



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

Case Reference : **CAM/22UG/LDC/2019/0041**

Property : **Allingham Court, King Coel Road, Colchester,
Essex CO3 9AQ**

Applicant : **Kirsch Securities Limited**
Managing Agent : **Town & City Management Limited**

Respondents : **The Long Leaseholders listed in the
Application**

Date of Application : **20th December 2019**

Type of Application : **To dispense with the consultation
requirements referred to in Section 20 of the
Landlord and Tenant Act 1985 pursuant to
Section 20ZA**

Tribunal : **Judge JR Morris**

Date of Directions : **23rd December 2019**

Date of Decision : **4th February 2020**

DECISION

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Decision

1. The Tribunal finds that the Notice of Intention has been served and that the 30 days have elapsed. The Tribunal finds that estimates/quotations have been obtained with regard to the erection of a fence instead of rebuilding the wall and the Leaseholders will have received copies of these. The Tribunal notes that this is in keeping with the only observations made by Leaseholders.

2. The Tribunal determines that it is reasonable to dispense with a Notice of the Landlord's Proposals. However, a letter must be served on each Leaseholder within 7 days of receipt of this Decision informing them of the quotation selected and reasons for doing so, if it is not the cheaper of the two, and the estimated service charge contribution of each Leaseholder in respect of the works.

Reasons

The Application

3. An Application for dispensation from the section 20 consultation requirements in respect of works to demolish and rebuild a boundary wall bordering the Property which was said to be at risk of collapsing was made on 13th December 2019. No costs estimate was provided in the Application although section 20 Notices were said to have been served. The dangerous parts of the wall have already been taken down in order to alleviate any danger.
4. The Property was described in the Application as being a purpose-built block of 4 flats.
5. Directions were issued on 23rd December 2019 which stated that the Application would be determined on or after 4th February 2020 based on written representations and without an inspection, unless either party made a request for an oral hearing by 13th January 2020. No request was received and the Tribunal wrote to the Leaseholders on 14th January informing them that the matter would be considered on the papers alone on or after the 4th February 2020.
6. The Directions required the Applicant to display prominently at the Property and serve on each of the Leaseholders a copy of the Application (excluding the names and addresses of Leaseholders) and the Directions by 6th January 2020 and certify this had been done by 8th January. The Directions required the Leaseholders who opposed the Application to complete and send an attached reply form to the Tribunal and a statement in response to the Application, with a copy of the reply form to the Applicant, by 22nd January 2020. No representations were received from the Leaseholders.
7. The Applicant provided a bundle to the Tribunal and to all four Leaseholders on 27th January 2020 as required by the Directions.
8. The Bundle included the following documents:
 - 1) A copy of a Lease for Flat 1 Allingham Court dated 12th March 2010 between First Essex Limited (1) and Gary Jackson (2) for a term of 150 years from 24th March 2008 confirming the Leaseholder hold long leases.
 - 2) A copy of a letter to the Leaseholders dated 13th December 2019 informing them of the need to replace the wall together with a Notice of Intention to

carry out Major Works which is set out in more detail in the Evidence section of these Reasons.

- 3) A copy of a covering letter dated 3rd January 2020 enclosing the Application under section 20ZA for dispensation from the section 20 process.
- 4) A copy of an e mail dated 15th January 2020 from the Leaseholders of Flat 2 requesting quotations be obtained for replacing the wall with a fence together with the reply from the Applicant dated 17th January 2020. These are set out in more detail in the Evidence section of these Reasons
- 5) Two quotations received from Alpha Building Group and D A Cant.

The Law

9. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
10. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations are summarised in Annex 2 of this Decision and Reasons.
11. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out Annex 2 of this Decision and Reasons and this is an Application for such dispensation.

The Evidence

12. The Applicant provided a statement of case explaining why the application had been made which said that:

The boundary wall to the car park which borders the Property is leaning and unstable. The unstable parts of the wall need to be removed and also the shrubbery behind the wall which has caused the problem. A lean mix is required over the removed shrubbery to stop future shrubs growing and damaging the wall. The wall then needs to be rebuilt. The work is urgent as the wall is a danger to the residents as it is at risk of collapsing.

13. The Applicant provided a copy of an email from the Leaseholders of Flat 2 dated 15th January 2020 which was an observation resulting from the Notice of

Intention. The email said that the wall adjacent the bin area between the two pillars appeared to be solid and it was presumed that this will not need to be taken down. Regarding the area that is unstable the Leaseholders said they would like quotations for fencing as well as for replacing the brickwork. The Applicant replied by e mail on 17th January saying that the wall currently stands on the boundary line, and as such it would have to be taken down and replaced by a fence, for which quotations had been obtained.

