

8391



**HM Courts
& Tribunals
Service**

Leasehold Valuation Tribunal

In the matter of S.20ZA Landlord & Tenant Act 1985

CONFIRMATION of DECISION & REASONS

Case Number: CHI/45UH/LDC/2012/0017

Property: Onslow Court
Brighton Road
WORTHING
West Sussex
BN11 2PL

Applicant: Onslow Court (Worthing) RTM
Co Ltd.

Represented by: Mr James Groves BSc MRICS,
Clifford Dann.

Witness: Mr W Grummitt BA BSc MRICS,
Grummitt Wade.

Respondents:

| | |
|--|---|
| Mr R Mason (Flat 1) | Mrs K S L Howarth (Flat 28) |
| Mrs D DeSilver (Flat 1A) | Mr R Adelinia (Flat 29) |
| Mr D E Shelverton (Flat 2) | Ms R Gent (Flat 30) |
| Mr & Mrs J D House (Flat 3) | Ms P J Minnett-Westwood (Flat 15) |
| Mr & Mrs A L Burton (Flat 4) | Mr L Ansell (Flat 16) |
| Mr A S Harris (Flat 5) | Mr & Miss Chipping & Allingham (Flat 17) |
| Mr K J Manuel (Flat 5A) | Mrs G Doyle (Flat 18) |
| Mr & Mrs C E Parsons (Flat 6) | Mr L & Mrs P Musgrove (Flat 19) |
| Mr R G Shakespeare (Flat 7) | Miss J L & Miss G Heigham (Flat 20) |
| Mr & Mrs M A C Holmes (Flat 8) | Mr J D & Mrs G F Howell (Flat 21) |
| Mr & Mrs P Beeson (Flat 9) | Mr M P Key (Flat 22) |
| Mr J S Bailey (Flat 10) | Mrs J McGinty (Flat 23) |
| Mr V R Higman (Flat 11) | Mr A Mouncer (Flat 24) |
| Mr M & Mrs P McCarthy & Waghorn (Flat 12) | Mrs Morgan (Flat 25) |
| Ms Z Bailey (flat 12A) | Mr L & Ms B M Monaco (Flat 26) |
| Mrs C E Merritt (Flat 14) | Ms R Squires (Flat 27) |

Date of Application: 10 May 2012

Date of Hearing: 07 June 2012

Date of these reasons: 27 June 2012

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Surveyor Chairman)
Mr P D Turner-Powell FRICS (Surveyor Member)

DECISION

1. Confirmation of oral decision announced at the Hearing in accordance with Regulation 18(2) Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (*the Regulations*):
2. The Tribunal determines to dispense with the need to re-issue the "paragraph (b) statement of estimates" in respect of the S.20 consultation requirements set out in Schedule 4 Part 2 of the Regulations relating to the qualifying works, the subject of this application:
3. **The replacement of the existing oil-fired communal boilers and ancillary components and equipment with new gas-fired communal boilers to include the provision of a new gas supply to serve the boilers, and new hot water storage cylinders, water pumps, operating controls, and new cold water tanks at roof level.**

INTRODUCTION

4. This is an application by Messrs Clifford Dann on behalf of their landlord client, Onslow Court (Worthing) RTM Co Ltd, for dispensation of all or any of the S.20 consultation requirements in respect of qualifying works in accordance with S.20ZA of the Landlord & Tenant Act 1985.

THE LAW

5. The statutory provisions primarily relevant to this application are to be found in Sections 20 and 20ZA of the Landlord & Tenant Act 1985 (the Act).
6. The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate Regulations or Statutory Instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
7. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.

8. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.
9. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987). These requirements include, amongst other things: an initial Notice of intention to carry out the works; a duty for the landlord to have regard to any comments received and to obtain estimates for the work from at least one unconnected contractor; and for the landlord to advise the tenants with a statement of the amounts of the estimates received and make them available for inspection.
10. S.20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to do so. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

THE LEASE

11. The Tribunal was provided with a copy of the lease of Flat 22 dated 30 March 1995. It is understood that other leases are in a similar form.
12. Although the Tribunal had regard to the full lease, little turned on its interpretation during the course of the representations made to it. There are covenants for the landlord to keep the Building insured and to remedy all defects and keep in good and substantial repair and condition any parts of the building not comprised in any of the flats.
13. There is also an obligation for the landlord to use its best endeavours to maintain a supply of hot water to the flats and to maintain the hot water heating system. The flats are provided with a central communal hot water supply and heating system.

14. The landlord is reimbursed with its costs of maintenance by way of service charge contributions details of which are set out in the lease.
15. There were no matters raised by the parties in respect of the interpretation of the lease and it is accepted by the parties that the cost of maintenance of the boilers and hot water system will fall on the service charge.

BACKGROUND

16. Following the application dated 10 May 2012 the Tribunal issued Directions on 21 May 2012 for the conduct of the case. The matter was listed to be dealt with on the fast track and set down for a Hearing on 7 June 2012. As the matter was considered to be urgent a shorter notice was given and no objections to this procedure were received. The Applicant was to bring to the Hearing a bundle of relevant additional documents. This was supplied and included a specification of the proposed work and copies of the Section 20 "Notice of Intention" dated 04 November 2010 and the "Statement of Estimates" dated 6 May 2011.
17. The Respondents were Directed to attend the Hearing if they wished to contest the application and bring with them any relevant documents. Mr Adelinia of Flat 29 attended the Hearing and brought with him a letter dated 6 June which had been received at the Tribunal office the previous day.

