

## **RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

### **SOUTHERN RENT ASSESSMENT PANEL LEASEHOLD VALUATION TRIBUNAL**

**Case Number: CH1/18UD/LDC/2007/0003**

#### **Decision on an Application under Section 20ZA Landlord and Tenant Act 1985**

Applicant: Bithrey Holdings Limited ("Bithrey")

Respondents: The Lessees at Rena Hobson Court

Premises: Rena Hobson Court, Canal Hill, Tiverton, EX16 4QA

Date of Application: 16 January 2007

Tribunal Members: Mr A L Strowger MA (Cantab) (Chairman)  
Mr P J R Michelmore FRICS

Date of Decision: 4 May 2007

## **DECISION**

### **The Application and the proceedings**

- 1 Notwithstanding the incorrect naming of the parties in the application, the Tribunal, as referred to in the Directions, has treated this as an application by Bithrey Holdings Limited with the Lessees at Reena Hobson Court named as the Respondents; they have been duly served with the relevant papers. The Applicants requested that the case be dealt with on the papers, without a Hearing. All the Lessees who responded gave their consent to this case being dealt with on the papers. Accordingly the application has been considered and determined on the papers.
- 2 The Tribunal is asked to exercise its jurisdiction under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") to retrospectively dispense with the consultation requirements of section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations"). The Tribunal has power under 20ZA (as set out in full below) to dispense with compliance with all or some of the consultation requirements with regard to qualifying works if satisfied that it is reasonable to do so.
- 3 The relevant qualifying works are the re-surfacing of the car park at Reena Hobson Court.

### **Background**

- 4 This application arises from a previous application to the Tribunal by certain of the Respondents for a determination as to their liability to pay a service charge in respect of flat 1 Reena Hobson Court. The determination by the Tribunal is dated 19 December 2006. In its summary at paragraph 42 (c) the Tribunal

determined that the Applicants were only able to recover a sum of £8000 from a total of £9950 for re-surfacing the car park because the consultation procedure laid down in section 20 of the 1985 Act was not followed and accordingly the statutory restrictions apply limiting recovery to £250 per flat. The full findings are set out under the section headed "Cost of Car Park works", paragraphs 32 – 37. The full circumstances are set out in that determination and will be known to the parties; it is not necessary to repeat them here. They are recited in detail in the submission made in support of the present application.

## Relevant law

5 Section 20ZA (1) of the Act states:-

"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."

Under section (2), for the purposes of section 20 and 20ZA, "qualifying works" mean works on a building or any other premises.

Under section 20ZA (4) the consultation requirements mean:- requirements prescribed by regulations made by the Secretary of State. These are the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the 2003 Regulations")

6 The relevant regulations under paragraph 7 of the 2003 Regulations in respect of this application are set out in Part 2 of Schedule 4 which apply where public notice is not required. The Regulations headed "Notice of Intention" state:

- 8 (1) The landlord shall give notice in writing of his intention to carry out qualifying works
- (a) to each tenant ; and
  - (b) where a recognised tenants' association represents some or all of the tenants, to the association
- (2)The notice shall:
- (a)describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected ;
  - (b)state the landlord's reasons for considering it necessary to carry out the proposed works
  - (c)invite the making, in writing, of observations in relation to the proposed works and
  - (d)specify
    - (i) the address to which such observations may be sent;
    - (ii) that they must be delivered within the relevant period; and
    - (iii) the date on which the relevant period ends.

