



**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

**S. 20ZA of The Landlord and Tenant Act 1985 (as amended)
(Application to dispense with consultation requirements)**

Case Number:	CHI/00ML/LDC/2013/0028
Property:	The Ocean Building 102 Queens Road Brighton East Sussex BN1 3ZA
Applicant:	Ocean Building (Freehold) Limited
Respondents:	The Leaseholders of the Property
Date of Hearing:	11th June 2013
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Lady Davies FRICS (Surveyor Member)
Date of the Tribunal's Decision:	28th June 2013

Background & Procedural Matters

1. This is an application made by the Applicant Freeholder pursuant to S.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with the consultation requirements contained in S.20 of the Act.
2. The work covered by this application is the erection of scaffolding to allow the renewal of the balcony coverings and sub-structures to flats 1 & 2 followed by the re-building thereof together with the necessary making good, all of which are more particularly identified in the following reports:-
 - a) Letter dated 23rd March 2013 from BDM builders addressed to Graves Jenkins.
 - b) Letter dated 30th April 2013 from BDM builders to Graves Jenkins.
 - c) Quotation dated 26th April 2013 from Southern Asphalt Ltd addressed to Graves Jenkins.
 - d) Unidentified scaffolding quotation.All of the above are collectively referred to as ("The Works").
3. By an order dated the 7th February 2013 the Tribunal gave directions for the application to proceed by way of a hearing and if any of the Respondents objected to the application then they should attend the hearing. The Applicant's case was set out in the application form. None of the Respondents attended the hearing.

Inspection

4. The subject property is a six story block built circa 1970 in a terrace of mainly commercial buildings which vary in age and character fronting onto Queens Road, Brighton, which is a very busy thoroughfare running from Brighton mainline station down towards the seafront. The building was originally built as an office block for Commercial Union but was converted into 20 self-contained residential flats in 1999. Externally the building is clad with slabs of stone with blue panelling. The windows are of metal and are double-glazed. The common parts are carpeted and there is a lift to the fourth floor. The Tribunal were accompanied in its inspection by Mr Howlett representing the managing agents and by two representatives of BDM builders. The Tribunal inspected the interior of flat 2 on the fourth floor where there were obvious signs of water penetration through the ceiling to the sitting room and damp stains to the corner of the dining room towards the ceiling level. In addition, the Tribunal was shown the small open lobby and en-suite shower room off one of the bedrooms where the Tribunal noted a hole in the ceiling and more signs of water penetration. Externally to flat 2 the Tribunal noted the small roof terrace off the sitting room which is paved with concrete slabs. Finally the Tribunal also inspected the large roof terrace to Flat 1 which is similarly covered with concrete slabs. This roof terrace is directly over the sitting room to Flat 2.

The Law

5. S.20 of the Act limits the service charge contribution that lessees have to make towards “qualifying works” if the relevant consultation requirements have not been complied with or dispensed with by a Leasehold Valuation Tribunal.
6. Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 1987 (“the Regulations”) provide that if a lessee has to contribute more than £250 towards any qualifying works then if the landlord wishes to collect the entire costs of those works the landlord must either carry out consultation in accordance with S. 20 of the Act before those works are commenced, or obtain an order from the Tribunal dispensing with the consultation requirements.
7. The consultation requirements are set out in the Regulations and it is not proposed to set these out here. However, they include the need for the landlord to state why they consider the works necessary and for further statements setting out their response to observations received, and their reasons for the selection of the successful contractor. A tenant has the right to nominate an alternative contractor and the landlord must try to obtain an estimate from such a nominee.
8. Under S.20ZA (1) of the Act, the Tribunal is given discretion to dispense with the consultation requirements. This Section provides:

Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any 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 those requirements.
9. As regards qualifying works, the recent High Court decision of *Phillips v Francis* [2012] EWHC 3650 (Ch) has interpreted the financial limit as applying not to each set of works, as had been the previous practice, but as applying to all qualifying works carried out in each service charge contribution period.
10. A lessor may ask a Tribunal for a determination to dispense with all or any of the consultation requirements and the Tribunal may make the determination if it is satisfied that it is reasonable to dispense with the requirements (section 20ZA). The Supreme Court has recently given guidance on how the Tribunal should approach the exercise of this discretion: *Daejan Investment Limited v Benson et al* [2013] UKSC 14. The Tribunal should focus on the extent, if any, to which the lessee has been prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the lessor to comply with the regulations. No distinction should be drawn between serious or minor failings save in relation to the prejudice caused. Dispensation may be granted on terms. Lessees must show a credible case on prejudice, and what they would have said if the consultation requirements had been met, but their arguments will be viewed sympathetically, and once a credible case for prejudice is shown, it will be for the lessor to rebut it.

