FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**BIR/00GL/LDC/2019/0013**
Properties	:	**Flats 10 and 10a Garbett Street, Goldenhill, Stoke-on-Trent, Staffordshire ST6 5RQ**
Applicant	:	**Blue Property Management UK Ltd**
Representative	:	**None**
Respondents	:	**Mr J Kiernicki (1)** **Ms T Bennett (2)**
Representative	:	**None**
Type of application	:	**Application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985**
Tribunal member	:	**Judge C Goodall** **Deputy Regional Valuer V Ward FRICS**
Date and place of hearing	:	**Determined on the basis of written representations**
Date of decision	:	**5 December 2019**

DECISION

Background

1. This is an application for dispensation from the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 ("the Act"). The Applicant manages the property on behalf of the freeholder, Long Term Reversions (Torquay) Ltd. The Property is a terraced house in Stoke-on-Trent that has been converted into two flats. The Respondents are the two leaseholders of those flats.

2. The Applicant intends to contract for some fire protection works ("the Works") at the Property. It intends to claim the cost of the Works from the Respondents. It has a quote for £1,365.36 plus VAT plus the cost of a phone line for that work.

3. When a demand for payment for services, repairs, maintenance, improvements, insurance or management fees are made from a tenant, section 20 limits the amount that can be demanded to £250 (in the case of works) unless the tenants have been consulted on the proposed expenditure. In the case of urgency, there is a procedure whereby the Tribunal can authorise dispensation from those consultation requirements. That procedure is an application under section 20ZA of the Act. This application seeks to use that procedure. The Applicant seeks an order that it need not follow the consultation requirements for the proposed expenditure on the Works.

4. In a joint letter dated 15 November 2019, the Respondents oppose the application.

5. On 27 November 2019, the Tribunal convened to determine the application. Neither party had requested a hearing. The determination has therefore been made on the basis of the Applicant's application form dated 28 October 2019 and its enclosures, including a copy of the lease for the first floor flat, a fire risk assessment dated 9 October 2019 by Bluerisk Management UK Ltd, and a quote dated 23 October 2019 from Oheap Fire and Security. At the inspection, the Tribunal also asked for, and was supplied with, a copy of the lease for the ground floor flat. The Respondents letter of 15 November 2019 has also been considered.

6. On 27 November 2019, prior to the Tribunal's meeting as above, we carried out an inspection of the Property. It is an end terrace property of traditional brick construction with mainly pitched tiled roof, and a flat roof over a single floor element at the rear. There is a small yard at the rear, with an external access door and a gate into a rear lane.

7. The Property is divided into two flats. There is a single front door to the street, leading to a small entrance hall (approximately 4 sqm) with two front doors facing, allowing the owners of the respective flats their own front door access to their flats. From the plans attached to the leases, and from our inspection, it is clear that the two flats are divided horizontally

at first floor level. The ground floor flat is no 10, and the first floor flat is no 10a. The stairwell to 10a is inside the right-hand front door within the entrance hall. There is a smoke/fire alarm and an emergency lighting unit in the entrance hall.

8. The Tribunal was met at the inspection by Mr M Olley, who is the property manager for the Applicant. He described the entrance hall as the "communal area".

9. This is the determination made by the Tribunal, with our reasons for making the determination we have.

Decision

10. **The application for dispensation from the consultation requirements in section 20 of the Act in respect of the proposed Works is Refused.**

Reasons

11. The first reason for refusal of the application is that the Applicant has no authority or responsibility to carry out the Works, or charge for them, under the leases. Each Respondent has his or her own lease of part of the Property. The first Respondent leases the ground floor flat, including the external walls, lower part of the structure, doors and windows and foundations. The entrance hall is clearly within the demise of the ground floor flat. The second Respondent leases the upper floor flat, including the external walls roofs, gutters, doors and windows and the upper part of the structure. She has a right of way through the entrance hall to her front door. The two leases at the Property demise the whole of the Property to the two Respondents. There is no residual part of the Property that remains in the possession or occupation of the freeholder. There are no communal areas.

