10572

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/21UD/LSC/2014/0100**
Property	:	**The Alexandra, 32-35 Eversfield Place St Leonards, East Sussex TN37 6QP**
Applicant	:	**A. MacCormick (Flat 7)** **M. Brzezinska (Flat 19)** **M. McClafferty (Flat 26)**
Representative	:	**Mr A. MacCormick**
Respondent	:	**The Alexandra RTM Company Ltd**
Representatives	:	**Prof. B Taylor**
Type of Application 1987	:	**Section 27A of the Landlord and Tenant Act**
Tribunal Members	:	**Judge D. R. Whitney** **Mr. R. Wilkey FRICS**
Date and venue of Hearing	:	**8th December 2015** **Hastings County Court**
Date of Decision	:	**13th January 2015**

DECISION

BACKGROUND

1. An application was made by the three named Applicants dated 28th September 2014 challenging the validity of a section 20 Consultation exercise undertaken by the Respondent RTM company.

2. Each of the Applicants owns a long leasehold flat within The Alexandra, 32-35 Eversfield Place, St Leonards on Sea ("the Building"). The Building is a former hotel converted into 40 flats. The freeholder is a Mr David Earwaker but the management of the Building is vested in the Respondent under the "right to manage" legislation. Mr Earwaker has taken no part in this application.

3. Directions were issued by the tribunal dated 8th October 2014. These directions provided that the only matter to be determined was whether or not a section 20 consultation had been properly complied with.

4. Unfortunately the Respondent had not fully complied with the directions as to the filing of bundles however at the beginning of the hearing all documents the parties sought to rely upon were provided to the tribunal.

DECISION

5. The tribunal determines that the consultation exercise undertaken in respect of major works to the front elevations of the Building, ultimately nominating Canonbury Building, was properly and validly conducted.

6. The above determination, as set out below, may however be immaterial given the Respondent has determined that they will not appoint Canonbury Building and so the exercise will need to be conducted again if the works are now to be undertaken as originally specified.

THE LAW

7. The relevant sections for this application are sections 20 of the Landlord and Tenant Act 1987 which is annexed hereto.

INSPECTION

8. The tribunal inspected the Building externally immediately prior to the hearing in the company of the representatives listed on the front cover of this determination.
9. The Building is a former hotel in the middle of a terrace facing the sea front. The Building consists of 5 main storeys with 2 further storeys within the roof.

10. The application concerns major works proposed to the front elevation of the Building.

11. The front elevation looked generally in need of repair and redecoration. The tribunal saw the balconies which it was suggested required works. There was evidence of rusting to these and certain of the rain water goods. There was also evidence of some cracking to the render to the front elevation.

12. The entrance to the Building was via steps from the street. These appeared to be cracked in places and to be in need of some maintenance. The door itself to the Building appeared to be old and again in need of maintenance.

HEARING

13. At the start of the hearing the tribunal reminded the parties that in accordance with the directions the only issue for it to determine was whether the consultation in respect of major works had been properly undertaken.

14. Mr MacCormick for the Applicants contended that the section 20 consultation undertaken in respect of proposed major works was defective. In particular he suggested that the works to be undertaken included improvements which were not allowed to be recovered under the lease. The specification itself was inadequate in that it did not include all necessary works and that a decision had been made in advance of the ending of the consultation itself.

15. The tribunal was directed to the first Notice dated 11th February 2013 and the second stage notice dated 11th June 2013. No third stage notice was served as it was intended that the lowest price tender would be proceeded with.

16. By way of background it was explained that the Respondent had employed Canonbury Management to manage the building on its behalf. This company had undertaken the section 20 Consultation process on the Respondents behalf. An associated company, Canonbury Building, had produced a tender. Subsequently the Respondent had ended its contract with Canonbury Management and as a result was no longer looking to appoint Canonbury Building to undertake the major works. Professor Taylor accepted it would be necessary to undertake a fresh consultation.

