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HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/22UJ/LDC/2012/0001

Property	:	**71-90 Quarry Spring, Harlow, Essex CM20 3HS**
Applicant	:	**Harlow District Council**
Respondents	:	**Mr. G. Evans (No. 76)** **Miss. V. Taylor (No. 79)** **Miss. K. Power (No. 81)** **Mr. D. Clarkson (No. 89)** **Mr. A. Fish & Miss. J. Gosnell (No. 90)**
Date of Application	:	**6th January 2012**
Type of Application	:	**Application to dispense with consultation requirements in respect of qualifying works (Section 20ZA Landlord and Tenant Act 1985 as amended ("the 1985 Act"))**
The Tribunal	:	**Bruce Edgington (Lawyer Chair)** **Evelyn Flint DMS FRICS IRRV**
Place and Date of Hearing	:	**15th February 2012 - The Park Inn Harlow, Southern Way, Harlow, Essex CM18 7BA**

DECISION

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1. The Applicant is granted dispensation from the consultation requirements in Section 20ZA of the 1985 Act and **The Service Charges (Consultation Requirements) (England) Regulations 2003** as amended ("the Regulations") in respect of works to renew the roof and ridge tiles, battening, sarking felt, flashings and weathering detail at the property.

Reasons

Introduction

2. When the Tribunal received this application, it was clear that refurbishment works were being undertaken at the property which is a block of 20 flats, some of which are occupied by tenants of the Applicant under periodic tenancies and the remainder on long leases acquired under the right to buy provisions.

3. It transpired from subsequent evidence filed on behalf of the Applicant that these works were for the general replacement of fascias, soffits, isolated windows, concrete repairs, redecoration, landlord's lighting improvements, external joinery, repairs to refuse and store shed areas, replacement of floor coverings over the cantilevered walkways and replacement front doors. Although this Tribunal is not dealing with those works, it does appear that the statutory consultation process was undertaken.

4. When the work was planned an allowance was made for repairs to the roof of some £3,000.00. However this was only with the benefit of a site inspection from the ground. When the scaffolding was erected and a closer examination was made, it became clear that the roof was in worse condition than had been anticipated. It was decided that further work would be required and as the scaffolding and the working site infrastructure are there already, it was decided to do the work now to save the further expense of re-installing scaffolding etc. It was also decided to apply to this Tribunal for dispensation from the full consultation requirements.

5. The cost of the new work involving the renewal of the roof, battens and felt together with allied and necessary finishing work is £25,953.50 according to the main contractor, T & B Construction Ltd, which is £1,297.68 per flat.

6. The written evidence to the Tribunal included a statement from Lauren Kerrigan, Home Ownership Office of the Applicant and 2 reports from Bob Purton, Principal Building Surveyor. There was also a copy of a letter written by Ms. Kerrigan to the Respondent lessees dated 16th January 2012 advising them of the extent of the additional works and the likely cost. This referred to an earlier letter of the 8th September 2011.

The Inspection

7. The Tribunal inspected the property and found that the 3 storey block was of brick construction under a dual pitched roof covered with concrete interlocking tiles. The property was built in the 1950's or thereabouts. It was a cold but clear morning. Brick built chimneys project from a tile ridge. Mr. Burton says that the design life for most of the components in the roof "has long expired".

8. It became clear that the majority of the work involved had been completed. The tiles were new and the lead flashing to the chimneys had all but been completed. Only one chimney needed doing and the ridge tiles needed fixing. Accordingly there was little to inspect and the Tribunal moved to the hearing venue.

The Statutory Framework

9. The purpose of Section 20 of the 1985 Act as now amended by the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") and the Regulations is to provide a curb on landlords incurring more than

£250 in respect of one item of service charge in one year and, now, entering into long term agreements.

10. The original regime meant that if service charges were over a certain limit, then the landlord had to either (a) provide estimates and consult with tenants before incurring such charges (b) have such service charges 'capped' at a very low level or (c) try to persuade a judge to waive the consultation requirements.

11. The 2002 Act which came into effect on the 31st October 2003 tightened up these provisions considerably and extended them to qualifying long term agreements i.e. agreements involving a tenant in an annual expenditure of more than £100 and which lasts for more than 12 months.

