



Case Number: CHI/OOHH/LDC/2007/0032

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

PROPERTY: Lucerne, Lower Warberry Road, Torquay, TQ1 1TN

Applicant: Lucerne Management Ltd

and

Respondent: All Leaseholders in Lucerne

In The Matter Of

Section 20ZA of the Landlord and Tenant Act 1985

**Landlord's application for the dispensation of all or any of the
consultation requirements contained in Section 20 Landlord and
Tenant Act 1985**

Tribunal

Mr A Cresswell (Chairman)
Mr M C Woodrow, MRICS
Mr R P Long LLB

Date of Hearing: 11 December 2007

At: Kingsley Suite, Livermead House Hotel, Torquay

Appearances: Mr Darren Stocks attended on behalf of the Applicant. Also in attendance were Respondents Mr Clegg, Miss Woollacott and Miss Stephens, the latter two of whom are also directors of Lucerne Management Limited.

DETERMINATION

The Application

1. On 25 October 2007, Crown Property Management, acting on behalf of Lucerne Management Ltd, and Torbay Co-ownership Housing Society (No3) Limited, the owner of the leasehold interest in Lucerne, Lower Warberry Road, Torquay, TQ1 1TN, made an application to the Leasehold Valuation Tribunal for the determination of an application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985 in respect of "heating works" at Lucerne.

Inspection and Description of Property

2. The Tribunal inspected the property and one of the flats at the property on 11 December 2007 at 10.00 am. Present at that time were Mr Stocks and Miss Woollacott. The property in question consists of a block of 35 self contained flats and 18 garages in grounds. The Tribunal saw the devices used to meter the supply of heating and hot water in Miss Woollacott's flat. (No 28)

Summary Decision

3. This case arises out of the Landlord's application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985 in respect of heating works at Lucerne. Under Section 20ZA of the Landlord and Tenant Act 1985 (as amended), the Tribunal has jurisdiction to make a determination dispensing with all or any of the consultation requirements "if satisfied that it is reasonable to dispense with the requirements." The Tribunal has determined that the landlord has not demonstrated that it is reasonable to dispense with the requirements, and for that reason does not make a determination dispensing with all or any of the consultation requirements.

Directions

4. Directions were issued on 16 November 2007. These directions provided for the matter to be heard on the fast track.
5. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. Respondents wishing to contest this application were advised to attend the hearing when they would be given an opportunity to be heard.
6. This determination is made in the light of the documentation submitted in response to those directions and the oral representations received at the hearing.

The Law

7. The relevant law is set out in sections 18, 19, 20 and 20ZA of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
8. The relevant law we took account of in reaching our decision is set out below:
Landlord and Tenant Act 1985 as amended by Housing Act 1996 and
Commonhold and Leasehold Reform Act 2002

Section 18 deals with the meaning of “service charge” and “relevant costs”

Section 19 details the limitation of service charges and reasonableness.

Section 20 deals with the limitation of service charges and consultation requirements

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.

- (5) Regulations 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.

Management

9. The property is managed by Crown Property Management acting on behalf of Lucerne Management Co Ltd.

The Lease

10. The lease before the tribunal is a lease dated 1 November 1982, which was made between Torbay Co-ownership Housing Society (No3) Limited as lessor and Margaret Mary Woollacott as lessee of Flat 28.
11. The Estate is defined in the First Schedule to the lease:

THE FIRST SCHEDULE above referred to
The Estate

ALL THAT piece or parcel of land at Torquay in the County of Devon having frontage to Lower Warberry Road for the purpose of identification only delineated on the Site Plan and thereon edged red TOGETHER WITH the buildings erected thereon ALL WHICH said property is known as “Lucerne” lower Warberry Road Torquay aforesaid

12. Clause 18 of the Fifth Schedule to the lease requires the lessee:

THE FIFTH SCHEDULE before referred to
Covenants by the Lessee

18. To pay all charges incurred for electric current hot water central heating and power supplied to the Demised Premises

and clauses 22 to 25 of that Fifth Schedule provide that:

22. The Lessee shall contribute and shall keep the Company indemnified from and against the following proportions of all costs and expenses incurred by the Company in carrying out its obligations under and giving effect to the provisions of the Sixth Schedule hereto (including Clauses 6-10 of that Schedule but excluding the charges incurred for electric current hot water central heating and power supplied to the Demised Premises) after deducting interest if any received by the Company or cash in hand such proportions to be as follows:-

