



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

Case Reference : **BIR/47UE/LDC/2016/0008**

Property : **1-32 Lapal Close, Comer Road, St John's,
Worcester WR2 5HT**

Applicants : **Orchidbase Limited**

Representative : **Glinert Davis LLP, solicitors**

Respondent : **The leaseholders of 1-32 Lapal Close**

Representative : **Not represented**

Type of Application : **Under section 20 (ZA) of the Landlord &
Tenant Act 1985 for dispensation of all
or any of the consultation requirements
provided for by section 20 of the said
Act**

Tribunal Members : **N R Thompson FRICS – Chairman
Regional Judge D S Jackson**

**Date and venue of
hearing** : **Paper determination in Birmingham on 26th
July 2016**

Date of Order : **27th July 2016**

DECISION

Background:

1. The application in this case (“the Application”) was received by the Tribunal (“the Tribunal”) on 17th June 2016 and relates to qualifying works (“the Works”) to be carried out at the Property for which dispensation is being sought from the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 (“the Act”). The Works are required as a result of additional drainage repairs and replacements found to be necessary as part of an earlier programme of underpinning of the Property for which appropriate consultation was undertaken at the relevant time. There is a degree of urgency in respect of the Works because the underpinning programme is already underway, and what the Applicant considers to be a very competitive quotation for the Works has been obtained.

2. Two estimates of the costs of the Works have been obtained by the Applicant from (i) the contractor currently undertaking the underpinning works (£33,000 + VAT) and (ii) Draintech Limited (£17,934.25 + VAT). It is proposed to accept the lower quotation from Draintech Limited, but this is only open for acceptance until 31st July 2016, which provides insufficient time to follow the consultation procedure laid down in the Act.

3. The application and subsequent Directions issued by the Tribunal were copied to each of the thirty two Respondents who were invited to notify the Tribunal if they opposed the application. A response was received from twenty six of the Respondents, none of whom objected to the application.

The Lease:

4. The Tribunal was provided with a copy of a specimen lease of the properties in Lapal Close, under which clause 4(v) (b) requires the Lessee:

“(V) to contribute and pay on demand one thirty second of the costs expenses and outgoings of the Lessor in performing the covenants contained in Clause 5 hereof other than the covenant for quiet enjoyment.”

Clause 5 of the lease refers, inter alia, at sub-clause (5) to the covenant by the Lessor:

“(5) to repair and keep in tenantable repair the exterior of the building of which the demised premises form part and all additions thereto including the loadbearing walls and drains the roof and foundations and to paint all paintwork at least once in every three years”

Accordingly, the sums expended by or behalf of the Lessor in carrying out the Works are recoverable via the service charge payable by the Lessees of the Property, subject to their rights to challenge the reasonableness of such expenditure under section 27 of the Act.

The Law

- 5 Section 20 (3) of the Act and Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 provides that where the qualifying works on a building or any other premises result in a contribution in excess of £250 being payable by any one tenant, the landlord is required to consult with the tenants in accordance with the procedure laid down therein. A First tier Tribunal (Property Chamber) has power under section (1) (b) of the Act to dispense with the consultation requirements. According to section 20 ZA (1) of the Act, when an application is made to dispense with all or part of the consultation requirements with respect to qualifying works, a Tribunal may make the determination if it is satisfied that it is reasonable to dispense with the requirements.
- 6 It should also be noted that the dispensation power of the Tribunal 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.
- 7 Section 20 ZA of the 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 pre-emptive applications which are the likelihood of prejudice to, or the degree of prejudice suffered by, the tenant. In the case of *Daejan Investments Limited v Benson (2013) UKSC 14* ("Daejan") the Supreme Court held that the sole question for the Tribunal to consider in applications under section 20ZA(1) of the Act is the real prejudice to the tenants flowing from the breach or anticipated breach of the consultation requirements of the Act. As Lord Neuberger, President of the Supreme Court said in the judgement in Daejan:

"As to the contention that my conclusion would place an unfair burden on the tenants where the LVT is considering prejudice, it is true that, while the legal burden of proof would be, and would remain throughout, on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered would be on the tenants."

As indicated in paragraph 3 above, none of the tenants has raised any objection to the application and the works now proposed by the Applicant and thus no prejudice has been identified by them in this case.

- 8 None of the parties requested a hearing and the application was therefore determined on the basis of the written submissions made by and on behalf of the Applicant, the relevant elements of which are set out in paragraphs 1 and 2 above.

Determination

- 9 The Tribunal is satisfied that compliance with the consultation requirements at this stage would be impractical and prejudicial to the leaseholders of Lapal Close. Following Daejan, the Tribunal is also of the view that there is no likelihood of any significant prejudice being suffered by any of the leaseholders in terms of their ability to respond to the consultation if the requirements are not met.
- 10 The Tribunal is satisfied that the Works are required on an urgent basis, and that on the evidence provided, it is reasonable to dispense with the consultation requirements of the Act on the basis that the Applicant proceeds to carry out the works immediately by accepting the quote of Draintech Limited, amounting to £17,934.25 + VAT.
- 11 The 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 Act on the grounds that the costs of the works when incurred had not been reasonably incurred or that the works were not carried out to a reasonable standard.
- 12 A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal and provide reasons. The application must be received by the Tribunal no later than 28 days after the date the Tribunal sends this decision 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).

N R Thompson
Chairman

Date 27th July 2016