The Evidence

11. The relevant evidence submitted to the Tribunal on behalf of the Applicant consisted of the following documents:
 - i. The Application
 - ii. Copy lease for Flat 1
 - iii. Copies of the reports and estimates referred to in paragraph 2 of this decision.

The Hearing

12. Mr Howlett led the case for the Applicant and also adduced evidence on behalf of the Applicant and began his evidence by summarising the background to the application in the following way:
13. Approximately three months ago the owners of flat 2 on the fourth floor reported damp to their flat. Their flat had been affected by damp for several years but until recently they had thought that the problem originated from the walls and the leaseholders had been attempting to carry out internal works to resolve the issue.
14. The Applicant had carried out investigative work to include removing some of the promenade tiles to the roof terrace of flat 1. This terrace is directly over the sitting room to flat 2. The inspection revealed that the structure below had perished with significant amounts of water resting on the original asphalt roof covering. It was the Applicant's view, supported by Mr Howlett a chartered surveyor and also by a specialist roofing contractor, that this area required immediate attention to prevent the situation from escalating into an even more serious problem. They were all of the view that the clear cause of the water penetration to flat 2 was the failure of the substructure of the roof terrace to flat 1 and that this needed to be rebuilt. Similar problems were found to affect the roof terrace of flat 2, which included the small roof terrace leading off the sitting room.
15. Mr Howlett contended that in view of the serious nature of the repair work and because of the impact on flat 2 it was necessary to proceed with the Works as a matter of urgency even though stage two of the statutory consultation had not been completed and in these circumstances he invited the Tribunal to make an order dispensing with the consultation requirements in relation to the Works.
16. Costings had been obtained to carry out the Works and the project would involve expenditure of approximately £20,000. There already existed sufficient funds within the property service charge account to cover the Works so no additional funds were required from the Respondents.

Consideration

17. In the opinion of the Tribunal the Works do constitute "qualifying works" within the meaning of the Act. As the contribution required from the Respondents

pursuant to the service charge provisions in their leases will exceed the threshold of £250, there is an obligation on the Applicant under Regulation 6 to consult in accordance with the procedures set out in the Regulations.

18. The evidence put before us establishes: -
 - (i) There is damp penetration to flat 2
 - (ii) The substructure of the roof terraces to flats 1 and 2, which consists of promenade tiles, decking, supporting frame work and asphalt roof coverings, have all failed having come to the end of their life.
 - (iii) The disrepair referred to in (ii) above is the likely cause of the water penetration to flat 2.
 - (iv) There is an urgent need to rebuild the roof terraces to avoid further water penetration and more extensive damage to flat 2.
 - (v) A failure to execute the rebuilding work promptly is likely to result in further and more extensive damage to the structure of the building and the interior of flat 2.
 - (vi) The first stage of consultation has already been carried out with the Respondents and there have been no objections to the Works or contractor nominations.
19. The Tribunal first considered the terms of the leases and in particular the repairing covenants contained therein. The leases provide in summary for the landlord to repair the structure and the exterior of the building, which includes the affected substructure, but not the promenade tiles. The Tribunal is thus satisfied that the Applicant is obliged to carry out the Works and the Respondents are obliged to contribute towards the cost of the Works by virtue of the service charge provisions of the leases.
20. The Tribunal is also satisfied that Works need to be progressed urgently to avoid further and more costly damage to the fabric of the building. It is therefore appropriate to dispense with consultation in respect of the Works so that they can be carried out during the summer months rather than the winter period, which would be the case if full consultation were to be instigated.
21. In accordance with *Daejan Investment Limited v Benson et al* [2013] UKSC 14 in arriving at its decision the Tribunal must focus on prejudice. There is no cogent evidence that the Respondents are being asked to pay for inappropriate works and indeed none of the Respondents have raised the issue of prejudice having been given the opportunity to do so by attending the hearing.
22. Accordingly taking all the circumstances into account and for the reasons stated above, the Tribunal is satisfied that it is reasonable for it to grant dispensation from all the requirements of S.20 (1) of the Act in respect of the Works and it so determines.

23. The Tribunal makes it clear that this dispensation relates solely to the requirement that would otherwise exist to carry out the procedures in accordance with S.20 of the Act. It does not prevent an application being made by the Respondents under S.27A of the Act to deal with the resultant service charges. It simply removes the cap on the recoverable service charges that S.20 would otherwise have placed upon them.

Signed _____
Mr. RTA Wilson LLB

Dated 28th June 2013