the Tribunal to grant a dispensation from the consultation requirements contained within section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") and the Service Charge (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations") in respect of repairs and improvements to Properties at St Cecillas, Okement Drive, Wednesfield, Wolverhampton WV11 1XD.
2. The repairs and improvements proposed comprise external wall insulation, cladding to concrete areas, replacing 19 wooden framed windows which are rotten and not weatherproof, in UPVC, and recovering and recladding the leaking flat roof. A Government grant of £474,000 can be obtained towards the total cost of the works of £632,000. The remaining element will be contributed by the lessees by way of a loan. Under the current proposals each lessee's contribution will be in excess of £100 per annum. This will therefore be a qualifying long term agreement within the meaning of section 20ZA (2) of the 1985 Act. The Applicant claims that agreement to proceed with the works is urgently required as otherwise the grant funding will be lost. The timescale allowed to take advantage of the grant will not be met if the consultation procedures under the Act are followed.
3. Prior to St Cecilia's RTM Company Limited (the RTM Company) acquiring the Right to Manage ("RTM") the development on 6 September 2014, the landlord had, in December 2013, issued a consultation notice regarding major works to be undertaken including external masonry repairs and decorating, wood and metal window replacement (184 pieces), asbestos removal under the common windows (38 pieces) and the associated access equipment to hire and project management.
4. Quotations for this work were as follows:

£187,640
£194,452
£215,819
£992,855.

On 23 December 2013, a letter was sent on behalf of all lessees rejecting the works and as the RTM procedures were already in hand, indicating that it was the RTM Company's intention to undertake similar work following full consultation. The landlord was requested to only undertake emergency works during the RTM acquisition process.

5. The landlord had been negotiating a Green Deal Grant for the external and cavity wall installation and after the success of the RTM process contacted Mr Robin Hacking, a director of the RTM Company, and asked him to follow the matter through.
6. A condition of the Department of Energy and Climate Change (DECC) funding is that Green Deal Assessment (GDA) surveys are undertaken of every flat within a development applying for funding. GDA surveys of every single flat were completed by 22 July 2014 following the efforts of the lessees and contractors, supported and co-ordinated by the directors of the RTM Company. The grant vouchers from DECC were applied for and funding obtained for the following works:
 - a) Cladding the concrete ranges;
 - b) Cavity wall insulating the brick ranges;
 - c) Removing asbestos panels below the common area windows (38 pieces);
 - d) Replacing 19 metal framed windows and 19 wooden framed windows in the common areas which are rotten and not weather proof with double glazed units;
 - e) Re-roofing and cladding the roof which is leaking badly (the latest leak was reported on 7 November 2014);
 - f) Access equipment hire and project management.
7. Planning permission has been granted by Wolverhampton City Council for the works.

Cost of Works

8. The project cost is £632,000 and will be funded as follows:
 - a) £474,000 approved Government grant being 75% of the cost of the works;
 - b) £158,000 Green Deal loan being the 25% balance of the cost of the works. This is payable by the leaseholders of St Cecilia's. The loan offer is with Credit Union and over a period of 5 years. The loan will be by way of 60 payments of £3,279.82 per month making an annual payment of £39,357.84. This includes the loan payments and associated interest. However, in addition, there is a requirement to pay 10% of this amount into a savings account, namely £327.90 per month or £3,934.80 per annum. The total repayment is therefore £43,292.64 per annum i.e. £363.80 per leaseholder per annum. This is a worst case scenario since Credit Union is investigating spreading the loan over 7 years at the RTM company's request. There is therefore a possibility

that the term might be somewhere between 5 & 7 years but the RTM company would intend to proceed if the only term offered is 5 years.

9. The Tribunal was advised that the benefits to the development of proceeding with this project are as follows:

- a) A fuel saving of approximately £200 per annum per 1 bedroom flat and £250 per annum per 2 bedroom flat.
- b) The cladding is self-cleaning and will not require painting for ten years. This should be viewed in light of the fact that external redecoration of the block is now required at a minimum cost of £68,000.
- c) The flat roof to the property requires recovering and there are no reserve funds to cover the anticipated expenditure of £50,000 + VAT.
- d) Common area window replacement is required.
- e) The granting of government funds makes available a further additional grant of £1,000 per flat towards energy efficient measures including new boilers and double glazing.

10. Currently, there are no reserve funds available as these were expended on emergency lift works.

11. The grant vouchers for DECC are time restricted to 6 months and as these were obtained in July 2014 they are due to expire in January 2015. However it is reported that the next release of funding will be in November 2014 and the grant vouchers will be obtained again.

12. The Applicant concluded that for the lessees of St Cecilia's, the benefits of proceeding with this project are significant and without the grant funding it will be many years before the RTM Company is in a position to carry out these works itself.

