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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/00HH/LDC/2015/0035

Property : Claire Court, Higher Erith Road, Torquay,
Devon. TQ1 2NQ

Applicant : Claire Court (Torquay) Management Limited

Representative : TMS South West Limited

Respondent : All leaseholders

Representative : ---

Type of Application: Application under Section 20ZA Landlord and Tenant Act
1985 ("the 1985 Act") for dispensation from consultation
requirements

Tribunal Members : Judge P J Barber

Date of Decision : 30th September 2015

DECISION

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Decision

1. The Tribunal determines in accordance with the provisions of Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”), that dispensation be granted from all the consultation requirements of Section 20 of the Act in respect of works to the 1970`s Annexe at the Property (comprising Flat Numbers 1A, 2A, 3A, 4A, 5A and 6A Claire Court) and consisting of full retro cladding, using a Marmorit system to overcome damp penetration / cold bridging issues, structural alterations to the attached concrete balcony and the application of a Triflex cladding, and the renewal of an unsafe external balustrade and spiral staircase, being the subject of this application.

Reasons

BACKGROUND

1. This is an application filed by TMS South West Limited (“TMS”), managing agents on behalf of Claire Court (Torquay) Management Company Limited, pursuant to Section 20ZA of the Act in relation to Claire Court, Higher Erith Road, Torquay TQ1 2NQ (“the Property”) to dispense with the consultation requirements contained in Section 20 of the Act.
2. The application describes the Property as comprising a Victorian Villa, converted to 8 flats, with an adjoining block or annexe structure, constructed in the 1970s (“the 1970`s Annexe”), comprising 3 ground floor 1 bedroom flats and 3 first & second floor duplex flats, each with 2 bedrooms.
3. The application refers to certain works required to the 1970`s Annexe and for which substantial government “Green Deal” funding is available, provided the works are completed by 31st October 2015 and in respect of which, the Applicant submits that there would have been insufficient time available to carry out the full consultation procedures required pursuant to Section 20 of the Act, and to complete the works by 31st October 2015, in order to obtain such “Green Deal” funding.
4. The Applicant indicated in the application that it would be content with a paper determination in the matter and no notification of any contrary view by the tenants has been received by the Tribunal. No inspection of the Property has taken place.
5. Accordingly the Tribunal is dealing with the matter on the papers, without an oral hearing pursuant to Regulation 31 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules S.I. 2013 No. 1169. No objections have been notified to the Tribunal in respect of the application.

THE EVIDENCE

6. In support of its application, the Applicant submitted a bundle of documents which included copies of the application, copy of the Lease of Flat 1A Claire Court, dated 8th December 1987, a list of the names and addresses of all the tenants, various e-mails, copy Section 20 Notice of Intention dated 17th January 2014, Statement of Estimates dated 30th July 2014, a letter from Colin Ritchie Architects,

dated 15th July 2015 and also a Schedule of Investigatory & Remedial Works for Repair prepared by Colin Ritchie Architects, and dated 22nd May 2014.

7. The Notice of Intention to carry out work dated 17th January 2014, referred to works both to the original Victorian Villa part of the Property and the 1970`s Annexe, although the application for dispensation relates only to the works to the latter. The Statement of Estimates dated 30th July 2014 referred to an estimate from Sherwell Valley Builders Limited, for the work in respect of the 1970`s Annexe; TMS indicated that although several tenders had been sought, only Sherwell actually bid for the work on the basis of being able to complete such work by the grant deadline of 31st October 2015. The Statement of Estimates referred to certain observations which had been received from the tenants at Flats 5 & 7 in response to the Notice of Intention to carry out works; the tenant at Flat 5 had suggested that TMS obtain an estimate from Torbay Decorating Company and the tenant at Flat 7 expressed concern about the works covering a leak to a shed and also in regard to serviceability of external redecoration colour choice.
8. The Schedule of Investigatory and Remedial Works prepared by Colin Ritchie Architects in May 2014, referred to various matters in regard to defects in the Victorian Villa part of the Property, and also specifically in regard to the 1970`s Annexe. In regard to the latter, the May 2014 Report referred to a strategy being needed and a specification put in place to waterproof and insulate the external walls, with a favourable option being to retro-insulate and re-clad the external walls from the outside.
9. The letter from Colin Ritchie Architects dated 15th July 2015, refers to the Property being divided into two distinct elements, the original Victorian Villa and the 1970s Annexe. The letter refers to a requirement for certain roof repairs, fascia soffit and rainwater goods repairs and external redecoration, to the Victorian Villa part. The letter also refers to the need for full retro cladding using a Marmorit system to the 1970`s Annexe, to overcome damp penetration / cold bridging issues, and structural alterations to the attached concrete balcony. The letter also refers to the application of Triflex cladding, and renewal of unsafe external balustrades and spiral staircase (referred to in the letter as Phase 1 of the works). In addition, the letter explains that the grant in respect of the Marmorit cladding element of the works to the 1970`s Annexe (referred to in the letter as Phase 2 of the works), is subject to completion of such work by 31st October 2015. The letter further explained a technical requirement for the Triflex balcony covering to be laid and completed prior to the Marmorit cladding being installed, to ensure a weather proof and watertight seal between the two abutting materials. The letter stated "*In conclusion there is the critical constraint that the Phase 2 work needs to be on site during August 2015 and completed by the 31st October 2015 and the technical requirement that Phase 1 work needs to be undertaken prior to this.*"
10. The bundle also included a copy of a letter dated 14th August 2015 sent by TMS to each tenant, advising of the application for dispensation; no notices of objection to the application has been received by the Tribunal from any of the tenants.

THE LAW

11. Where a landlord intends either to carry out major works, the cost of which will be borne by the service charge payers, Section 20 of the Act requires that the landlord shall first either go through a prescribed consultation process with the tenants concerned, or alternatively obtain a determination from the Tribunal that it may dispense with those procedures. If it fails to do so, the amount it may recover from each service charge payer towards the cost of the works in question is limited. The detailed consultation requirements are set out in Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations S.I. 2003 No.1987 and such regulations require a notice of intention to carry out works to be served on the tenants, facilities for inspection of the documents to be given, a duty to have regard to tenants' observations, followed by the preparation of a detailed statement of the landlord's proposal and a further opportunity for the tenants to comment.
12. Section 20ZA of the Act allows the Tribunal to dispense with some or all of these requirements if it is satisfied that it is reasonable to do so.

TRIBUNAL'S FINDINGS

13. The Tribunal accepts on the basis of the evidence placed before it, that the works to the 1970's Annexe need to be completed by 31st October 2015 in order that grant funding, which is beneficial to the tenants, may be available to them to cover part of the costs of those works. Accordingly the Tribunal takes the view that if dispensation is granted in this case in regard to the 1970s Annexe works, without full implementation of the Section 20 consultation procedures, no prejudice is likely to be occasioned to the tenants. On the contrary, if the works were to be delayed, then on the basis of the evidence provided, grant funding would no longer be available to subsidise part of the cost, to the disadvantage of the tenants.
14. No objections to the application from any of the Respondent tenants have been notified by the Applicant to the Tribunal; the Tribunal further notes that if any of the tenants consider that the cost of the works or standard of them, is unreasonable, they may yet seek to challenge them by making a future application to the Tribunal under Section 27a of the Act when the related service charge demand is received, notwithstanding that dispensation of the consultation requirements has been granted by the Tribunal.
15. Accordingly the Tribunal so makes the determination set out in paragraph 1 above.

Judge P J Barber

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.