(3)The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

### **Consideration of the facts and the law**

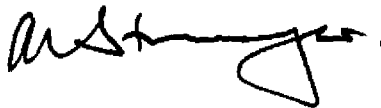
- 7 The purpose of the consultation regulations is to ensure that lessees are fully aware of proposed works and have the opportunity of commenting on proposals and of suggesting an alternative contractor from whom the landlord should obtain a quote.
- 8 The present Tribunal is not asked to adjudicate as to the reasonableness of the costs of the re-surfacing of the car park. It was noted by the previous Tribunal at paragraph 32 that the applicant in that case accepted, as did that Tribunal, that the costs incurred in respect of the car park were reasonable.
- 9 Originally it was planned to carry out the necessary repairs to the car park in 2003/4; the necessity to do this work was never in dispute. The Respondent appointed a surveyor, Peter Sheldon of J & P Sheldon, Chartered Surveyors of Dawlish ("Sheldons") to supervise. Sheldons invited tenders from 4 contractors, 2 of whom submitted quotations. In the event Roadform Civil Engineering Co Ltd ("Roadform") was successful and the 2003/4 Budget was set to include a provision of £7,000 to cover the work. However there was a fire in one of the flats and it was necessary to postpone the car park works.
- 10 The work went out to tender again in the spring of 2006. It is not entirely clear as to how many firms were invited to submit quotations. In the letter to the Lessees dated 14 June 2006, H. Management Services Ltd, the Applicant's managing agents, refer to five companies being invited but letters to only three are attached. At 3.5 of the Applicant's case it is stated that three firms were invited. In any event only Roadform responded. This firm had submitted the lowest tender in 2003, by a considerable margin. Accordingly, in due course, a decision was made to give the contract to Roadform. The tender figure was £6621 plus VAT making a total of £7780. This is below the statutory threshold that would require the consultation process to be followed. However in view of the uncertainties as to possible additional unforeseen costs that might arise once the contractor was on site, the Applicant prudently followed advice and allowed a total of £9750 as "a worst case scenario" figure to cover contingencies. This figure crosses the threshold figure of £250 per unit and requires compliance with the 2003 Regulations.
- 11 In its submission in support of its application, at paragraph 4.3, the Applicant states that it was, and is, aware of the consultation requirements but pleads that there was "simply a technical breach only in that we failed to give the Lessees the opportunity to nominate a contractor". The Applicants accept that their knowledge was less than perfect in that it made this omission and did not comply with regulation 8 (3). There is no reason why it could not have complied: it was merely ignorance.

- 12 The purpose of the consultation regulations is to ensure that lessees are fully aware of proposed works and have the opportunity of commenting on proposals and of suggesting an alternative contractor from whom the landlord should try to obtain a quote. In the budget presented to the Lessees for the year to 30 June 2007 and dated 22 May 2006, provision was made for the resurfacing of the car park in the sum of £9750. The Lessees were fully informed of the proposals and of the process by a letter dated 14 June 2006 from the Management Company. The Tribunal is satisfied that the requirements of the 2003 Regulations were met by the letter and the provision in the budget, except in two respects. Firstly, as the Applicant acknowledges, it failed to meet the requirements of 8 (3) and invite the Lessees to nominate a contractor from whom the Applicant should try and obtain an estimate. Secondly the letter did not comply with the requirement of 8 (2) (d) (ii) and (iii) in that it failed to state that observations should be made within the relevant period and to give the date on which the relevant period ends. The letter simply invites observations to be made "as soon as possible".
- 13 The Tribunal has considered the first point - the failure to invite the Lessees to name a person from whom the Applicant landlord should try to obtain an estimate. The Applicant pleads that it was unlikely that the Lessees could have found another contractor from whom another price might have been obtained. The Tribunal finds considerable merit in this argument. In 2002 only two contractors responded and Roadform's price was significantly the better. In view of the fact that this firm was the only one to respond in 2006 and the inherent difficulties of the site, the Tribunal shares the view that it was extremely unlikely the Lessees could have identified another credible possible contractor. In practical terms the Lessees have not been disadvantaged.
- 14 The Tribunal finds that there was no prejudice to the Lessees with regard to the second point - the failure to state a cut-off point for making observations. Full information was supplied to the Lessees and it was open to any of them to make observations if the estimate obtained was considered to be objectionable. No one was time barred from responding, but in fact, in the event, no one did respond.
- 15 The purpose of section 20ZA and the 2003 Regulations is to provide a protective regime for tenants. However, on the particular facts of this case, the Tribunal finds that there has been no prejudice to the Lessees as a result of the technical failure of the Applicant Landlord to fully comply with the 2003 Regulations.

### **Conclusion**

- 16 In all the circumstances the Tribunal considers it reasonable to dispense with the consultation requirements of section 20ZA and the 2003 Regulations. Accordingly the full amount can be recovered from the Lessees being the total cost (including surveyor's fees) of £11,010.93 less the amount payable by Sanctuary Housing Association plus the management fee of £175 awarded by the previous Tribunal. Therefore the net figure recoverable is £10,635.38, divisible between the Lessees.

Signed:



**A.L. Strowger, Chairman**

**Dated: 9 May 2006**