FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/LDC/2019/0053**
Property	**:**	**68 Bramber Road, London W14 9PB**
Applicant	**:**	**Northumberland & Durham Property Trust Limited**
Representative	**:**	**Mr J Demachkie – Counsel Mr D Robins and Mr M Allen of Seddons Solicitors**
Respondents	**:**	**Triplerose Limited (1) Mr Andrew Marshall (2)**
Representative	**:**	**Mr Marshall in person. Triplerose Limited did not attend the hearing**
Type of application	**:**	**To dispense with the requirement to consult lessees about major works/ a long-term agreement**
Tribunal members	**:**	**Tribunal Judge Dutton Mr J Barlow JP FRICS and Tribunal Judge Evans**
Venue and date of hearing	**:**	**10 Alfred Place, London WC1E 7LR 8th May 2019**
Date of Decision	**:**	**14th May 2019**

DECISION

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DECISION

The Tribunal finds that the procedures for consultation required by s20 of the Landlord and Tenant Act 1985 (the Act) and the Service Charges (Consultation Requirements) (England) Regulations 2003 (Schedule 4 part 2) (the Regulations) have been complied with for the reasons set out below.

In the alternative the Tribunal would have found it reasonable to dispense with the requirements by virtue of s20ZA save that the Applicant shall comply with paragraph 13 of the Regulations.

The Tribunal makes an order under s20C of the Act and paragraph 5A of the Commonhold and Leasehold Reform Act 2002, (the 2002 Act) considering it just and equitable to do so, that the costs incurred by the Applicant shall not be regarded as relevant costs and are irrecoverable as a service charge or an administration charge in so far as they relate to Mr Marshall. In respect of Triplerose Limited (Triplerose) costs up to and including 11th April 2019 are likewise not regarded as relevant costs or administration charges but costs thereafter are considered to be relevant costs and may be recovered as a service charge, or an administration charge if the lease so provides.

The Tribunal orders Triplerose to reimburse the hearing fee of £200 to the applicant within 28 days.

BACKGROUND

1. By an application dated 3rd April 2019 the Applicant, Northumberland & Durham Property Trust Limited, sought dispensation from the consultation requirement under the Act and the Regulations. There are two respondents, Mr Marshall the leaseholder of 68A Bramber Road London W14 9PB and Triplerose the leaseholder of 68B. There are only two flats at the property. The application is supported by grounds for dispensation.

2. The grounds set out the works to be undertaken and that there was an intention to appoint WD Building Limited (WD) as contactor at a price of £42,982 plus VAT, which was the lowest of the three tenders submitted.

3. A Notice of Intention was served upon the respondents and is dated 4th February 2016. Within the consultation period Mr Marshall responded raising observations dated 3rd March 2016 and Triplerose put forward an alternative contractor, AMM Maintenance Limited (AMM). It is said that AMM was invited to submit a tender but did not do so. It was said that the observations by Mr Marshall did not require a response.

4. On 18th November 2016 a Statement of Estimates was issued listing the three contractors who had responded to the tender and indicating that AMM had not responded. No comment was made concerning the

observations of Mr Marshall. It was not until 14th June 2017, in a document headed “Statement of Reasons in Relation to Proposed Works”, that the applicant addressed the observations made by Mr Marshall, more than 15 months before. It is said by the applicant that the consultation requirements under the Act and the Regulations had been complied with.

5. Just prior to the hearing we were provided with a substantial bundle of documents which included a copy of the lease to flat 68B, the tender documents, the Notices issued under the Act, correspondence passing between the parties and other relevant correspondence, largely in the form of emails. Amongst the papers of particular relevance is a letter from Avon Estate (London) Limited on behalf of Triplerose dated 11th April 2019 and a statement from Mr Marshall dated 23rd April 2019.

6. The letter from Avon raised three issues, the first that the specifications are three years old, the second that the matter is not urgent and that there is sufficient time to review and up date the specifications and thirdly an allegation that AMM did not receive a copy of the specification.

7. The statement from Mr Marshall confirmed, for the reasons stated therein, that he no longer opposed the application but that no costs should be charged to him either as a service charge or administration charge.

8. In addition to the bundle of papers we were also provided with a skeleton argument prepared by Mr Demachkie. This set out the chronology of events, which is not, it would seem, in dispute, the reasons for the application, addressed the points raised by Avon in the letter of 11th April 2019 and finally, if the primary case that the consultation process had been properly followed was not accepted by us, why dispensation should be granted.

<u>HEARING</u>

9. Triplerose, despite indicating that they wished for an oral hearing, did not attend and were not represented at the hearing. Mr Marshall did attend but only really to observe.

10. Mr Demachkie addressed the point raised that Mr Marshall’s observations had not been responded to appropriately, and or at the right time. He told us that in his submission the observations had been responded to in the Statement of Reasons dated 14th June 2017. He also pointed out that Mr Marshall did not pursue his objections to the application to dispense.

11. In respect of the matters raised in the Avon letter he told us, and Mr Marshall confirmed, that there had been a somewhat fractious relationship between Mr Marshall and the applicant, happily it would seem now repaired, and this had caused the applicant to delay proceeding with the works. In any event there was, he said no time limit on the consultation procedure and drew our attention to the Upper Tribunal case of Jastrzembski v Westminster City Council [2013]UKUT 0284 (LC) (see para’s 46 and 47).

12. He was asked why the costs had risen from £39,022 to £42,982. The explanation for this was to be found in a letter from Anstow Limited, building surveyors dated 2nd September 2016 which explained that the increase was as a result of WD reviewing the extent of the works and allowing for extra scaffolding and lead work. We were told that the tendered price of £42,982 was to be held by WD and presumably will be confirmed when the contract is entered into and notice given to the leaseholders in due course.