17. Mr MacCormick explained that he did not own his flat at the time of the initial consultation. Professor Taylor could not recall exactly what observations were received although he recalled that certain contractors were nominated by residents being George Stone Limited and RJ Construction of Folkestone. Both of these companies were asked to tender for the works together with two other companies (one of which was Canonbury Building).

18. It appeared that three companies provided estimates including George Stone Limited and Canonbury Building. Canonbury Building provided the lowest estimate.

19. Mr MacCormick suggested that the scope of the works was excessive. He believed that works could be phased over a period of time to keep the costs of the same down.

20. He suggested that replacement of the front doors, new steps to the entranceway, new render to the front and replacement of the rainwater goods were all improvements and not works which should be undertaken.

21. Professor Taylor submitted that it was clear the front door required repairs and replacement was the most cost effective method. As to the front steps he suggested that given the cracks and wear to the same replacement was required.

22. Professor Taylor explained that it was envisaged that the metal work for the balconies would all need to be exposed and much replaced. In so doing this would further damage the render to the front elevation. He believed that patching the render would be ineffective and again whilst scaffolding was in place a total re-rendering with a modern product would create costs savings for the block over time.

23. Again in respect of the rain water goods much of this would need to be removed whilst the works were being undertaken to the balconies. Again it made economic sense to replace these at this time.

24. Mr MacCormick felt the Respondent should only do the bare essentials to have the Building bought into a state of repair.

25. It was accepted that the first stage notice had been received by the Applicants. As to the second stage notice it was accepted that the Applicants themselves had received the second stage notice although it was submitted that certain residents who did not have email may not have done so.

26. Professor Taylor accepted there may initially have been an issue with the second stage notice being sent out but he told the tribunal this was corrected by the agent within a week.

27. Mr MacCormick referred to an email sent by Professor Taylor sent to fellow board members of the Respondent dated 28th June 2013. He submitted that this email demonstrated that the respondent had already decided who to appoint. He had obtained this email from a former board member.

28. Professor Taylor contended that this was just a "working decision" and no final decision had been made and in fact no contract had ever been awarded. Professor Taylor explained after the end of the consultation the Respondent had set out to agree a contract with Canonbury Building but had been unable to agree terms, particularly as to independent supervision, given its relationship with Canonbury Management. It was partially due to this that the Respondent had ended its management agreement with Canonbury Management.

29. Professor Taylor contended that the consultation process had been properly followed. He suggests that the scope of the works covers repairs required to the building and which are reasonable. He candidly accepted that given the ending of the relationship with Canonbury Management the process would need to be carried out again and the Respondent was urgently looking to appoint a new agent.

30. Mr MacCormick raised concerns over payments made by the Applicant. No documents about this were before the tribunal although after the hearing Mr MacCormick did email the tribunal a copy of an application for an interim payment.

DECISION

31. This is a matter where probably no one gains from the decision given it is clear the whole process will need to be repeated.

32. The tribunal was satisfied that the consultation process was adhered to by the Respondent.

33. It was clear that the Respondent took account of companies nominated by leaseholders and invited them to tender. George Stone Limited actually did give an estimate although not the lowest.

34. The Applicants main complaint appears to be the extent of the works. The tribunal was satisfied that all the works included within the specification were reasonable. The tribunal does not accept the Applicants contention that the works are improvements. It was apparent that works to the front elevation were required. The tribunal could see the logic in replacing the render and rain water goods whilst the balconies were being repaired. As to the front entranceway again this was in need of repair and replacement seemed a reasonable method of dealing with the same.

35. As a result the tribunal was satisfied that this consultation was properly undertaken and valid in so far as it related to the potential appointment of Canonbury Building for the price proposed by them. However given the time that has elapsed and the determination of the management agreement with Canonbury Management it is apparent that the process will have to be started afresh.

36. Finally the tribunal comments that it only takes account of matters before it at the hearing and seen by all parties. In any event the tribunal was only to determine whether the consultation was properly conducted and this is what it has done.

Judge D. R. Whitney

Appeals

1. A person 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.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for 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.

4. The application for permission to appeal must 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.

ANNEX

Section 20 Landlord and Tenant Act 1985

Limitation of service charges: consultation requirements

(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.