- (a) One equal thirty-fifth part of all the costs charges and expenses relating to the Estate save and except the Garage Building
- (b) One eighteenth part of all the costs charges and expenses relating exclusively to the Garage Building

13. Covenants on the part of the Company (Lucerne Management Ltd) are listed in the Sixth Schedule, and include:

THE SIXTH SCHEDULE above referred to
Part I
Covenants on the part of the Company

4. (a) That the Company will maintain and keep in good and substantial repair and condition:

(ii) the waterpipes sewers drains and electric cables and wires in under or upon the Estate and other appurtenances belonging to serving or used for the same and enjoyed or used by the Lessee in common with the Lessees and occupiers of the other parts of the Estate (including without prejudice to the generality of the foregoing the common television aerial leads wires and connections leading thereto)

(e) That the Company will use its best endeavours so far as it is legally able to maintain a supply of hot and cold water central heating (by means of the installed oil fired plant) and electricity and the proper functioning of any other services provided to or for the Demised Premises and to or for the Common Parts PROVIDED that the Company shall not be liable to the Lessee for any loss damage or inconvenience caused by reason of the failure breakdown leakage defect or malfunction of or to any such supply or service

The Applicant's Case

14. Mr Stocks explained in his Statement of Case that the applicant wished to replace a current system of recording the use of heating and hot water in the 35 flats which relied upon evaporative heat and requires an annual reading, with one which relies upon a computerised reading and analysis /a system which can be read remotely without having to gain access to the individual flats. He said in his application that the reason for dispensing with consultation

was that the current system is 40 years old and an urgent upgrade is required due to many residents being elderly.

15. In evidence he said that Crown Property Management had taken over the management of Lucerne in December 2006. In January 2007 Crown Property Management had become aware of a proposal by Switch 2, the company maintaining the heating system, that it was unable to continue maintaining the evaporative heat system due to supply problems and was therefore recommending a new electronic system. He told us that the proposal was then one year old and is now two years old.
16. Crown Property Management also noted that the evaporative heat system was not the most precise of systems due to the lack of accuracy and the fact that 5 flats had actually removed the system when radiators were renewed. There was a meeting between Crown Property Management and the Lucerne Management Limited directors in early March 2007, when a decision was made to confirm with the contractors who had suggested a change (Switch 2) the necessity of that change and to obtain further quotations, if necessary.
17. Mr Stocks told us that he had obtained two other quotations, both of which were higher than that of the current supplier of services, Switch 2. He had, he told us, made only tentative enquiries with other contractors, but had run into difficulty in finding contractors locally who were interested in quoting for the work. He had not made any enquiries to see if a contractor was willing to maintain the current evaporative heat system.
18. He had spoken with ARMA (Association of Residential Managing Agents) which body advised him to make this application to dispense with consultation.
19. He told us that the heating boiler is in working order and is serviced.
20. He told us that he accepted that the application was poorly worded in that it appeared to suggest that the urgency of the situation was the need to maintain the heating for elderly residents in the winter. The urgency was in fact simply a wish to have the situation resolved.

21. At the Lucerne annual general meeting on 22 November 2007, he told us, there had been much discussion of the proposed change in the system of metering. The meeting had been well advertised but only about a third of the residents attended. He and Miss Woollacott told us that the meeting had been unanimously in support of the change.
22. Mr Stocks said that he considered that the wording of the lease was sufficient to enable the landlord to recover the cost of a new metering system under the service charge regime that it set out.

The Respondent's Case

23. Miss Stephens told us that the flats do need a change of system, that the existing system has never been truly accurate, and that she and other residents have never been able to understand how the system worked.
24. Miss Woollacott told us that she knew that a number of meters in flats had never been read because people were not there. She welcomed the proposed change, but accepted that the people who had attended the AGM and who had been supportive were likely to be those who thought they were paying too high a proportion of the costs.

Consideration and Determination

25. The Tribunal finds it clear from its examination of the papers and the oral evidence that the Switch 2 proposal is now some two years old. Mr Stocks told us that the cost would now have risen by some percent, but there was no clarity as to how much the cost might have risen. The heating system at Lucerne is operating effectively and has been serviced. There is no apparent reason to believe that elderly people will be deprived of heating or hot water during the winter. The Tribunal finds the wording of the application to be misleading, as it appears to suggest that there was a threat to the heating and hot water supply which brought an urgency to the application.

