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

Case Reference : **CHI/24UF/LDC/2016/0002**

Property : **122-124 High Street, Lee on the Solent, Hampshire PO13 9DA**

Applicant : **Linden Homes (Southampton) Limited**

Representative : **F & S Property Management Limited**

Respondents : **Mr G Battersby, Mr A Burton, and Mr I Loveland & Mr A Keene**

Representative : **Unrepresented**

Type of Application : **To dispense with the requirement to consult lessees about major works**

Tribunal Members : **Mr RTA Wilson (Tribunal Judge)
Mr P Turner Powell FRICS (Valuer Member)**

Date of Inspection and Determination : **9th March 2016**

Date of Decision : **10th March 2016**

DECISION

Decision of the tribunal

- (A) The tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of the following works (‘the Qualifying Works’) at the Property:

Stage 1 works

- *Erection of buttress scaffolding*
- *Removal of defective coping stones*
- *Cut out sections of the fractured brickwork*

Stage 2 works

- *Rebuilding the brick work*
- *Relay weathered coping stones*
- *Rendering the brickwork to match existing*
- *Applying two coats of masonry paint*

- (B) No terms are imposed on the grant of dispensation.

The application

1. The tribunal received an application for dispensation under section 20ZA of the 1985 Act on 6th January 2016.
2. Directions were issued on 8th January 2016. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties have objected to this allocation or requested an oral hearing. The paper determination took place on 9th March 2016 following the tribunal’s inspection of the Property.
3. The Applicant supplied the tribunal with a bundle of relevant documents in accordance with the directions. This included copies of the application, the directions, the Applicant’s statement of case, response forms, relevant correspondence and a sample lease.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The Building is a three storey mid terrace period property, which has been converted into a mixed-use development of a shop on the ground floor and three flats above. The building is built in brick under a pitched and tiled roof. The Applicant is the freeholder and the Respondents are the leaseholders of the 3 flats.
6. In October 2015 part of the parapet wall of the Property failed unexpectedly and urgent works were carried out to remedy the situation.
7. The Applicant seeks dispensation from leaseholder consultation in relation to the Qualifying Works. The Qualifying Works have all been carried out and accordingly the Applicant seeks retrospective dispensation.
8. The grounds of the application are set out in the application form and in the Applicant's statement of case and can be summarised as follows:
 - (a) The Stage 1 works needed to be carried out urgently to prevent danger to the public and further damage to the fabric of the building.
 - (b) After completion of the Stage 1 works the Property was no longer watertight and it was not possible to provide tarpaulins due to the extreme angle of the roof and the location of the Property, which was in an exposed location close to the sea front. It was therefore necessary to undertake the Stage 2 works as a matter of urgency.
 - (c) The Applicant achieved cost savings by completing the Stage 2 works using the scaffolding that had been erected for the Stage 1 works.
 - (d) None of the leaseholders has suffered prejudice as a result of the failure to consult.
9. Paragraph 4 of the directions required the Respondents to complete and file response forms with the tribunal, indicating whether they supported the application. A form was filed by the leaseholder of one of the flats opposing the application but consenting to the application being decided on the papers and without a hearing. In the event the tribunal did not receive a statement from the opposing leaseholder setting out his reasons for opposing the application. There was no other opposition to the application and no written representations from the Respondents identifying any prejudice or proposing any terms as a condition of granting dispensation.

The inspection

10. The tribunal inspected the Property on the morning of the 9th March 2016. It is a mid terrace period property on the high street of Lee on the Solent only a short distance from the sea front. It comprises a shop on ground floor with three self-contained flats on the first and second floors.
11. Ms Leggate of F & S Property Management was in attendance and she pointed out Stage 1 and Stage 2 works carried out by the Applicant.
12. The tribunal was able to verify from its inspection that the works as described in the application had been carried out.

The tribunal's decision

13. The tribunal grants the application for dispensation under section 20ZA of the 1985 Act in respect of the Qualifying Works. No terms are imposed on this grant of dispensation.

Reasons for the tribunal's decision

14. The tribunal is satisfied that the Stage 1 Works were of an urgent nature and that in these circumstances it was not feasible to carry out consultation before commencing the work. This was because scaffolding was required to investigate the problem and the minimum cost of hire at £900 immediately exceeded the threshold for consultation.
15. Having carried out the Stage 1 works the tribunal accepts that the Property was vulnerable to the elements and therefore there was a need to proceed with the Stage 2 works as a matter of urgency.
16. Costs savings were to be achieved by completing the Stage 2 works utilising the scaffolding already in situ. These savings would not have been available if the Applicant had paused to carry out consultation before commissioning the Stage 2 works.
17. Embarking upon a full consultation exercise would have taken 3 months or longer and this sort of delay was not desirable and might well have lead an accident bearing in mind the Property fronts a busy high street.
18. None of the Respondents has suggested that they will be prejudiced if dispensation is granted. Furthermore, none of the Respondents has suggested that any terms should apply to the grant of dispensation.

19. Having regard to the particular facts of this case it is reasonable to dispense with the consultation requirements for the Qualifying Works. However nothing in this decision prevents the Respondents from seeking a determination of their liability to contribute to the cost of the Qualifying Works, pursuant to section 27A of the 1985 Act, should they wish to do so.
20. Given the absence of a detailed specification, the definition of 'Qualifying Works' at paragraph (A) of this decision is necessarily brief.

Name: Tribunal Judge RTA Wilson **Date:** 10th March 2016

Appeals

1. Any party 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 which application must:-
 - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
 - b. 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
2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
- (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
- and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section "relevant contribution", in relation to a tenant and any works or agreement, 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 or under the agreement.

- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.