12. The leases contain no obligation upon the freeholder to carry out any maintenance or repair of the Property. In relation to installation of a fire system, the leases contain no provisions which oblige the freeholder to carry out the Works. They also contain no provisions which entitle the freeholder or agent to claim any charges at all from the Respondents save for:

    a. Ground rent;
    b. Insurance premium;
    c. Payment of any repairs carried out by the freeholder if the Respondent has failed to carry out those repairs following service of a notice from the freeholder to do so following a permitted inspection of the Property by the freeholder;
    d. A fee for registration of an assignment, transfer, sub-letting or charge of the Property;

e. The costs incurred by the landlord in or in contemplation of the service of a section 146 or section 147 notice served under the Law of Property Act 1925;
f. The costs of the landlord in enforcing covenants against the other lessee at the Property.

13. The Works do not fall within the preceding list of situations under which any payment for them can be demanded from the Respondents. Costs of installing a fire system cannot be demanded under the leases.

14. Expanding this point, because the Respondents have raised this issue in their letter, the lease also does not allow the Applicant or the freeholder to demand a fee for accountancy, bank charges, cleaning, fire risk assessment, health and safety risk assessments, management fees, or repairs and maintenance costs which do not fall within paragraph 12c above.

15. As the Applicant has no right or obligation to carry out the Works, it will never be entitled to claim the costs of the Works from the Respondents. It is therefore pointless for it to seek dispensation from the consultation requirements in section 20. Those requirements exist in order to protect lessees from being charged costs of works as a service charge unless they have been given the opportunity to comment on the works. As the Respondents in this case can never be charged for the Works anyway, it is wholly unnecessary for the Applicant to consult, or seek dispensation from consultation.

16. The second reason for refusal of the application is that the Applicant has no responsibilities for fire safety at the Property. The Regulatory Reform (Fire Safety) Order 2005 ("the Order") imposes responsibilities upon the "responsible person" in relation to common areas. It does not apply to domestic premises, (which means premises occupied as a private dwelling) under article 6 of the Order. As there are no common areas, and the whole of the Property is owned as private dwellings, the Order does not apply.

17. If, (which is not known) either flat is let, this would still not require the Applicant to be involved; responsibility for compliance with the Order would then fall upon the Respondent who was letting the flat. If that were to happen, the Respondent may wish to contact the local authority or fire authority for advice on their obligations to install fire protections systems.

18. The third reason for refusal is that, in any event, an application for dispensation would require there to be some good reason for not following the normal consultation requirements in section 20. Here, there is no urgency. The Order has been in force for many years. The Applicant has been holding itself out as the manager since 2013.

19. The fourth reason is that the Applicant has not put forward a convincing case for the need for the Works in any event. It is not clear that the existing fire protection already at the Property is inadequate. The Fire Risk Assessment dated 9 October 2019 provided to the Tribunal initially stated that there was no emergency lighting, and it failed to note the rear access for the ground floor flat. An amended version had to be produced correcting these errors. Also, the inspector appears not to have inspected inside the two flats, yet he recommended installation of alarms inside them. As the Respondents stated that they already have smoke alarms and emergency lighting, we would have needed to resolve whether the inspector stood by his findings in the light of factual identification of the existing provision. We therefore did not find the Fire Risk Assessment to be an entirely convincing document.

20. Fifthly, the quotation for the Works seemed to us to be for an excessive sum for the work required. In particular, we note that the contractor assumed the need for a permanent telephone line to be provided. We would have been concerned that the system might have been over-specified.

21. Sixthly, the Applicant is the wrong entity to bring this application. If there were legal duties upon the freeholder, it should have been that company in whose name the application was brought.

Limitation of this decision

22. This decision is not to be construed as a decision that no fire protection work is needed to the Property. Even when there are no legal obligations to carry out work, it may be sensible and prudent for the Respondents to seek and implement advice about the adequacy of their existing fire security measures. It is possible that the Property would benefit from some further investment into fire protection systems.

Appeal

23. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)