1201

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/OOAE/LDCV/2017/0045**
Property	:	**110C Chichele Road, London NW2 3DH**
Applicant	:	**Genesis Housing Association Limited**
Representative	:	**Winckworth Sherwood LLP**
Respondent	:	**Brian Patrick D'Brass**
Representative	:	**Not known**
Type of application	:	**To dispense with the requirement to consult lessees (s20ZA Landlord and Tenant Act 1985)**
Tribunal member	:	**Tribunal Judge Dutton** **Mr K M Cartwright FRICS**
Date of decision	:	**11th May 2017**
	:	

DECISION

DECISION

The Tribunal determines that dispensation should be given from all the consultation requirements in respect of the works required to the rear flat roof at the property 110 Chichele Road, London NW2 3DH (defined as the Works below) as required under s20ZA of the Landlord and Tenant Act 1985 (the Act) for the reasons set out below.

Background

1. The applicant seeks dispensation under section 20ZA of the Act from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act[1].

2. 110, Chichele Road, London NW2 3DH (the Property) contains three flats, two let on tenancies to the Applicant's tenants and one on a long lease to the Respondent Mr D'Brass.

3. The application states that urgent repair works are required to the flat roof at the Property. These works were discovered during the course of cyclical repairs which were being carried out under a qualifying long term agreement for which the consultation process had been followed. It appears that the flat roof has a large crack running through it and sections of ashphalt have dropped. It appeared that the structure may be affected, which could result in water ingress. Such ingress, if not prevented, would cause damage to the membrane of the roof and the building. In addition, the works would be more expensive if not carried out in the near future as the scaffolding in situ can be used, thus saving costs. The cost of the works are, as per a schedule prepared by the contractors Kier some £5128.85 inclusive of VAT. This would give a liability to Mr D'Brass of £1,923.32 as set out in an email to him dated 20th April 2017. This is based on a slightly higher figure for the costs of £5,769.95.

4. On 26th April 2017 Mr D'Brass contacted the Applicant's representative and said *"although I have not taken any legal advice at this time I'm happy for GHA's intended application to the FTT for dispensation from the consultation rules"*

5. Directions were issued on 4th May 2017 and included a questionnaire to be returned by Mr D'Brass indicating whether he supported the application or objected to same. No questionnaire has been returned and at the time of our determination there do not appear to have been any objections lodged with the Tribunal.

6. The matter came before us for consideration as a paper determination on 11th May 2017.

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[1] **See Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987) Schedule 4**

7. Prior to our determination we had available a bundle of papers which included the application, the directions, copies of letters sent to Mr D'Brass explaining the need for the works which was said to be sent under the provisions of s20 of the Act. A copy of the lease for flat was on the file as was a copy of the schedule of the proposed works and costings.

8. The only issue for us to consider is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of the Works. This application does not concern the issue of whether any service charge costs are reasonable or payable.

THE LAW (SEE BELOW)

DECISION

9. We have considered the papers lodged. There is no objection raised by the Respondent. There is, in our findings no doubt that the matter needed to be dealt with speedily to take advantage of the presence of the scaffolding and thus save costs on the Works, the requirement for which is not challenged.

10. We are satisfied that it is appropriate to dispense with the consultation requirements for the Works. Our decision does not affect the right of the Respondent to challenge the costs or the standard of work should he so wish.

Andrew Dutton

Tribunal Judge

Andrew Dutton 11th May 2017

The relevant law

Section 20 of the Act

(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) a leasehold valuation 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.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with

the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).