10799

Case Reference	:	**MAN/00BN/LDC/2015/0011**
Property	:	**Apartments 1-36 Old School Court Old School Drive, Blackley Manchester, M9 8DR**
Applicant	:	**Village Gardens Limited**
Representative	:	**Scanlans Property Management**
Respondents	:	**The leaseholders of the Property**
Representative	:	**N/A**
Type of Application	:	**Landlord and Tenant Act 1985 - section 20ZA**
Tribunal Members	:	**Judge J Holbrook (Chairman) Judge L Bennett**
Date and venue of Hearing	:	**Determined without a hearing**
Date of Decision	:	**10 June 2015**

DECISION

© CROWN COPYRIGHT 2015

DECISION

Compliance with the consultation requirements is not dispensed with. Accordingly the application is refused.

REASONS

Background

1. On 11 May 2015 Village Gardens Limited applied to the First-tier Tribunal (Property Chamber) ("the Tribunal") under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations").

2. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.

3. The works for which a dispensation is sought concern proposed remedial works in respect of dry rot at the development known as Old School Court, Old School Drive, Blackley, Manchester M9 8DR ("the Property").

4. The Applicant is the management company for the Property, and the Respondents to the application are the leaseholders of the 36 apartments within the Property.

5. On 20 May 2015 the Tribunal issued directions and informed the parties that, unless it was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received, and the Tribunal accordingly convened to determine the application on 10 June 2015. The Tribunal had before it the application form and supporting documentary evidence submitted by the Applicant. This had been copied to each of the Respondents, but none of them submitted representations in response.

6. The Tribunal did not inspect the Property.

The grounds for the application

7. The Property (which is understood to be an old school which has been converted to residential use) is suffering from localised outbreaks of dry rot to one of its communal stairwells and to three of the individual apartments. The Applicant asserts that the properties are in a poor condition and that dry rot treatment needs to be carried out urgently due to health and safety risks.

8. In support of the application, a copy of a dry rot inspection and survey report was provided. The report was prepared on 8 May 2015 by Trace Remedial Building Services. The report confirms that the relevant parts of the Property are generally in a poor and deteriorated condition, with widespread penetrating damp and dry rot. The report states that the decay is mainly affecting non-structural timbers, except possibly at roof level. There is a higher risk that, as a result of its suspended timber flooring, the structural members within one of the apartments concerned may be subject to decay.

9. The Trace report recommends that, as an alternative to a full refurbishment of all external elevations (which appears to be the preferred approach, but one which presumably would have very significant cost implications), localised treatment works should be carried out to remove and restrict the existing dry rot that has germinated. The report included a schedule of such localised treatment works, comprising the removal of damp plaster substrates; timber treatment and repairs; masonry sterilisation; and making good. The total estimated costs of such works is £20,759.00 plus VAT, although the report recommends that a further provision of £15,000.00 plus VAT is made for additional works which may be required.

Law

10. Section 18 of the Act defines what is meant by "service charge". It also defines the expression "relevant costs" as:

> *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.*

11. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

> *Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either–*
> *(a) complied with in relation to the works ... or*
> *(b) dispensed with in relation to the works ... by the appropriate tribunal.*

12. "Qualifying works" for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (section 20(3) of the Act and regulation 6 of the Regulations).

13. Section 20ZA(1) of the Act provides:

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 ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

14. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to:

    - give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;

    - obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;

    - make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;

    - give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

Conclusions

15. The question for the Tribunal is not whether it is necessary for the works in question to be undertaken, but whether it is reasonable for them to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken. It is reasonable that the consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.

16. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed until the requirements have been complied with. The Tribunal must weigh the balance of prejudice between, on the one hand, the need for swift remedial action to ensure that the condition of the Property does not deteriorate further and, on the other hand, the

legitimate interests of the leaseholders in being properly consulted before major works begin. It must consider whether this balance favours allowing the works to be undertaken immediately (without consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in carrying out the works which that will require). The balance is likely to be tipped in favour of dispensation in a case in which there is an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.

17. In the present case, the Tribunal has not been furnished with evidence about the views of the leaseholders. Although it is tempting to interpret the lack of active participation in these proceedings by individual leaseholders as an indication of their tacit agreement, these proceedings are not a substitute for proper statutory consultation on proposed works which seem likely to increase the service charge by at least £700.00 per apartment. We therefore consider that our decision about whether to grant dispensation should be based solely on an assessment of the urgency of the proposed works.

18. Although the Trace report implicitly indicates that works to address the outbreaks of dry rot at the Property should be undertaken without undue delay, it is less clear that the need for those works to be carried out swiftly is so pressing that the consultation requirements should be dispensed with. The Trace report makes no mention of particular urgency in this regard – either in terms of the avoidance of further deterioration in the condition of the Property or in terms of the prevention of possible harm to individuals. Although we note the Applicant's assertion that dry rot treatment needs to be carried out urgently due to health and safety risks, no information has been provided to support this assertion. We therefore conclude that the balance of prejudice favours compliance with the consultation requirements and thus it would not be reasonable to order that they be dispensed with.

19. The fact that the Tribunal has refused to dispense with the consultation requirements should not be taken as an indication that we consider the proposed works to be unnecessary: we make no finding in that regard. Nor do we make any finding as to whether the anticipated service charges resulting from the works will be reasonable or unreasonable; or, indeed, whether they will be payable by the Respondents.