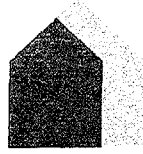


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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AY/LDC/2008/0011

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 20ZA LANDLORD & TENANT ACT 1985.**

Applicant: Clapham Park Homes

Represented by:

Respondent: Various Tenants

Represented by:

Premises: Birkwood Close, Scutton Close, Tenbury Court, Tierney
Road, Clarence Crescent.

Date of Application: 6th February, 2008

Leasehold Valuation Tribunal:

Miss A Hamilton-Farey LLB, FRICS, FCIArb

Date of Tribunal's Decision: 13th March, 2008

The Tribunal allows the application to dispense with the requirement to consult the tenants under Schedule 4 Part II of the Service Charge (Consultation Requirements) (England) Regulations 2003.

1. Background:

1.1 The Tribunal received an application on 6th February 2008 in which the applicant sought dispensation with all or some of the requirements to consult with the tenants under S.20ZA of the Landlord & Tenant Act 1985. In particular the Applicants sought dispensation with the requirements imposed by Schedule 4 Part II of the Service Charge (Consultation Requirements) (England) Regulations 2003 ("The Regulations").

1.2 In the interests of proportionality the Tribunal had issued directions for the matter to be determined on the papers provided by the parties.

1.3 The application relates to all of the leasehold properties contained within the properties known as 1-16 Birkwood Close, 7-28 Clarence Crescent, 35-54 Clarence Crescent, 13-36 Scrutton Close, 37-57 Scrutton Close, 1-12 Tenbury Court and Tierney Road.

1.4 The Applicants sought to 'fast track' the applications on the basis that the works for which they sought dispensation were urgently required.

1.5 Directions were issued on 11th February 2008 which required, amongst other things, for any Respondent to the application to inform the Tribunal whether or not they consented to the application, or whether they opposed it, and if so why. The Directions also required any Respondent to confirm whether or not they agreed to the matter being dealt with by way of written representations, or whether they required an oral hearing. The matter was listed for a determination on the papers in the event that no request for an oral hearing was made and that the determination would be made on 13th March or shortly thereafter.

2.0 The Law:

2.1 S.20 of the Landlord & Tenant Act 1985 ("The Act") was amended by S. 151 of the Commonhold and Leasehold Reform Act 2002 ("CLARA") with effect from 31st October 2003.

S.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.*

S.20(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.

S.20(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

2.3 Regulation 4 (6) states:

"For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.00'.

2.4 In addition, Regulation 7 (4) states:

*'Except in a case to which paragraph (3) applies, and subject to paragraph *(5), where qualifying works are not the subject of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works –*

(a) in a case where public notice of those works is required to be given, are those specified in Part 1 of Schedule 4;

(b) in any other case, are those specified in Part 2 of that Schedule.

2.5 The Regulations set out the various consultation requirements for both qualifying works and qualifying long term agreements that are both subject to and exempt from EU Procurement Regulations. These requirements are set out in the 4 schedules to the Regulations each dealing with different consultation scenarios.

2.6 S.20ZA(1) of the Act makes it clear that-

"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."

2.7 The applicant seeks dispensation with the requirements under Schedule 4 paragraph 2 in its entirety.

3.0 Bundles:

3.1 One of the Directions required the parties to provide a bundle of documents on which they wished to rely. The Applicant duly provided a bundle, no documents were received from the Respondents, with the

exception of some supporting letters, addressed to the Applicant from two of the tenants.

4.0 The Applicants Case:

- 4.1 The Applicants case is contained with in a statement prepared by Mr. P. Ewart, Leasehold Manager, dated 20th February 2008.
- 4.2 In broad terms, the Applicant seeks dispensation under S.20ZA from the consultation requirements for the following reason. That a contract was entered into with Diamond Build for refurbishment works to the subject properties. This contract was entered into following compliance with the requirements to consult under S.20, the Notice of Intention (4th July 2006) and the Notice of Proposal (5th April 2007) having been served on all affected parties and the necessary periods for the lodging of objections having been given.
- 4.3 The Applicant was compelled to remove the contractor due to performance issues on 16th November 2007 and following consultation and complaint from the Respondents.
- 4.4 Due to the removal of the contractor, the contract was suspended and it is now intended that the contract be continued with a different contractor.
- 4.5 The Applicant has confirmed that, following the decision to terminate the contract with Diamond Build, the leaseholders were informed and a further tender report was carried out on 4th January 2008 during which tenders were requested from the 2nd and 3rd lowest priced tenders from the original tendering exercise.
- 4.6 Following on from this second tender report, Hi Life Construction Limited are the proposed contractors to resume the contract works.
- 4.5 Taking into consideration the above, the Applicant seeks dispensation on the following basis:
- *That the costs will remain substantially the same; extra costs will not be born by the majority of leaseholders as works are capped at £10,000.00. There may be a slight differential between final and estimated costs for those leaseholders whose estimated costs are less than £10,000.00; this would be the case had Diamond Build completed the works programme; as a differential either less or more is to be expected between an estimated specification and final costs. Leaseholders will receive a detailed breakdown of accounts at final account stage.*
 - *Leaseholders have expressed a desire for immediate resumption of the works programme. Further consultation would put the programme back by up to 6 months.*

- *Further consultation may lead to increased costs as contractors would tender at 2008/09 rates.*
- *Our preferred contractor tendered for the works during the initial consultation exercise and is able to resource works immediately.*
- *Our preferred contractor has demonstrated the necessary commitment to our residents having undertaken refurbishment works to tenanted properties.'*

5.0 Reasons for the Tribunals Decision:

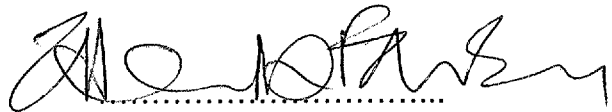
5.1 Having considered the evidence before it, the Tribunal considers that it would be reasonable to dispense with the requirements to consult on the basis that;

- The contract has already been commenced
- That full consultation was carried out by the Applicant prior to the commencement of the contract with Diamond Build
- That it would appear that the application to dispense is supported by the Respondents.
- That it does not appear to the Tribunal that any Respondent would be financially disadvantaged by the contract being completed by a different contractor, and indeed the Applicant has undertaken that there would be no financial disadvantage.
- That by carrying out a further tender exercise, the costs of the contract are likely to increase and that this would incur the leaseholders in additional costs, where their contributions are not capped at the £10,000.00

5.2 The Tribunal therefore allows the Applicant to dispense with the requirements to consult under Paragraph 2 of Schedule 4 to the Regulations.

Tribunal:

A. Hamilton-Farey LLB, FRICS, FCI Arb



Date:

13th March 2008