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THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S20ZA OF THE LANDLORD AND TENANT ACT 1985

Property: **Granville Square, Peckham, London SE 15 6DX**

Applicant: Granville Square Management Company Limited

Respondents: The leaseholders of flats in Granville Square

Date heard: 1 September 2006

Appearances: Miss Anna Burne, counsel, instructed by T G Baynes, solicitors
Mrs Jenny Bunting and Ms F Castellani, Acorn Management Limited
for the applicant

Mr Peter McManus, leaseholder, Flat 49
Miss Anita Blake, leaseholder, Flat 20

Members of the leasehold valuation tribunal:

Lady Wilson
Mr M A Mathews FRICS
Mrs L Farrier

Date of the tribunal's decision: 1 September 2006

Background

1. This is an application by the landlord, which is a company owned by the leaseholders, under section 20ZA of the Landlord and Tenant Act 1985 ("the Act"), for dispensation from the statutory consultation requirements in relation to proposed works to rectify the effects of a past infestation of rats in non-demised parts of one of the blocks of flats in Granville Square.

2. Granville Square is a development of 72 flats in four storey blocks. On 22 January 2006 Mr McManus, the leaseholder of Flat 49, applied to the tribunal under section 24 of the Landlord and Tenant Act 1987 for an order appointing a manager of the development on the principal ground that the landlord had failed over a period of ten years to deal effectively with the damage, caused by rats, to the structure of his block which had compromised the structure of his flat and made it uninhabitable. On 7 June 2006, after a contested hearing, the presently constituted tribunal made an order under section 24 of the 1987 Act that Mr S Unsdorfer FIRPM M Land Inst, of Parkgate-Aspen Limited, should be appointed manager of the development but that his appointment should be suspended for a period of six months on the basis that the landlord must, in the interim, take effective steps to collect funds from the leaseholders to carry out the necessary works and must do its utmost to put the works in hand as soon as possible. A further hearing is to take place on 7 December 2006 to review the steps taken by the landlord to enable the works to progress, and we anticipate that, if by that date the landlord is proceeding effectively with the works, including the collection of the necessary funds from the leaseholders, the order will be further suspended or discharged but that, if not, Mr Unsdorfer's appointment will take effect.

3. In order to facilitate the early completion of the works, the landlord has now applied under section 20ZA of the Act because compliance with the relevant consultation requirements will

delay the works. We are satisfied that all the leaseholders have been made aware of the application and have been given the opportunity to appear or to make written representations.

4. The hearing of the application on 1 September 2006 was attended by Miss Anna Burne of counsel, instructed by T G Baynes, solicitors, on behalf of the landlord, and by Mrs Jenny Bunting and Ms F Castellani of Acorn Management, the landlord's managing agent, and by Mr McManus and by Miss Anita Blake, the leaseholder of Flat 20. Two other leaseholders, Mr Rose (on behalf of Hawthorn Developments Limited, the leaseholder of Flat 41), and Mrs Gul Gündes Ver, the leaseholder of Flat 30, have written to the tribunal in connection with the issues raised by the application, and we have taken their representations into account.

5. Section 20ZA(1) of the 1985 provides that the tribunal may make an order dispensing with the consultation requirements *"if satisfied that it is reasonable to dispense with the requirements"* . The relevant requirements are contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003.

The landlord's evidence

6. The grounds for making the application are set out in the statement of the landlord's case, and Mrs Bunting gave evidence in support. A tender report was put before us showing that nine contractors were invited to tender for the contract. Of these, only three had done so, namely Links Construction Company (at £63,000), Trafalgar Building Company Limited (at £28,805 plus VAT) and Chasefield Construction Limited (at £28580 plus VAT). Mrs Bunting said that a statement of the likely costs of the project had been sent to all the leaseholders. This was based on acceptance of Chasefield's tender, plus supervision by a chartered surveyor at £5500, management and administration by the managing agent at 10%

of the contract sum, contingencies for CDM Regulations at £850 and £750 for Building Control, together with VAT, producing a total estimated cost of £45,282.15.