INSPECTION

18. In company with Mr Cox (a representative of the managing agent) the Tribunal members inspected the exterior generally and the boiler room and boilers at the property. None of the Respondents were in attendance or represented.
19. The property comprises a corner four storey purpose built block of 32 flats probably constructed in the 1930s having painted, cement rendered elevations under a flat roof. There is a large basement boiler room housing two oil fired boilers, a large hot water tank and associated valves and pipework. This system supplies domestic hot water to each flat and central

heating by way of water filled radiators. The system was functioning at the time of the inspection.

EVIDENCE

20. A Hearing took place at the Tribunal offices in Chichester scheduled to start at 11:30 a.m. Mr Adelinia arrived in good time but Mr Groves was delayed and the Hearing did not commence until after 12 noon.
21. The Tribunal had regard to the written evidence before it and took oral evidence from Mr Groves, Mr Grummitt and Mr Adelinia.
22. As Mr Adelinia had not seen the bundle of documents presented by the Applicant he was given an opportunity to peruse the bundle. He agreed to proceed without an adjournment on the understanding that the Tribunal would consider any concerns he may have had regarding documents that he had not seen previously presented in evidence. Mr Groves indicated that there was nothing in the bundle that had not been seen by Lessees or had not been made available for inspection prior to the hearing.
23. The Tribunal had received letters from the tenants of Flats 4,9,11,12,21, and 25 broadly agreeing and supporting the application for dispensation.

The Applicant's Case

24. Mr Groves spoke to his application with support, as required, from Mr Grummitt. He explained that as early as 2006 a report was prepared by Archer's heating engineers stating that the boilers were beyond their useful life and that there was a high probability of failure. The previous managing agents, Fryzer Property Services Ltd, had issued "Notice of Intention", the first stage of the S.20 consultation procedure, on 4 November 2010. This gave notice of intention to replace the boilers with gas fired units and a full specification was made available for inspection.
25. Messers Grummitt Wade prepared a specification of work, including the detailed M & E Schedule by Freeman Beesley, and sent this for tender in

March 2011. A response was received to the initial notices and Messrs A R Evans were added to the tender list.

26. Tenders were received and the "Statement of Estimates" was sent to lessees on 6 May 2011.
27. There has been a delay in arranging the work and this has brought about an increase in costs. Mr Groves and Mr Grummitt believe that to delay issuing instructions for the work to allow for re-tendering and another consultation period would mean that the boilers may not be replaced before winter. Messrs A R Evans had identified the specific additional cost. As time goes on there is an increasing possibility of a failure of the old boilers. This is why the landlord is seeking dispensation to allow the work to proceed quickly.
28. The lessees have been kept informed by way of the S.20 Notices already issued and most of them are aware of the situation by way of being members of the RTM Company.

The Respondents' Case

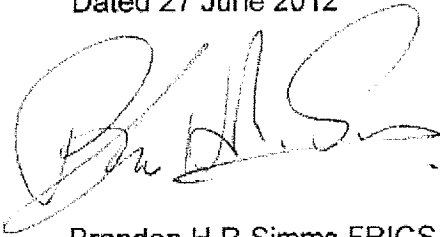
29. The Tribunal's Directions provided for the Respondents to make submissions at the Hearing if they wished to. Only Mr Adelenia took advantage of this opportunity and objected to the proposed dispensation. Six other lessees wrote in support of dispensation.
30. Mr Adelenia did not think that the proposed work was necessary as the boilers are fully operational. If upgrading is required then work could be undertaken at a much reduced cost. He did not produce any evidence or report from a heating engineer in support of his position and he had no expertise in this area himself.
31. On the basis that the work was not required then the S.20 consultation procedure was not required.

CONSIDERATION

32. There is no doubt from the Tribunal's inspection and the detailed report by Freeman Beesley, Building Services Engineers, that substantial work is required to the boilers. It is for the Landlord to determine what work is required for it to comply with its covenant to repair in the lease and this Tribunal has no jurisdiction in this area. Mr Adelinia's representations to us dealt entirely with the need for the work and the method of completing it. These are not matters before us.
33. The Tribunal's attention in this case is to consider whether it is reasonable to dispense with the strict consultation requirements set out in S.20 and the Regulations. Mr Adelinia's concerns would be more appropriately addressed to the landlord or its managing agent.
34. The Tribunal considered whether dispensation would cause significant prejudice to the leaseholders and determined that it would not. All lessees have been made aware of the general works by way of the S.20 "Notice of Intention" and "Statement of Estimates" already issued. It is only the final cost that might increase and this is not a matter of particular concern when dealing with S.20. There are safeguards elsewhere in the legislation dealing with the reasonableness of final costs.
35. The works would seem to have been urgent for some time but to delay them further to allow completion of the consultation process might be likely to prejudice the lessees to a greater extent if there was a failure of the supply of hot water and central heating.
36. For these reasons dispensation is granted only for the need to issue a further "Statement of Estimates".
37. It must be clear that this Tribunal does not determine the reasonableness of the need for the work or its cost and the Applicant should take steps to keep the cost under control and to supervise the work.
38. For the sake of clarification the Tribunal reminds the parties that either the landlord or the tenant may make an application to the Tribunal under section

27A, or other sections, of the Act for a determination as to the payability and reasonableness of charges either before or after any works. The decision given in this document does not prevent any future application to the Tribunal.

Dated 27 June 2012

A handwritten signature in black ink, appearing to read 'B. H. Simms', written over a horizontal line.

Brandon H R Simms FRICS MCI Arb
Chairman