

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 20ZA OF THE LANDLORD AND
TENANT ACT 1985**

Case Reference: **LON/00AW/LDC/2012/0117**

Premises: **67 Portabello Road, W11 2DY**

Applicant: **Benchlevel Properties Limited**

Respondents: **Jean-Luc Bourrin (flat A)
Innes Ross (flat B)**

Leasehold Valuation
Tribunal: **Mr M Martynski (Solicitor)**

Date of decision: **17 December 2012**

DECISION

Decision summary

1. The application for dispensation from the consultation requirements imposed by section 20 Landlord and Tenant Act 1985 in respect of structural repair works to 67 Portabello Road is granted in respect only of the works set out in paragraph 12 of this decision.

Background

2. The property in question consists of a commercial unit at ground floor level with two residential flats above.
3. The Applicant has made an application asking the Tribunal to grant dispensation from the need to comply with the consultation requirements of section 20 Landlord and Tenant Act 1985¹ in respect of certain structural works that are in the process of being carried out at the subject property.
4. The application form describes the works in question as follows:-

EMERGENCY PROPPING WORKS TO FRONT ELEVATION AS BUILDING STRUCTURALLY UNSAFE; REMOVAL OF OLD TIMBER BRESSUMER & INSTALLATION OF NEW STEEL BEAM TO SUPPORT FRONT ELEVATION PLUS ASSOCIATED MAKING GOOD WORKS INTERNALLY & EXTERNALLY WORKS CURRENTLY UNDERWAY.

5. The Tribunal gave directions on the application on 18 October 2012. Those directions gave the Respondents the opportunity to comment on the application and directed that unless either party requested a hearing, the application would be decided on the papers alone.
6. One of the Respondents, Mr Bourrin, responded to the application by a letter dated 18 November 2012. Mr Bourrin's letter contained a limited objection to the application. The relevant parts of Mr Bourrin's letter read as follows:-

While I acknowledge that the repair had to be started as soon as reasonably practicable, I am submitting this opposition to the Application for the following reasons:-

1. To date, I have not been provided with any cost estimate for the repairs;
2. To date, Landlord has not provided me with the percentage/proportion of the repairs that Landlord expects me to pay
 - a.
 - b.I would like Landlord to provide Mr. Ross and me with a repair estimate and a proposed allocation for dividing the cost of repair among Landlord, Mr. Ross and me (and commercial tenants, if appropriate).

.....
If Landlord provides me and Mr Ross with a repair estimate and a proposed allocation for dividing the cost of repair among Landlord, Mr. Ross and me (and, the commercial tenants if Landlord adds them as Respondents) AND if we are all able to reach an agreement on the allocation, I will gladly withdraw this opposition.

¹ See the extracts from the relevant law at the end of this decision

7. In response to this letter two emails were sent to the Respondents dated 3 December 2012 setting out the costs relating to the works so far as were known at that date and stating that the costs would be split into three equal parts between the two residential flats and the commercial premises.
8. There was no request from any party for a hearing and accordingly this application has been decided on the papers alone, those papers being contained within a hearing bundle supplied by the Applicant's agents.

Evidence

9. I considered the witness statement of Mr Christopher Ogden-Newton dated 9 December 2012. In that statement Mr Newton stated that during works of external decoration (in respect of which there was consultation) which were being carried out in September 2012, it became apparent that there was a problem with the support of the front elevation of the building. A structural engineer was instructed and the local authority informed. On further investigation it was found that the timber bressumer beam had deteriorated and bowed and that the wall directly above the beam was bowing.
10. Mr Newton then described that the residents in Flat A were evacuated on the evening of 28th September 2012 (flat B being empty) and that during that evening/night temporary props were put up to support the building. On the same day the local authority, having agreed that the building was unsafe, gave a licence to hoard off part of the pavement outside the building.
11. Mr Newton stated that the same contractor who had carried out the propping was instructed to carry out the necessary works which included new structural supports and the rebuilding of part of the front elevation at first floor level plus replacement windows and floors at first floor level with essential making good.

The Tribunal's decision

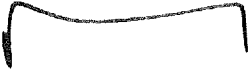
12. In the circumstances as described by Mr Newton and given that the issues raised by Mr Bourrin have been mostly addressed and given the tenants' further rights referred to in paragraph 13 below, it is reasonable for the Tribunal to grant the dispensation from the consultation requirements of section 20 Landlord and Tenant Act in respect of the following works only:-

Emergency propping works to the front elevation of 167 Portabello Road. The removal of the old timber bressumer beam and installation of a new steel box frame with the rebuilding of part of the front

elevation at first floor level plus the replacement of windows and floors at first floor level with essential making good.

13. This decision does not prevent any leaseholder making an application to the Tribunal challenging the reasonableness of the works, the costs of them or the division of the costs.

Chairman:



Mark Martynski

Date:

17 December 2012

EXTRACTS FROM THE RELEVANT LAW

Landlord and Tenant Act 1985

20ZA 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.]

Service Charges (Consultation Requirements) (England) Regulations 2003

SCHEDULE 4CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

Part 2Consultation Requirements for Qualifying Works for Which Public Notice is Not Required *Notice of intention*

8

- (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
- (a) to each tenant; and
 - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—
- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
 - (c) invite the making, in writing, of observations in relation to the proposed works; and
 - (d) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

9

- (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
 - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

10

Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

11

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

- (a) from the person who received the most nominations; or
- (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
- (c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

- (a) from at least one person nominated by a tenant; and
- (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—

- (a) obtain estimates for the carrying out of the proposed works;
- (b) supply, free of charge, a statement ("the paragraph (b) statement") setting out—
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
- (c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

- (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
- (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
- (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
- (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
- (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—

- (a) each tenant; and
- (b) the secretary of the recognised tenants' association (if any).

- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—
- (a) specify the place and hours at which the estimates may be inspected;
 - (b) invite the making, in writing, of observations in relation to those estimates;
 - (c) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

12

Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

13

- (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
 - (b) where he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.
- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.