26. The Tribunal could see no reason why the normal consultation requirements should not be undertaken in this case, especially as the Switch 2 proposal is now well out of date and plainly needs to be revised. Their very purpose is to inform and involve residents in the decision making process which relates to major and continuing expenditure. The AGM was attended by a minority only of the residents, and, against that background, we could not be sure that the other lessees had had adequate notice of what was quite apparently not an urgent application. The underlying ground for our decision was that we were not clear that all of the lessees were as fully informed about the matter as they would be if the section 20 procedure were to be followed, and that there appeared to us to be no reasons of urgency or otherwise that were sufficient to satisfy us that it would be reasonable for us to grant the dispensation sought.
27. The Tribunal determined that the dispensation requested by the applicant be refused.

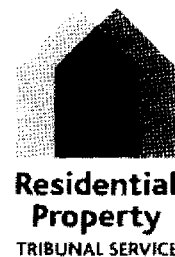
signed

Andrew Cresswell (Chairman)

Date 17 December 2007

A member of the Southern Leasehold Valuation Tribunal

Appointed by the Lord Chancellor



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Inspection and Description of Property

2. The Tribunal inspected the property and one of the flats at the property on 11 December 2007 at 10.00 am. Present at that time were Mr Stocks and Miss Woollacott. The property in question consists of a block of 35 self contained flats and 18 garages in grounds. The Tribunal saw the devices used to meter the supply of heating and hot water in Miss Woollacott's flat. (No 28)

Summary Decision

3. This case arises out of the Landlord's application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985 in respect of heating works at Lucerne. Under Section 20ZA of the Landlord and Tenant Act 1985 (as amended), the Tribunal has jurisdiction to make a determination dispensing with all or any of the

consultation requirements “if satisfied that it is reasonable to dispense with the requirements.” The Tribunal has determined that the landlord has not demonstrated that it is reasonable to dispense with the requirements, and for that reason does not make a determination dispensing with all or any of the consultation requirements.

Directions

4. Directions were issued on 16 November 2007. These directions provided for the matter to be heard on the fast track.
5. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. Respondents wishing to contest this application were advised to attend the hearing when they would be given an opportunity to be heard.
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15. In evidence he said that Crown Property Management had taken over the management of Lucerne in December 2006. In January 2007 Crown Property Management had become aware of a proposal by Switch 2, the company maintaining the heating system, that it was unable to continue maintaining the evaporative heat system due to supply problems and was therefore recommending a new electronic system. He told us that the proposal was then one year old and is now two years old.
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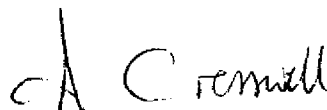
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Consideration and Determination

25. The Tribunal finds it clear from its examination of the papers and the oral evidence that the Switch 2 proposal is now some two years old. Mr Stocks told us that the cost would now have risen by some percent, but there was no clarity as to how much the cost might have risen. The heating system at Lucerne is operating effectively and has been serviced. There is no apparent reason to believe that elderly people will be deprived of heating or hot water during the winter. The Tribunal finds the wording of the application to be misleading, as it appears to suggest that there was a threat to the heating and hot water supply which brought an urgency to the application.
26. The Tribunal could see no reason why the normal consultation requirements should not be undertaken in this case, especially as the Switch 2 proposal is now well out of date and plainly needs to be revised. Their very purpose is to inform and involve residents in the decision making process which relates to major and continuing expenditure. The AGM was attended by a minority only of the residents, and, against that background, we could not be sure that the other lessees had had adequate notice of what was quite apparently not an urgent application. The underlying ground for our decision was that we were not clear that all of the lessees were as fully informed about the matter as they would be if the section 20 procedure were to be followed, and that there appeared to us to be no reasons of urgency or otherwise that were sufficient to satisfy us that it would be reasonable for us to grant the dispensation sought.
27. The Tribunal determined that the dispensation requested by the applicant be refused.



Andrew Cresswell (Chairman)
A member of the Southern Leasehold Valuation Tribunal
Appointed by the Lord Chancellor

Date 17 December 2007