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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTIONS 20ZA OF THE LANDLORD AND
TENANT ACT 1985 (as amended)**

Case Reference: LON/00AQ/LDC/2012/0088

Premises: 260-266 Headstone Lane, Harrow, Middx,
HA2 6NE

Applicant: London Borough of Harrow

Representative: Mr Tazafar Asghar – Senior Lawyer London
Borough of Harrow

Respondents/leaseholders: Mr K & Mrs D Sanderson – Flat 260 (1)
Mr M Cybulski & Mrs K Jaguscik – Flat 262 (2)
Mt T Annon & Miss C Mogridge - Flat 264 (3)
Miss H D Williams – Flat 266 (4)

Representative: Mr Giovanni Federico

Date of hearing: 5th September 2012

Appearance for Applicant: Ms Carol Henry –Smith – Leasehold Manager
Mr George Nwokadi – Leasehold Team
Manager
Mr Michael Campbell – Contractor
Mr Mike Moran - Surveyor

Appearance for Respondent(s): Mr M Cybulski

Leasehold Valuation Tribunal: Mrs N Dhanani LLB(Hons)
Mr W R Shaw FRICS

Date of decision: 18 September 2012

(NB: Unless otherwise stated: the numbers in the square brackets correspond to the page numbers in the papers produced by the parties.)

The Tribunal grants an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of the emergency roof works to the Premises.

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for a dispensation of the consultation requirements imposed under s.20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations") in respect of emergency roof works to the Premises.

The hearing

2. A hearing was held on the 5 September 2012, the Applicant was represented by Mr Asghar and the Second Respondent was represented by Mr Cybulski. The other Respondent's did not appear and were not represented at the hearing.

Background:

3. The Premises is a purpose built block of flats comprising 4 two bedroom flats.
4. The Applicant is freehold owner and the landlord of the Premises.
5. The Respondent's are the leasehold owners of the flats in the Premises and hold leases granted for a term of 125 years.
6. The Applicant claims the roof of the Premises was damaged and was likely to leak during rainfall. The Applicant confirms that repair works were carried out and completed on 15 June 2012 in order to rectify the damage and prevent any further leaks.
7. The Applicant states that no formal consultation has been carried out and it seeks full dispensation from the consultation requirements in respect of qualifying works.

Directions:

8. The Tribunal issued Directions in the matter on the 24 July 2012 and the matter was set down for a decision in the week commencing 5 September 2012.

Inspection:

9. The Directions issued did not provide for an inspection of the Premises and no request for an inspection was made by either party.

Matters agreed:

10. At the start of the hearing Mr Federico confirmed on behalf of the Second Respondent that they no longer opposed the application.

The Applicant's Case:

11. Mr Asghar made submissions in support of the Applicant's case. He relied on the Applicant's reply to the Respondent's statement [51-66].
12. The Applicant states that emergency roof works to the Premises were carried out on the 15 June 2012. The works comprised repairs to the roof, gutters, soffit boards and to the front, side and rear valley ("the qualifying works") as detailed in the quote [9]. The Applicant confirmed that the quotation has been produced in accordance with agreed National Schedules of Rates for payment.
13. The Applicant states that the qualifying works were undertaken on an emergency basis as they were necessary and any delay would have resulted in damage to the structure of the block as well as the internal parts of the flats as a result of water penetration.
14. The Applicant appointed Slade Group Building and Roofing Services to carry out the qualifying works. The actual cost of the works is £1,172.42. Each Respondent is liable to pay £293.10 as a contribution towards the cost of the works.
15. The Applicant contends that the decision to undertake the qualifying works did not cause the Respondents any significant prejudice. The Applicant summarises the degree of prejudice caused to the Respondent as:
- (i) lost opportunity to make observations in respect of the qualifying works;
 - (ii) lost opportunity to nominate a contractor; and

- (iii) lost opportunity to make observations in respect of any estimates obtained by the Applicant.

16. The Applicant submits that although they must have regard to any observations received they are not obliged to agree with or implement the observations London Borough of Haringey v Ball per HHJ Cooke (unreported)
17. The Applicant submits that as a local authority social landlord it is under a duty to ensure that it achieves best value for its leaseholders by ensuring that the works are carried out by a contractor with the relevant capabilities. The Applicant submits that they had nothing to gain from the failure to consult nor is it a commercial landlord exploiting its tenants. The Applicant states that the Respondents are at liberty to challenge the reasonableness of the costs incurred by the Applicant in carrying out the emergency works. The Applicant submits that there is no question of any wilful avoidance or disregarding of the statutory requirements.
18. The Applicant states that it would be wholly disproportionate and unjust for the Applicant to be deprived of its contractual right to recover from the Respondents their proportionate share of the cost of the qualifying works and only be entitled to recover a de minimus sum.
19. The Applicant argues in the event that the Tribunal refuses to grant a dispensation this will result in a windfall gain for the Respondents and a corresponding loss to the Applicant's housing capital works fund which will ultimately be detrimental to the Applicant's ability to discharge its social housing functions for the benefit of its leaseholders.
20. The Applicant has produced a copy of the lease relating to flat 262 as a sample lease.

The Law:

21. **s. 20** of the 1985 Act provides that:
"(1) Where this section applies to any qualifying works....., 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."
22. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to

those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) a leasehold valuation tribunal.

23. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

24. s. 20ZA of the 1985 Act provides:

"(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."

25. Under Section 20ZA(1) of the 1985 Act, "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 ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements". The basis on which this discretion is to be exercised is not specified.

The Tribunal's decision:

26. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any significant prejudice has been suffered by a leaseholder as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.

27. The Tribunal having considered the evidence is satisfied that proposed works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply. The landlord has not complied with the consultation requirements set out in the 2003 Regulations. However, the Tribunal is satisfied that the proposed works are of an urgent nature and are for the benefit of the interests of both the landlord and leaseholders in the Premises. The Tribunal is satisfied that the leaseholders have been notified of the application and they do not oppose the application.

28. The Tribunal has taken into consideration that the leaseholders have not had the full opportunity for consultation under the 2003 Regulations. However, the works are urgent and the Applicant has taken reasonable steps in the circumstances and time available, to provide the leaseholders with relevant information.

29. The Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are dispensed with in respect of the proposed roof works. In doing so, it is important to note that the Tribunal does not make any findings as to the reasonableness of, or the liability to pay the actual or estimated costs of the works.

CHAIRMAN: Mrs N Dhanani

DATE: 18 September 2012