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

Case Reference : **LON/00AA/LDC/2013/0054**

Property : **Cromwell Tower, Lauderdale
Tower & Shakespeare Tower,
Barbican, London EC2Y 9NJ.**

Applicant : **The Mayor and Citizens of the City
of London**

Representative : **Comptroller and City Solicitor**

Respondent : **345 Leaseholders of the Properties**

Representative :

Type of Application : **For the determination of an
application under S.20ZA of the
Landlord & Tenant Act 1985.**

Tribunal Members : **Miss. A. Hamilton-Farey LLB,
FRICS, FCI Arb
Mr. L. Jarero BSc FRICS
Mrs. R. Turner JP, BA**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Appearances: : **Mr. J. Manning of Counsel
Mr. R. Howlett – Chief Legal
Assistant
Mr. C. Bate – Building Surveyor
Dr. R. Casson – Materials
Consultant
Ms. S. Nihat of Counsel.**

Date of Decision : **30 July 2013.**

DECISION

Decisions of the tribunal

- (1) The tribunal grants dispensation under S.20ZA of the Landlord & Tenant Act 1985 in respect of the concrete works both undertaken and to be undertaken to the above premises, and in respect of which statutory consultation was commenced in June 2011.
- (2) The tribunal grants dispensation with respect to the interim repairs contract undertaken in 2011/12, the additional work now required to Lauderdale Tower, and the core sampling works undertaken to the towers.

The application

1. The Applicant seeks dispensation from the requirements to consult leaseholders under S.20 of the Landlord & Tenant Act 1985, as amended, ("the Act"), in relation to works to the three tower blocks noted above.
2. It is understood from the documentation that the applicant seeks dispensation for three distinct pieces of work.
 - Repairs works in respect of the unsound concrete to the exterior of the towers.
 - Works undertaken under the heading of 'contingencies' in relation to the works, these were the subject of consultation in June 2011, however the cost increased beyond the £15,000 advised to residents in the consultation letters.
 - The finishing works to Lauderdale House, where the applicant intends appointing the same contractor (Structural Renovations Limited) to undertake these works, on the basis that the contractor has knowledge of the buildings and given the complexities of the works involved, it would be sensible to use them to complete any outstanding works.

The issues

3. The only issue to be determined by the tribunal is whether or not we should agree to the dispensation sought. We make no determination as to whether the costs are reasonable or the works undertaken/to be undertaken have been carried out to a reasonable standard.

The hearing

4. The hearing was attended by those persons noted on the front of the decision. There was no attendance on the part of any of the respondents. The tribunal had been provided with a bundle of documents relevant to the application which contained the very limited responses received from the respondents in relation to these works. In effect only 3 of the 345 lessees made any observations following the issue of the Notice of Intention.
5. During the hearing, the applicant also handed up a copy of a revised quotation from Structural Renovations Limited, in which the overall cost of the works had been reduced. This quotation also broke down the relevant costs in relation to each tower.

The Evidence:

6. Mr. Manning helpfully explained the reasoning behind the application to the tribunal. He informed us that dispensation was sought from the tribunal in respect of spalled concrete to the three towers that had fallen onto the concourse below and presented a danger to lessees and the general public.
7. Having been made aware of the problem, the applicant commenced consultation under S.20 and issued a Notice of Intention. However as the works were considered to be 'urgent' they were undertaken without the balance of the consultation exercise being completed.
8. Those works for which dispensation is now sought, involved abseilers testing areas of concrete panels, removing loose sections and making good. Due to the nature of the blocks and their special architectural importance, English Heritage had made recommendations as to the colouring of the concrete repairs so that a close match could be achieved.
9. Abseiling was used because scaffolding the whole of the towers was impractical as the weight of the scaffold could not be supported by the concourse and it would have been likely that it would have penetrated into the car park below. Scaffold with netting was erected at the lower part of the towers to catch any falling concrete and protect the public.
10. Works were completed to Cromwell and Shakespeare Towers, but Lauderdale was delayed by the nesting of peregrine falcons. The RSPB had informed the applicant that their nesting sites were protected and as such no works which would disturb the nest could be undertaken until the breeding season was over. This was likely to be in July. Now that that period has passed the applicant wished to continue with the work to Lauderdale Tower and thus complete the contract.

11. In the evidence bundle we were shown the report by Messrs Bickerdike Allen Partners (Dr. R. Casson) this concerned the works that had been carried out on the hammer testing of the concrete. These tests revealed that the panels were generally in a good condition, although localised repairs could not be ruled out for the future, and preventative measures were recommended, and this included the hammer testing that was subsequently undertaken by Structural Renovations.

Contingencies:

12. With respect to the contingency sums, we were told that, originally the applicant considered that £15,000 would be sufficient and had notified lessees of this amount in the Notices of Intention. However, because the colour matching was necessary, involving both English Heritage and the Planning Department those contingencies increased to £98,991.
13. It is understood that further investigations were necessary and core samples had to be taken, with a petrographic analysis undertaken. All works were suspended and the situation is now that the finishing works to Cromwell and Shakespeare Towers remains outstanding, and on Lauderdale Tower, both the initial and finishing layers of repair are required especially to the upper parts.
14. The applicant wishes to use the same contractor for these works on the basis that they know the building, carried out the initial investigative works, that they would provide a guarantee and they have already have a working relationship with English Heritage and the Planners.
15. Although some lessees consider that another contractor should be appointed, on the basis that this is not specialist work, they have not proposed anyone who they would wish the applicant to consider. In any event, we consider that this work is highly specialist and that it is prudent for the landlord not to appoint another contractor and then possibly have disputes over the quality and responsibility for the works; that costs can be contained because Structural Renovations understand the works and that any new contractor would need to be approved by English Heritage and the Planners, and this would take some time. Additionally the costs in the preparation of the tender documents in order to go out to further tender would probably outweigh any possible savings in the cost of the works.
16. Having considered the matter of contingencies, whilst it is unfortunate that these increased significantly during the contract, we are satisfied that the reasons for their doing so is reasonable, and that given the programme of work it was not necessary for the applicant to consult with lessees over the additional cost. In any event, we dispense with the requirement to do so.

Emergency Works:

17. We are satisfied that the works undertaken by the landlord were of an emergency nature and that in the circumstances it is reasonable for us to dispense with the requirement for them to consult further on these works. We therefore dispense with the requirements.

Future Works:

18. It is evident that the work on Lauderdale Tower must now proceed as it is half finished, and that subject to the agreement of English Heritage and the Planning Department over the form and colour of the repairs that the works to Cromwell and Shakespeare Towers should now proceed. We find that the use of a contractor already familiar with the blocks must be preferable and prudent in the circumstances. We therefore dispense with the requirement of the landlord to consult with respect to the remaining works.
19. When reaching our decisions above, we have taken into consideration the lack of response by the respondents to this application and the works in general. In our view they have been given an opportunity to make their respective cases but have not done so. In addition with very few exceptions they have not questioned the need or the methodology used for the works.
20. The lessees have not demonstrated that they have suffered any prejudice in relation to these works, they have not provided any additional contractors who could have undertaken the works more efficiently, or at a lower cost, and we therefore find that the applicant has acted reasonably in taking any possible prejudice into consideration, and finding none, has progressed with the work.
21. We therefore grant dispensation under S.20ZA in respect of each part of the works as per the application.

Name: Aileen Hamilton-Farey Date: 30 July 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are 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.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (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) the appropriate 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.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are