

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**IN THE MATTER OF SECTION 20ZA LANDLORD & TENANT ACT 1985**

Application No	CHI/00ML/LDC/2009/0032
Property	Beresford Court Somerhill Road Hove
Applicant	Geneva Investments Group Represented by Jacksons, Managing Agents, and Osler Donegan Taylor, Solicitors
Respondents	The Lessees (see Schedule 1 attached)
Members of the Tribunal	Ms H Clarke (Barrister) (Chair) Mr A O Mackay FRICS
Date of hearing	27 October 2009
Date of decision	28 October 2009

**1. THE APPLICATION**

The Applicant Landlord asked the Tribunal to dispense with the consultation requirements imposed by statute in relation to repair work to a waste/soil pipe and drains located partly below the property, on the basis that the work in question was urgently required.

**2. THE DECISION**

The Tribunal dispensed with the statutory consultation requirements in relation to the work set out in the Schedule for Repair to Drainage dated September 2009 prepared by Clive Voller Associates.

**3. THE LEASES**

The Tribunal was shown 2 forms of standard lease in use at the Property. Each of them provided for the landlord to maintain the soil pipes, drains and sewers serving the Property and for the

tenant to contribute to the costs under the service charge provisions. Nothing in the Application turned on any provision of the leases.

4. **THE LAW**

Section 20 Landlord & Tenant Act 1985 (as amended by the Commonhold & Leasehold Reform Act 2002) states:

*Limitation of service charges: consultation requirements*

*(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.*

5. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 2003/1987 and in summary the relevant part of the regulations at Schedule 4 Part 2 requires the landlord to give each tenant written notice of intention to carry out works, to invite observations on the works and invite the tenant to nominate a person from whom an estimate should be obtained, and subsequently to obtain estimates and provide information about them to the tenants before entering into a contract for the works to be done. The minimum time required for the entire consultation procedure to be completed is 60 days, but this does not take account of any additional time for matters such as service of notices, time for replies to be received from contractors invited to provide estimates, or time for the landlord to consider responses.

6. Section 20ZA(1) Landlord & Tenant Act 1985 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.*

7. **THE INSPECTION**

Immediately before the Hearing the Tribunal inspected the exterior of the Property. The Property constituted a block of 20 flats with storage units below, apparently constructed in the early 20<sup>th</sup> century. It was built on a sloping site adjacent to a road. Flat 14 was positioned at the south side of the Property below the level of the road, and Unit 4 was below Flat 14. The Property was served by a partially-pumped waste water drainage system

incorporating three inspection chambers, two of which were below road level adjacent to Flat 14 and one at road level, following which the drain fed into the main sewer below the public highway. It was not possible upon the inspection to gain access to the interior of Flat 14 or Unit 4.

**8. THE EVIDENCE AT HEARING**

A hearing was held at Brighton. The Applicant was represented by Mr P Barnes, Solicitor, and Mr G Pickard of Jacksons, the Applicant's managing agents. The Applicant submitted a witness statement from Mr Pickard and relevant documents to support its statement of case.

9. No Respondents attended the hearing and no submissions were received by the Tribunal from any Respondent.

**10. REASONS AND DETERMINATION**

The Applicant's unchallenged case was that in July 2009 it became the freehold owner of the Property. Five of the flats belonged to the Applicant. The leasehold tenants of the remaining fifteen flats were the Respondents to the application.

11. In the summer of 2009 effluent and waste water sewage from drains serving the property back-flowed through the bath and WC of Flat 14 and subsequently entered Unit 4 below it, causing damage. The Applicant through its managing agents Jacksons obtained an inspection report with recommendations for repairs to the drains from Blockbusters Environmental Services Contracts Ltd ("Blockbusters"), including a CCTV drain survey report. Based on the contents of this report it also obtained a specification of work from Clive Voller Associates prepared by Mr Clive Voller MRICS MBEEng, MIAS. Blockbusters estimated the cost of carrying out the work in its report at £10,930 plus VAT.

12. Jacksons sent Mr Voller's schedule to other contractors, but at the time of the hearing no other quotes had been obtained. As a protective step, a notice comprising the first step in the statutory consultation process under s20 Landlord & Tenant Act 1985 had been sent to all the tenants liable to contribute to service charges. One tenant had nominated other contractors, and the Applicant did intend to approach those contractors for a quote, which it would consider when received. The Applicant was committed to using the most reasonable quote provided (which may not necessarily be the cheapest). However the Applicant was anxious to start the work, and had agreed to fund the work itself subject to later recharging it to the service charge account.

13. The Tribunal agreed with the Applicant's submission that the works under the schedules prepared by Mr Voller and by Blockbusters were 'qualifying works' under s20 Landlord & Tenant Act 1985.
14. The Tribunal noted that s20ZA empowered a tribunal to dispense with all or any of the consultation requirements if satisfied that it was reasonable to do so. The question of whether it was reasonable was to be judged in the light of the purpose of the consultation provisions. The most important consideration was likely to be the degree of prejudice that there would be to the tenants if the consultation was not carried out as required by statute. This would not, however, be the sole consideration.
15. The Tribunal considered all the circumstances of the case, and decided that on balance it was reasonable to dispense with the requirement for the Applicant to consult the tenants before entering into a contract to carry out the work set out in the schedule prepared by Clive Voller Associates because:
  - i) the evidence demonstrated that the drain system was in a defective condition and there was a real risk that foul water could again escape and flow back into parts of the property.
  - ii) there was therefore an urgent need for repairs and work to be carried out to prevent a recurrence.
  - iii) the insurers of the Property had accepted a liability claim for the cleaning and consequential damage costs on the last occasion, but asserted that they would not cover the cost of cleaning or consequential loss if it happened again. In that event it appeared from the Leases that the costs of consequential damage and cleaning may fall wholly on the tenants through the service charge.
  - iv) the Applicant had obtained a quote from a locally known and reputable firm of contractors and was prepared to investigate other quotes before starting work, although the Tribunal acknowledged that this would have to take place within a very short time frame.
  - v) the work required was relatively specialised, and so the scope for nominating other contractors able and prepared to quote was likely to be relatively restricted.
16. The Tribunal also accepted that it was possible that the work would cost less if contracts were entered into before the anticipated rise in VAT in January 2010, but this did not weigh heavily in the decision.

17. The law provides in effect that if a landlord is required to carry out the statutory consultation, but does not do so, then the amount which each tenant may have to contribute to the cost of the work in question is limited to £250. The effect of dispensing with the consultation requirements is to remove this limit. In making its decision to dispense with consultation in this case, the Tribunal is not making a determination as to the liability of individual tenants to pay for the work. Nor is the Tribunal making any determination as to the reasonableness of the service charge costs that will or may be incurred, nor that the work will or will not be carried out to a reasonable standard. Such a determination could only properly be made on an application under s27A of the Landlord & Tenant Act 1985.

Signed-----28-10-09-----

Dated-----hmc-----