14. Two quotations were obtained and provided as follows:

(1) Alpha Building Group £3,112.07 (£2,593.39 plus £518.68 VAT)

The quotation was to replace the wall with fencing as follows:

1. To remove the brick wall within the car park which has failed and dispose of all material as required
2. To cut back/remove all foliage
3. To prepare the grounds as required
4. To install new fencing and posts to replace the brick wall on a like for like basis as the fencing on the opposite side of the car park.

Include all labour, material and equipment

(2) DA Cant £3,985.00 plus VAT

Replacement Fence:

Break out existing boundary wall and dispose off site. Remove hedge growth and dispose. Provide and erect 1.8m high concrete posts and waney edge fence panels. Length not exceeding 14m. Shed to be emptied and assuming this can be lifted and re-positioned with ease.

15. Prior to the obtaining of quotations, the Applicant's Managing Agent wrote to the Leaseholders on 13th December 2019 informing them that following a recent site inspection the car park wall was leaning and unstable. The wall was found to be within the Freehold Title of the Property (copy of HM Land Registry Title EX848994 provided) and therefore formed part of the communal area of the building. Alpha Building Group had been instructed to take down the unstable part of the wall as a matter of urgency. Residents were asked not to go near the wall and to park vehicles within a safe distance to prevent any injury or damage.

16. In addition, the Leaseholders were informed that to rebuild the wall may come over the limit specified under Section 20 of the Landlord and Tenant Act 1985 and therefore be classed as major works. A Notice of Intention was enclosed being the first formal notice in this prescribed procedure. (a copy of the Notice was provided dated 13th December 2019 and inviting observations within the consultation period of 30 days ending on 17th January 2020. Notes describing the full procedure were attached.

Determination

17. In determining whether or not dispensation should be given and the extent of such dispensation the Tribunal took into account the decision in *Daejan Investments v Benson* [2013] UKSC 14. Lord Justice Gross said that “*significant prejudice to the tenants is a consideration of the first importance in exercising the dispensatory discretion under s.20ZA(1)*”.
18. In addition, Lord Neuberger said that the main issue and often the only issue is whether the tenants have been prejudiced by the failure to comply:
Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements. [44]
19. The Tribunal noted that the Leaseholders had received:
On 13th December 2020 a Notice of Intention,
On 3rd January 2020 a copy of the Application under 20ZA and Directions,
On 27th January 2020 a copy of the Bundle which included the quotations.
20. The Tribunal has received no representations. Observations have been made by the Leaseholders requesting quotations for the erection of a fence instead of rebuilding the wall. The Applicant has indicated that the replacement of the wall by a fence is its chosen option, presumably because it is significantly cheaper and quotations have been obtained accordingly.
21. The Tribunal accepted that the works were urgent to prevent injury to residents or damage to vehicles, the wall being the boundary to the car park.
22. The Tribunal finds that the consultation requirements referred to in Section 20 of the Landlord and Tenant Act 1985 as set out in Schedule 4 Part 2 of the Service Charges (Consultation requirements) (England) Regulations 2003 have been complied with and may be dispensed with to the following extent.
23. The Tribunal finds that the Notice of Intention has been served and that the 30 days have elapsed. The Tribunal finds that estimates/quotations have been obtained with regard to the erection of a fence instead of rebuilding the wall and the Leaseholders will have received copies of these. The Tribunal notes that this is in keeping with the only observations made by Leaseholders.
24. The Tribunal determines that it is reasonable to dispense with a Notice of the Landlord’s Proposals and that the Leaseholders will not be prejudiced by so doing.

25. However, it is not clear that the Leaseholders know which quotation has been selected and what is to be their estimated service charge contribution to the works.
26. Therefore, for the avoidance of doubt, a letter must be served on each Leaseholder within 7 days of receipt of this Decision informing them of the quotation selected and reasons for doing so, if it is not the cheaper of the two, and the estimated service charge contribution of each Leaseholder in respect of the works.
27. Leaseholders should note that this is not an application to determine the reasonableness of the works or their cost. If, when the service charge demands in respect of these works are sent out, any Leaseholder objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the Act. A landlord can also seek a determination as to the reasonableness of the cost of the work.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

ANNEX 2 - THE LAW

1. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
2. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the “relevant period” and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord’s Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the “relevant period” and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord’s response to them.

3. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –

- (1) Where an application is made to a leasehold valuation 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.
- (2) 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.
- (3) 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.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
 - b) to obtain estimates for proposed works or agreements,
 - c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) and (7)... not relevant to this application.