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

Case reference : **LON/00AE/LDC/2018/0001**

Property : **31, 34 and 57 Newland Court, Forty Avenue, Wembley, Middlesex HA9 9LZ**

Applicant : **The London Borough of Brent**

Representative : **Lynne Burgess, London Borough of Brent Legal Services**

Respondents : **Tina Murray (1)
Simon Robinson (2)
Rouhangiz Rouhani Najaf Abadi (3)**

Type of application : **To dispense with the requirement to consult leaseholders**

Tribunal Member : **Judge N Hawkes
Mr D Jagger MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of paper determination : **22 February 2018**

DECISION

Background

1. The applicant has applied to the Tribunal under S20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for dispensation from the consultation requirements contained in section 20 of the 1985 Act in respect of certain qualifying works to 31, 34 and 57 Newland Court, Forty Avenue, Wembley, Middlesex HA9 9LZ ("the Property").
2. The Tribunal has been informed that the Property comprises three flats situated within various purpose built blocks of flats known as Newland Court.
3. The application is dated 15 December 2017 and Directions were issued on 5 January 2018. The applicant has requested a paper determination.
4. No application has been made by any of the respondents for an oral hearing. This matter has therefore been determined by the Tribunal by way of a paper determination on 22 January 2018.
5. No party requested an inspection. The Tribunal does not consider that an inspection of the Property would be of assistance, nor would it be proportionate to the issues in dispute.
6. The Tribunal is grateful to the parties for their initial submissions and for their further submissions in response.
7. In the preamble to their Statement of Case, the respondents have emphasised that they are litigants in person and they have asked the Tribunal to be sympathetic if they deviate from the use of an appropriate format or language.
8. The Tribunal appreciates the time and care which the respondents have put into preparing their submissions and found both the format and the language used to be clear and helpful.
9. However, in light of the fact that the respondents are not legally represented, the Tribunal wishes to stress from the outset that this decision does not concern the issue of whether any service charge costs should be paid by the respondents.
10. The Tribunal notes that the respondents have asked the Tribunal to consider whether the respondents should be liable for the costs charged by the applicant should they wish to do so.

The applicant's case

11. The applicant applies for dispensation from the requirements to consult leaseholders under section 20 of the 1985 Act in respect of

maintenance work to Newland Court which the applicant states commenced on 25 September 2017 and is ongoing ("the Work").

12. The applicant states that a notice of intention to carry out the Work was sent to the respondents on 2 June 2017. This notice invited the respondents to make observations in relation to the proposed work by 6 July 2017.
13. Representations were received from the first and second respondents and the third respondent's daughter made representations on the third respondent's behalf. The applicant states that it responded to each of the representations individually by letter on 24 August 2017.
14. The applicant seeks dispensation from the consultation requirements because it accepts that it failed to respond to the observations within the 21 day deadline.
15. The applicant states that it does not consider that the respondents have suffered any prejudice as a result of the non-compliance; the observations were considered before the Work commenced and the first and second respondents attended drop-in sessions and meetings which were arranged by the applicant.

The respondents' case

16. It is denied that the first and third respondents received any response to their observations. The respondents state that the second respondent did receive a response but not until 57 days after the 21 day deadline had expired. They also make reference to the experience of other lessees who are not party to these proceedings.
17. The respondents contend that there has been a widespread failure on the part of the applicant to comply with its consultation obligations and that any informal consultation which has been carried out outside the statutory consultation process has been flawed.
18. The respondents do not consider that due regard was paid to their observations. They state that scaffolding was erected four days after an observation was made and they consider that the applicant's failure to respond to their observations in a timely manner has caused them prejudice. The respondents state that they requested the applicant to review the payment terms, the applicant's reply stated "this would not be possible". However, the applicant has now agreed to review the current range of payment options and the respondents submit that this demonstrates that no considered reply was provided to the observations. Further, the respondents state that they have not received a reply to observations concerning the necessity and timing of the works.

20. The respondents consider that, if the applicant had had regard to their observations, the Works would have been rescheduled to take place at a different time of year and that this would have resulted in lower costs, the saving of time, and would have been more efficient for the reasons set out in their statement of case.
21. They also contend that, had regard been paid to their observations, scaffolding would not have been erected 4 weeks prior to the commencement date for certain works.

The Tribunal's determination

22. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as is the case in this instance) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
23. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003.
24. Section 20ZA of the 1985 Act provides that, where an application is made to the 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.
25. In reaching its determination, the Tribunal has considered all of the submissions and documents provided by the parties.
26. The Tribunal accepts the respondents' position that any informal consultation which has been carried out is not a substitute for the statutory consultation process (and the Tribunal notes that the applicant does not seek to claim otherwise).
27. The Tribunal is not satisfied that, had the statutory consultation process been complied with, the Work would have been rescheduled by the respondents and the applicant would have been prejudiced.

In its response dated 14 February 2016, the applicant states that it would have rescheduled the Work and the Tribunal is not satisfied on the balance of probabilities that the respondents could have compelled the applicant to do so or to take the other steps proposed.
29. Accordingly, the Tribunal is not satisfied on the balance of probabilities that the respondents have been prejudiced and it determines pursuant to section 20ZA of the Landlord and Tenant Act 1985, that it will

dispense with the statutory consultation requirements in respect of the Work.

30. As stated above, the respondents seek to challenge the necessity for the Work; they claim that scaffolding was erected prematurely; and they consider the costs to be unreasonably high for other reasons. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**
31. Should the respondents wish to obtain independent legal advice, a leaflet listing potential sources of legal advice, some of which may be free of charge, may be available from the Case Officer or at the Tribunal reception.

Judge Hawkes

Date 22 February 2018

ANNEX - 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.

The application for permission to appeal must identify the decision of the Tribunal which it is sought to be appealed, the grounds for the application, and the reasons why the applicant considers that the Tribunal's decision is wrong.