13. As to the allegation that AMM had not been included in the tender process Mr Demachkie queried why Triplerose, being aware of this by reason of the Statement of Estimates dated 18th November 2016, did not query the position then and only raised it in the letter of 11th April 2019.

14. At the conclusion of his submission he reiterated that it was the applicant's primary case that the consultation process had been followed. Only if we disagreed did the question of dispensation arise. No prejudice has been raised by Triplerose and the question of the tender invitation to AMM, or rather lack of same, is unsupported by Triplerose. The application was made in respect of the concerns raised by Mr Marshall. The complaints by Triplerose, through Avon did not arise until after the application had been made.

15. On the question of costs the applicants confirmed that they would not seek any costs from Mr Marshall and accordingly would not object to an order being made under s20C of the Act, nor it would seem under schedule 11 para 5A of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act).

16. In so far as Triplerose was concerned it was confirmed that the applicant would not seek costs up to and including 11th April 2019. However, the request by Triplerose for a hearing and the company's failure to attend meant that the applicant sought the right to recover the costs of the proceedings, in particular the hearing costs, from Triplerose.

THE LAW

17. The law relating to this application is set out below. In reaching our decision we have borne in mind the decision of the Supreme Court in Daejan Investments Limited v Benson and others [2013]UKSC 14, which was put to us by Mr Demachkie.

FINDINGS

18. The applicant's case is put in the alternative. That is to say that primarily the case is that the consultation process has been complied with. If we consider that it has not been, in particular the response to the observation made by Mr Marshall in his letter of 3rd March 2016, then we should grant dispensation. In this regard cognisance must be had of the statement Mr Marshall made, through his solicitors dated 23rd April 2019. In that statement, at page 105 of the bundle he confirmed that he did not oppose the applicants application for dispensation. Further he said that the

grounds for objection were linked to the delay during the consultation process and the fact that works had not started.

19. The response to the application by Triplerose, through Avon Estates questioned the age of the specification, the lack of urgency and the possibility that the delay may have caused further deterioration. In addition they raised for the first time the allegation that AAM had not been invited to tender. Taking the last point first we are satisfied from considering the papers before us at pages 106 - 108 that AAM were involved in the tender process. Their name is shown as having been an addressee to the invitation to tender dated 25th April 2016. Further in a report on the tenders by Anstow Limited dated 2nd September 2016 they say at paragraph 1.6 that *"A tender enquiry was submitted to AAM Maintenance under cover of our letter 25th April 2016; no response was received from them."* In addition this is confirmed in the Statement of Reasons dated 18th November 2016. Despite this Triplerose raised no point until the letter from Avon dated 11th April 2019. For these reasons are satisfied that AAM were invited but chose not to submit a tender.

20. The age of specification is not relevant as we were told that WD were holding to the figure given in 2016 and this would be confirmed in the contract for which notice would be given to the lessees as required under paragraph 13 of the Regulations. Further the Jastrzembski case appears to confirm that there is no specific time for service of the notice, although an inordinate time scale may result in challenge. In this case the specification remains the same, the tender has not altered and the price given by WD is the same. In the circumstances we do not consider the objections of Triplerose hold water.

21. In respect of the response to Mr Marshall's letter of 3rd March 2016 we find that although strictly speaking this might better have been dealt with in the Statement of Estimates dated 18th November 2016, the Statement of Reasons dated 14th June 2017 dealt in detail with the matters raised by Mr Marshall. Further he makes no complaint on this point. Accordingly we find that the consultation process has been complied with.

22. If it is considered that we have given too much leeway over the time between the letter of 3rd March 2016 from Mr Marshall and the response in June 2017 we find that applying the principles of the Daejan case no prejudice has been caused to either Mr Marshall or Triplerose, the latter being presumably the inability to utilise the services of AAM, which we have dealt with above. Accordingly we would grant dispensation.

23. On the question of costs the applicant confirmed that none would be sought from Mr Marshall, either as a service charge, nor we find as an administration charge. Accordingly we make an order under s20C of the Act and an order preventing the applicant from recovering costs by reason of paragraph 5A of Schedule 11 to the 2002 Act.

24. In so far as Triplerose are concerned the applicant confirmed that they would not seek costs from Triplerose up to the hearing. It was Triplerose who requested a hearing and did not then attend. This it was said was

unreasonable. No application under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 has been made. However the applicant did seek a refund of the hearing fee of £200.

25. Our findings in this regard is that although any party can call for a hearing and should not be prejudiced for so doing, we do consider that Triplerose should have extended the courtesy of attending the hearing, or at the least indicating that a hearing was not required. This caused unnecessary costs to be incurred on the part of the applicant, who was content with a paper determination. In the circumstances we find that Triplerose should reimburse the applicant the hearing fee of £200 within 28 days. Further, we make no order under s20C in respect of costs for the hearing, including preparation therefor nor under paragraph 5 of schedule 11 of the 2002 Act for the same period. Whether the applicant seeks to recover such costs is a matter for them and those costs could be the subject of review under the Act and the 2002 Act.

26. Finally we should make it clear that the application before us sought dispensation. Our findings have no bearing on the reasonableness and or payability of any costs incurred in carrying out the works which were the subject of this application. The respondents rights under s27A of the Act are not affected.

Andrew Dutton

Tribunal Judge Dutton date 14th May 2019

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.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

The relevant Law

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) a leasehold valuation 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.

20ZA Consultation requirements: supplementary

(1)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 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,