12. The consultation requirements in the Regulations are extensive and include:-

    i. The service of a notice on each tenant of an intention to undertake works. The notice shall set out what the works are and why they are needed or where particulars can be examined. It shall invite comments and the name of anyone from whom the landlord or the landlord's agent should obtain an estimate within a period of not less than 30 days.
    ii. The landlord or landlord's agent shall then attempt to obtain estimates including from anyone proposed by a tenant.
    iii. At least 2 detailed proposals or estimates must then be sent to the tenants, one of which is from a contractor unconnected with the landlord, and comments should be invited within a further period of 30 days
    iv. A landlord or landlord's agent must take notice of any observations from tenants, award the contract and then write within 21 days telling everyone why the contract was awarded to the particular contractor.

13. The 2002 Act transferred jurisdiction for the waiving of these requirements from the courts to Leasehold Valuation Tribunals.

The Leases

14. The Tribunal was provided with copies of the 2 forms of lease relevant to this block. They are long leases. The detailed provisions are not relevant to this application because, of course, the Tribunal is not being asked to decide whether the charges are reasonable or payable.

15. The leases do impose an obligation on the Applicant to keep the structure in repair under clause 7(a). However, there appears to be a crucial difference between the 2 forms of lease. The service charge provisions are set out in Schedule G. In one form of the lease the Applicant is able to recover a proportionate part of the cost of "*maintenance (not amounting to repair) by the Council pursuant to its*

obligations under this lease of ..... the structure and exterior of the Property (including the flat)".

16. In the other form of lease the first words in brackets are "*(not amounting to the making good of structural defects)*". However there is then an additional provision in paragraph (iv) which says "*after the expiry of the Initial Period the making good of structural defects and other works pursuant to the obligations of the Council under clause 7(a) of this Lease*". For the avoidance of doubt, the initial period has expired in the copy of this version of lease provided.

17. Thus, it appears on the face of it, that the Applicant is able to recover the costs of repairs to the structure, which would include the roof, from the lessees under the second form of the lease but not the first. The Tribunal has not looked at this aspect of the matter in detail as it is not relevant to this decision. However, if an attempt is made to recover these costs from the lessees, the Applicant will obviously have to consider its legal position in some detail.

The Hearing

18. Those attending the hearing were Ms. Claire Hicks and Mr. Purton from the Applicant and Karen Power from No. 81. It was confirmed that all the work under the tiles i.e. felt and battening had been completed. It was also confirmed that no other quotations had been obtained.

19. Ms. Power said that she was concerned that no-one had picked up this situation when the works were originally proposed. There had been no warning that this might happen. The response to this was that re-roofing was not part of the original brief. As far as the council was aware there had been occasional leaks but nothing to suggest that there was a real problem with the roof.

20. Ms. Power also made the point that an extra £1,300 was a lot of money to her and it would be undoubtedly to other lessees.

Conclusions

21. It was clear from the evidence and from the Tribunal's observations that the additional work to the roof is needed. It is also clear that having to go through the consultation process for these works will delay matters for 3 or 4 months by which time the scaffolding and site infrastructure will have been dismantled.

22. It would clearly be expensive for the Applicant and the long leaseholders to have to pay for the scaffolding to be re-erected at a later date. The Tribunal notes the estimated costs of the works. Whilst it could be said that an estimate from a main contractor on site is likely to be expensive because it is rather a matter of 'Hobson's Choice', this estimate for the complete re-roofing of the building including battening, sarking felt and finishing does not appear, on the face of it and in the absence of competitive estimates, to be too expensive. Obtaining an estimate from another contractor to use

scaffolding and site infrastructure provided by another is, for all intents and purposes, not going to be possible.

23. At the end of the day, the only issue for this Tribunal to decide is whether it is reasonable and more advantageous for the lessees to have these works done without having the benefit of the full consultation process. If the lessees wish to challenge the cost and reasonableness of the works, this would have to be the subject of a further application.

24. The Tribunal accepts that there would be substantial additional costs if the work had to be delayed. It therefore decides, on balance, that it is likely to be to the Lessees' benefit to dispense with the consultation requirements for these works and the decision of the Tribunal is that such consultation requirements are dispensed with and therefore the risk of prejudice is minimal.

25. Ms. Power's points were well made. The Tribunal was disappointed to see that no account had been taken of the fact that the roof was approaching the end of its life when the refurbishments were proposed. It is not very helpful to make lessees pay a substantial sum and then ask them for a further amount approaching £1,300 within a short time when this sort of expense might have been anticipated. Hopefully the council will take this into account and be reasonable about terms of payment e.g. an interest free loan.

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Bruce Edgington
Chair
15th February 2012