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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL for the**

**LONDON RENT ASSESSMENT PANEL**

**LANDLORD AND TENANT ACT 1985 SECTION 20ZA**

**LON/00AC/LDC/2010/0094**

**Premises** 1-58 Manor Court, York Way, London N20 0DR

**Applicants:** LG Lipman  
S R Lipman

**Represented by:** Mr T Ullam- Property Manager- Trust Property  
Management  
Mr P Henry- Surveyor- Benjamin Mire Surveyors

**Respondents:** Various Leaseholders

**Represented by:** Ms Tutcher (Flat 11) and Mr Reeve (Flat 5)  
**Also in Attendance:** Mrs T Philippou (Flat 45)  
Mr J R Taylor on behalf of Miss B A Collins (flat2)  
Mr Gautama  
Ms Lee  
Ms Patel  
Miss Sui-Pei Choi  
Mr C Sturt  
Mr J Grant

**Date of Hearing** 29 September 2010

**Tribunal:** Ms M Daley LLB (Hons)  
Mr F Coffey FRICS  
Mr J Francis QPM

## Background

1. The property, which is the subject of this Application, is a mixed development with two low rise and three blocks of three storeys in height and situated on either side of Manor Way. Each block of flats is housed under a combination of flat and pitched, tiled roofs and constructed in brickwork with partially painted render finish. To the rear of each block there are a series of balconies.
2. On 31 August 2010 The Applicant applied for dispensation from all of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985. The Tribunal were informed that during the course of carrying out major cyclical works of decoration they became aware of a problem with the balconies. In the application made on behalf of the Applicant by the managing agents the application to dispense states “ *The qualifying works are related to the Repairs to the Balconies. Once a Determination is made, it is the intention of the Management Company to carry out urgent repairs as deemed necessary by the Structural Engineer and Surveyor.*”
3. The Tribunal received the Application on 3 September 2010. The Tribunal gave Directions on 3 September 2010. The directions required the Applicant to-:
  - State the date and circumstances on which it first became apparent that the works became necessary
  - Provide a copy of any consultation
  - Details of any quotations received, with specifications if available.
  - Any other relevant documents (including reports) on which the, applicant wishes to rely.
4. The Directions provided that “Unless the Respondents consent to the application, they shall either separately or together prepare a bundle of documents and send three copies to the Tribunal and one copy to the applicant by 27 September 2010... The bundle shall be in a file ...and include A statement setting out why they oppose the application...”

## **The issue**

5. The only issue for the Tribunal is whether or not it is reasonable to dispense with all of the consultation requirements. This Tribunal does not determine any issues concerning the reasonableness of the service charge or the payability.

## **The Law**

### **6. S20ZA 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.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long-term agreement—
  - (a) if it is an agreement of a description prescribed by the regulations, or
  - (b) in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) 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.
- (6) Regulations under section 20 or this section—
- (a) may make provision generally or only in relation to specific cases, and
  - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. [...]
7. The relevant Regulations referred to in section 20 are those set out in Part 2 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.

### **The Hearing determination**

- 8. At the hearing the Tribunal was provided with a bundle that included the Application emails from the surveyor Mr Henry of Benjamin Mire Surveyors, copies of the only quotation received, responses from the Respondents and a copy of the structural engineers report from BW Consulting Engineers Ltd.
- 9. The Tribunal noted that there was a lack of documentary evidence concerning the original section 20 and the specification of work, and the original survey report. And details concerning how and when the need for the work was discovered and how they were deemed to be dangerous. Given this the Tribunal deemed it necessary to grant a short adjournment to enable the documents to be produced. The Respondents although not opposing the decision to grant an adjournment, noted that this information ought to have been produced within the hearing bundle.
- 10. The Tribunal were informed that a specification for cyclical repairs was produced in 2007 for major redecoration works, however the Leaseholders objected to the proposed cost of the work, and as a result the matter was

referred to the Leasehold Valuation Tribunal, who made a determination of the reasonableness of the cost of the proposed work on 7 November 2007.

