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

Case Reference : CHI/21UC/LDC/2016/0022

Property : 80-126 Madeira Way, Sovereign Harbour,
Eastbourne BN23 5UJ

Applicant : Madeira Way RTM Co Ltd

Representative : Carlton Property Management

Respondent : The Lessees of Flats 80-126 Madeira Way

Type of Application : Application under Section 20ZA of the
Landlord and Tenant Act 1985

Tribunal Member(s) : Judge D. R. Whitney

Date of Determination : 3rd June 2016

DECISION

BACKGROUND

1. The Applicant is the Right to Manage Company responsible for the management of 24 flats situated in two purpose built blocks known as 80-126 Madeira Way, Sovereign Harbour, Eastbourne. The Applicant issued an application dated 4TH May 2016 seeking a dispensation from the consultation requirements under Section 20 of the Landlord and Tenant Act 1985 in respect of works to a lift serving Flats 80-102 which was not working.
2. Directions were given by the tribunal dated 6th May 2016. The Applicants representative confirmed by letter dated 25th May 2016 that copies of the directions had been sent to all lessees with a covering letter from the representative explaining why the application had been made. A copy lease was supplied and the Applicants representative confirmed that all leases were in a similar format.
3. Responses were received from four leaseholders being the owners of Flats 90, 96, 116 and 118. All supported the application and were content for the tribunal to deal with the same by a paper application. No objections or other representations were received from any other party.

DECISION

4. The tribunal grants the Applicants application for dispensation from the consultation requirements in respect of the proposed lift works to the lift within the block containing Flats 80-102 Madeira Way. These works are said to be a full electrical refurbishment with retention of salvageable parts for future maintenance of the lift in the other block.

THE LAW

5. The relevant law is set out in Section 20ZA of the Landlord and Tenant Act 1985.

DETERMINATION

6. The tribunal has had regard to the papers filed being essentially the application itself and copy lease subsequently supplied. In making its determination the tribunal has regard to the guidance issued in the Supreme Court decision of Daejan v. Benson [2013] UKSC 14 and Section 20ZA.
7. The tribunal records and notes that no party has objected and the only representations received from leaseholders support the application.

The tribunal records that two of the Respondents are leaseholders in the block not affected by the non-functioning lift.

8. The tribunal is told that the lift serves some 12 flats spread over five floors. We are told this lease has been “out of commission” since 25 April 2016. The directors of the Applicant have supposedly explored various options. We are told three options exist:
 - Replace the Main Board
 - Replace the Controller
 - Carry out full electrical refurbishment.
9. As to the first it is said there is no guarantee that this will solve even the current problem. Whilst the second method may get the lift working again it would not be compliant with modern day standards and so the third method is proposed to remedy the current problems. It is also said that this will enable the Applicant to salvage some parts and in effect “cannibalise” these for future repairs to the lift in the other block. These works would be undertaken by the contractor with whom the Applicant has a maintenance agreement for the lifts. It is suggested that practically they are the only people who could undertake the work as otherwise this could have knock on consequences as to whether this company under its current agreement would agree to maintain works undertaken by third parties. The works are required urgently to prevent residents (particularly those who are old or have children) from experiencing access issues.
10. It would appear that the necessary parts have been ordered and the contract placed and that actually by the time of this determination the works may have been completed. The tribunal accepts it was reasonable for the Applicant to proceed.
11. The tribunal is satisfied that on the evidence provided it is clear that there was some urgency attached to these works to ensure access to all Flats. It appears that Flat owners have been made aware of the works and this application.
12. Having regard to the evidence the tribunal determines that it is reasonable and proper to grant the dispensation requested. No party has objected and the tribunal has found no evidence of prejudice. In this tribunals determination it is right for the works to be undertaken as suggested by the Applicant. The Applicant has clearly considered the options and we agree that practically it is likely that the works would need to be undertaken by the company with whom a maintenance contract exists.
13. The tribunal reminds all parties that in making such determination it has not made any determination as to the Applicants ability to recover such costs or the reasonableness of the same.

Judge D. R. Whitney

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 A

Section 20ZA

Consultation requirements: supplementary

(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—

(a)

if it is an agreement of a description prescribed by the regulations, or

(b)

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)

Regulations under section 20 or this section—

(a)

may make provision generally or only in relation to specific cases, and

(b)

may make different provision for different purposes.

(7)

Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.