13. The Tribunal received no representations from any lessee.

THE LEASE

14. Under Clause 2 of the lease, the lessees covenant as follows:

"... and ALSO PAYING by way of additional rent such sums representing the Lessee's Proportion of the Lessor's Expenses as is to be calculated and paid in the manner hereafter provided"

15. "The Lessor's Expenses" are defined within the lease "as the monies actually expended or reserved for periodical expenditure by and on behalf of the Lessor at

all times during the term hereby granted for the purpose of fulfilling the obligations specified in the Eighth Schedule”.

16. The Eighth Schedule sets out those items that may be considered to be lessor's expenses.
17. In this respect, the lease requires the lessees to pay a proportion of the cost of repairing and renewing the development. The works proposed in this Application fall within that definition. The proportion of each lessee's contribution towards these expenses is stated within the lease.

THE INSPECTION

18. The Tribunal carried out an inspection of the development on 16 December 2014. Present at the Inspection were Mrs Lyndsey Cannon-Leach of Pennycuik Collins, the representatives of the RTM Company and Mrs Elizabeth Hacking, Mr Robin Hacking and Mr Peter McShane, all directors of the RTM company.
19. St Cecilia's is a tower block of 119 flats arranged over 20 floors with the upper floors served by lifts. The building appeared to have been constructed during the 1960s. There is car parking on site.
20. The Tribunal carried out an internal and external inspection of the property.
21. From an inspection of the internal communal areas, the Tribunal noted water ingress into numerous areas, including the lift shaft, and also noted defective windows. It was not possible to inspect the flat roof covering externally. However photographs were provided from which it is clear that roof urgently requires replacement.

THE LAW

22. Section 20 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are collectively known as the Service Charges (Consultation Requirements) (England) Regulations 2003. A qualified long term agreement is entered into by the landlord with a wholly owned independent organisation or contractor for a period of more than 12 months. Landlords (or the entity responsible for the Landlord's obligations under the lease, such as the RTM company in this matter) must consult leaseholders where the amount payable by any one contributing leaseholder under the agreement in any accounting period exceeds £100 per annum. The figure is to be calculated on the basis of the leaseholder's total contribution resulting from the agreement including VAT. If the consultation is not undertaken, the landlord may not be able to recover more than £100 per

leaseholder in any accounting period towards the costs incurred under the long term agreement.

23. There are essentially three stages in the consultation procedure, the pre tender stage; Notice of Intention, the tender stage; Notification of Proposals including estimates and in some cases a third stage advising that the leaseholders that the contract has been placed and the reasons behind the same.
24. It should also be noted that the dispensation power of the First-tier Tribunal under section 20ZA of the 1985 Act only applies to the statutory consultation requirements and does not confer any power to dispense with any contractual consultation provisions which may be contained in the lease.

THE TRIBUNAL'S DETERMINATION

25. Section 20ZA of the 1985 Act does not expand upon or detail the circumstances when it may be reasonable to make a determination dispensing with the consultation requirements. While this Application is being made to deal with an urgent situation, it is a fact that most applications to dispense with the consultation requirements are made on a retrospective basis. However, similar principles apply in relation to pre-emptive applications. In *Eltham Properties v Kenny* (2008) L & TR 14 at Paragraph 26, the Lands Tribunal stated:

“When an application is made under section 20ZA (1) of the 1985 Act the LVT may make the determination to dispense with all or any of the consultation requirements “if satisfied that it is reasonable to dispense with the requirements.” The determination is thus one for the LVT’s discretion, and the issue in this appeal is whether the LVT in making its determination approached the matter correctly in law. What the LVT had to determine was whether it was reasonable to dispense with the consultation requirements, and the reasonableness of dispensation is to be judged in the light of the purpose for which the consultation requirements were imposed. The most important consideration is likely to be the degree of prejudice that there would be to the tenants in terms of their ability to respond to the consultation if the requirements were not met”

26. It was clear to the Tribunal from the site inspection and also the photographs provided that extensive repairs and improvements are required to St Cecilia’s. The costs of maintaining a twenty storey building of this age will always be significant.
27. Therefore, the Tribunal considers that compliance with the consultation requirements at this stage would be impractical and prejudicial to the lessees of St Cecilia’s.

28. The Tribunal is satisfied that the works are required urgently and that, on the evidence provided, it is reasonable to dispense with the consultation requirements of section 20 of the 1985 Act provided the Applicant proceeds to obtain the grants available and, thereafter, to carry out the works as soon as possible.
29. Parties should note that this determination does not prevent any later challenge by any of the respondent leaseholders under sections 19 and 27(A) of the 1985 Act on the grounds that the costs of the works when incurred had not been reasonably incurred or that the works had not been carried out to a reasonable standard.
30. In making its Determination, the Tribunal had regard to its inspection, the submissions of the parties, the relevant law and its knowledge and experience as an expert Tribunal, but not to any special or secret knowledge.

Appeal

31. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD BSc Hons FRICS Chairman

23 JAN 2015