11. No information was provided as to what had occurred between that date and 2010. However in February 2010 Mr Henry was instructed to re-price the schedule of work, following on from a successful tender a contract was awarded to Architectural Decorators for the work of redecorating and carrying out remedial repairs to the building. The Tribunal were informed that this work commenced on 19 July 2010. During scaffolding to the three storey buildings it became apparent that the work to the balcony was more extensive than that set out in the specification, and following this structural engineers were commissioned to report on the condition of the balcony.
12. The report dated 31 July 2010. The letter accompanying their report stated “ A visual inspection revealed the balconies to be in poor condition with the bottom flange of the encased original steel edge beam exposed and severely corroded, presumably as a result of inadequate cover.” The suggested work was that “...all balconies be suitably propped and cordoned off. The remedial edge beams together with the failed original edge beam should be removed and replaced with a single reinforced concrete beam. All steel stanchions and inadequate masonry piers should be replaced.”
13. The contractors who were in place carrying out the redecoration were asked to provide an estimate, which was produced on 30 July 2010. The cost of this work was £57,462.50.
14. Mr Ullam the property manager had not obtained further estimates, although he indicated that he was happy to do so, on the basis that he was awaiting the outcome of the hearing.
15. . The Tribunal were informed that the work was still in progress although the contractors had slowed down awaiting the outcome of the Tribunal Decision on dispensation.
16. The Respondents accepted that the work was necessary, however they opposed the grant of dispensation on the grounds that the Applicant ought to have been aware of the need for this work as a result of the LVT decision dated 7 November 2007 which had pointed out that the condition of the balcony was poor. They also considered that prudent inspection of the

property, before the work was carried out, would have revealed the defects in the state of repair of the balcony. One of the leaseholders Ms Choi who was an architect by profession stated that the normal practice was for a full condition survey before the work was undertaken.

17. The Respondents were also opposed as they considered that given this history between the parties of incomplete and inadequate work, and the distrust, which had lead to the original 2007 LVT, that they ought to be consulted.
18. It was pointed out to the Respondents, that they could raise these issues should and if the cost of the work becomes an issue by making an application to the LVT, and that they could also consider the management issues under right to manage legislation, it was however not a matter for this LVT to determine.
19. The Tribunal noted that there may be an increase in the cost should the existing work be carried out, and further consultation be needed on the proposed work.

#### **The Decision of the Tribunal**

20. The Tribunal having considered all of the circumstances of this Application have decided that it is not reasonable to dispense with the Section 20-consultation requirements.

#### *The Reason*

21. The Tribunal noted that the condition of the balconies had been raised as an issue by the Tribunal in 2007, and that this ought to have lead a prudent manager to investigate the condition of the balcony at an earlier stage, rather than when the work had commenced.
22. The Tribunal also noted that Mr Henry in preparing the revised specification, had stated at point 4.3.4, that further work might be necessary. He stated *@...carry out structural and repair works to rear balconies of following blocks as recommended in Structural Engineer's report ( to be appointed by TPM)...* in the Tribunal's view this was sufficient to alert the Applicant to the need to commission a report before commencing with the external redecoration contract.

23. The Tribunal consider that although the condition of the balcony is uncertain, and potentially dangerous, the balconies are unlikely to be in usage between the autumn and winter months, this will enable a proper consultation concerning the nature and type of repair that needed to be carried out.

**The cost of the hearing**

24. The Tribunal note that Mr Ullman is without instructions concerning whether it is the Applicant's intention to reclaim the cost of the hearing as a service charge. The Applicant shall on or before 14 October 2010 notify the leaseholders of whether the Applicant intends to claim the cost of the hearing as a service charge and the provisions of the lease, which are relied upon by the Applicant in claiming the cost. Any leaseholder, who wishes to object, must make a section 20C Landlord and Tenant 1985 application in writing to the Tribunal on or before 30.10.2010.

**25. Accordingly the Tribunal pursuant to section 20ZA of the Landlord and Tenant Act 1985 the Tribunal have refused the application sought.**

**CHAIRMAN.....**

**DATE.....**