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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AJ/LDC/2018/0157**
Property	:	**1 – 58 Riverside Close, Hanwell, Middlesex W7 1BY**
Applicant	:	**A2 Dominion Homes Limited**
Representative	:	**Mr Nicholas Grundy QC – Counsel Mr Andy Barren, solicitor; Mr Nathan Rodwell; Ms Sasha Redhead and Ms Laura Lewis all from A2Dominion Homes Limited**
Respondent	:	**The various leaseholders at the Property details of which are appended to the Application**
Representative	:	**Not known but Mr Declan Walsh attended the hearing**
Type of application	:	**To dispense with the requirement to consult lessees (s20ZA Landlord and Tenant Act 1985)**
Tribunal member	:	**Tribunal Judge Dutton Mr D I Jagger MRICS**
Date of hearing		**31st October 2018**
Date of decision	:	**12th November 2018**

DECISION

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above and the constructions Phase Plan for the works. We noted all that was submitted to us.

6. At the hearing on 31st October 2018 the Applicant was represented by Mr Grundy QC. There had been written communications by Mr Mark Furlong, Mr Planteau de Maroussem, Dawn Odins-Dale, Mr Bunder, Mr Walsh Mr Matthew Grant and Mr Michael Grant, although he did not appear to have forwarded his complaint to the Tribunal. It was passed to us by Mr Grundy during the hearing. S and R Bains had indicated that they wanted a hearing but there were no submissions on the office file. Mr Walsh attended the hearing.

7. We heard from Mr Rodwell, the leasehold Team Manager who had started the process seeking consultation on the question of lift replacement in November 2017. Apparently it had become recognised in 2013/14 that lift works were required but they were not included in major works undertaken at that time so as to spread the costs to the lessees. He told us that there was no reserve fund. Mr Rodwell confirmed that a decision to proceed with Temple had been made, he thought in March 2018. However, he was not a party to this and it was until September 2018 that he became aware of the letter sent by Mr Bryan to Mr Hensby dated 15th January 2018.

8. He immediately arranged the meeting with leaseholders, giving only 7 days notice. It seems that 6 lessees attended. A similar letter was sent to the lessees of the third block due to start in 2019 and no one attended. He also told us that there were 28 tenanted properties in the blocks and that of the long leases approximately 20% are sublet on AST's.

9. Mr Walsh asked him to explain the tender analysis, which he did. Mr Walsh then raised the financial hardship caused by the cost of the works. He had owned the flat since, it would seem, 2009 and as a result of these works had decided he needed to sell the flat as he did not consider he could raise funds. It was pointed out to him that payment would not be sought until the final accounts were known, perhaps March 2019 onwards and that he would be offered a 12 months interest free payment programme.

10. Mr Walsh considered that if we granted dispensation then the Applicant was 'manipulating the law'. He considered that the Applicant had adopted a 'slap-dash' approach to the consultation process, which had happened with the works in 2013/14. He did say he would pay the cost of the works when demanded of him and that any prejudice caused was the late notification of the works and thus a curtailing of his ability to put money aside.

11. Mr Grundy accepted that the Applicant had failed to consult properly. There was no urgent works that would justify such lack. He did however, remind us that as soon as Mr Rodwell had discovered the position, meetings had been arranged although by then the contract had already been placed and work started on the construction of the lifts.

12. He submitted to us that there had been no prejudice caused to the lessees. An initial Notice of Intention had been served and no nominations were forthcoming from the lessees. The works were competitively tendered based

on expert support and the lowest of four tenders accepted. It was submitted that as the lowest tender had been accepted the requirement under paragraph 13 of Part 2 of Schedule 4 of the regulations did not apply.

13. Of the responses received from the lessees Mr Matthew Grant recognised the position following the Supreme Court case of Daejan v Benson but sought an apology from the Applicant and a reduction, even by a small sum of the costs of the work. Mr Michael Grant objected generally on the lack of consultation and indicated that the commencement of works at such short notice had caused him problems with the refurbishment of his flat. He also complained that he had not been made aware of this impending work when he purchased his flat in July 2018. No details of any financial losses are included and as we stated above this letters had not been sent to the Tribunal, nor did he attend the hearing. The other responses referred to above had been replied to by the Applicant, but were included in the bundle before us for completeness.

14. 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

15. We have considered the papers lodged. We have listened to all that was said by Mr Walsh and the evidence of Mr Rodwell. We note the submissions of Mr Grundy, both to us at the hearing and in a skeleton argument provided on the day. There is no doubt that the Applicant has failed to comply with the consultation process. What we need to consider, in the light of the Supreme Court Decision in Daejan v Benson, is the prejudice caused to any lessee. As was said in the Daejan case by Lord Neuberger at paragraph 46 *"I do not accept the view that a dispensation should be refused in such a case solely because the landlord seriously breached or departed from the requirements"*

16. It is clear that the Applicant has woefully failed to comply with the consultation process after the Initial Notice. We do accept that the provisions of paragraph 13, as mentioned above, would not apply but nonetheless the failure to notify the lessees of the intended works and costs until only a few days before the works started is, in truth unforgivable in the context of landlord/lessee relationships. However, in this case we need to consider the prejudice caused by such failings. We have taken cognisance of the lack of any nominated contractor by the lessees after the Initial Notice. It seems that only 6 lessees attended the meeting arranged in September, although Mr Walsh explained this on the basis that by the time of the meeting the lessees had discovered the existence of the intended works. When asked by us about any prejudice the best Mr Walsh could say was that

he would have been given more time to raise funds, although we note that there will be no need to make any payments until perhaps September of next year and that there will be 12 month interest free period.

17. The works have been undertaken on the professional advice of Mr Bryan who had carried out a survey and reviewed the four tenders received. The Initial Notice was served. There is no indication that any party would have nominated an alternative contractor and indeed given the extent of the works, the four who were tendered gave the necessary protection to the lessees in that regard. We find that there is no evidence of prejudice that would require any penalty to be imposed on the Applicant in us granting dispensation.

18. We are satisfied that it is appropriate to dispense with the consultation requirements as set out in the Regulations[1]. We must however, make it clear to all lessees that our decision does not affect the right of any leaseholder to challenge the costs should they so wish under s27A of the Act, it relates only to dispensation under the provisions of s20ZA of the Act.

Andrew Dutton

Tribunal Judge

Andrew Dutton 12th November 2018

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.

Consultation requirements: supplementary
Section 20ZA

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.

In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
if it is an agreement of a description prescribed by the regulations, or
in any circumstances so prescribed.

In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

Regulations under subsection (4) may in particular include provision requiring the landlord—
to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

to obtain estimates for proposed works or agreements,
to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
to give reasons in prescribed circumstances for carrying out works or entering into agreements.
Regulations under section 20 or this section—
may make provision generally or only in relation to specific cases, and
may make different provision for different purposes.
Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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).