7. Mrs Bunting said that although the tenders had been received in March or April 2006, the chosen contractor had agreed to hold its price until December 2006. Asked why the landlord had not undertaken consultation as the Regulations require, she said that until the tribunal's order under section 24 of the 1987 Act the landlord had considered it inappropriate to undertake the consultation process because it did not know whether a manager would be appointed to take the work forward. After the order was made the landlord was at first unclear whether dispensation was required but, having received advice, the application under section 20ZA was issued. She said that a major problem had been, and remained, that many leaseholders could not understand why they needed to contribute to works which they regarded, albeit incorrectly, as the responsibility of another leaseholder. She said that the managing agent had written to all the leaseholders explaining the effect of the tribunal's decision, and that she personally had spoken to very many leaseholders and had done her utmost to deal with their concerns and to explain to them why it was that the works were the landlord's responsibility and thus recoverable as a service charge. She said that all of them had been made aware of the likely costs and none of them had expressed any misgivings about the chosen contractor or the tender process. In particular, none of them had asked for the opportunity to nominate a contractor.

8. Dealing with concerns expressed by Mr Rose in his letter to the tribunal, she said that all the leaseholders, including Mr Rose's company, should have been aware of the application to appoint a manager because Acorn had written to each leaseholder including, in Mr Rose's company's case, its managing agent. Of the likely costs of supervision which Mr Rose had raised as a concern, she said that the project was to be managed by a chartered surveyor, which in her opinion was absolutely necessary, and that it would be by no means

straightforward to supervise.

9. Of Miss Blake's wish for a residents' meeting to discuss the works, she said that there was a considerable degree of apathy amongst leaseholders, and that Annual General Meetings of the landlord at which the works were discussed had not been well attended. She also said that she thought that there was a risk that hostility might be shown to Mr McManus at a meeting, from leaseholders who did not fully understand that the works were the landlord's responsibility rather than his, and that for that reason a meeting might do harm than good.

10. Mrs Bunting said that 28 leaseholders had already paid their contribution, and granting the dispensation would help significantly in the recovery process from the other leaseholders. She said that the directors of the landlord fully supported the need to carry out the works with all reasonable speed.

The leaseholders' evidence

11. Miss Blake said that she would like a meeting to be held at which the leaseholders could express their concerns but she agreed that works needed to be carried out as quickly as possible and that the dispensation sought by the landlord should be granted.

12. Mr McManus strongly supported the application.

13. Mrs Gündes Ver said that she believed that the need to do the works was the fault of the landlord and that she should not be held liable to contribute to the cost of repairing someone else's flat.

14. Mr Rose said that the cost of supervision appeared to be excessive. He also maintained that he had not been made aware of the hearing of the application to appoint a manager.

Decision

15. We are satisfied that it is reasonable dispense with the requirements of the consultation regulations. In our view it is essential that the necessary works should be carried out with no further delay and we are satisfied that reasonable steps have been taken to keep the leaseholders informed of them. We do not consider that any real benefit to the leaseholders would be achieved in this particular case if the consultation requirements had now to be strictly complied with, because we are quite satisfied that the landlord has consulted the leaseholders to a considerable extent and has conducted a comprehensive tendering process and that it is very unlikely that there are contractors available to do the work who would be able to carry out the works effectively at a lower cost. Further delay is not in the interests of any of the leaseholders because there is a risk that Mr McManus might pursue a claim for damages in respect of the loss of use of his flat which, if it were to be successful, could in theory increase the financial burden on all the leaseholders.

16. We hope that the leaseholders who have not yet paid their contribution of the likely cost of the works will understand that the works which are required are accepted by the landlord to be the landlord's responsibility and not Mr McManus's. This is because the damage is to the structure of the block which has, of course, had consequential effects within Mr McManus's flat. It is the interests of all of the leaseholders that the work is carried out as soon as possible, which cannot be done unless they pay their share. Until they do so the contract cannot be let. They should also understand that there is a risk that the cost of the work will exceed the estimate. We are by this decision not determining the reasonableness of the costs themselves, including the supervision fees to which Mr Rose has taken exception,

although it is right to say that we are not surprised that the supervision of these works is likely to be difficult and therefore more expensive that with some, more straightforward, contracts.

17. We add that we are satisfied that all the leaseholders were or should have been aware of the application to appoint a manager.

CHAIRMAN.....

DATE.....1 September 2006.....