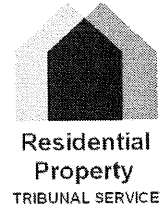


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**LEASEHOLD VALUATION TRIBUNAL**

In the matter of Section 20ZA of the Landlord and Tenant Act 1985

Case Nos. CHI/29UM/LDC/2013/0005

Property: **Gange Mews  
Crescent Road  
Faversham  
Kent ME13 7ED**

Between: **Grange Management (Southern)  
Limited  
(the Applicant)**

and

**Various Lessees of Gange Mews  
(the Respondents)**

Date of hearing: 4<sup>th</sup> February 2013  
Date of the decision: 4<sup>th</sup> February 2013

Members of the Tribunal: Mr D. Dovar LLB (Hons)  
Mr R Athow FRICS MIRPM  
Mr P A Gammon MBE BA

## **DECISION**

### **Introduction**

1. This is an urgent application, dated 17<sup>th</sup> January 2013, for dispensation from the statutory consultation requirements pursuant to section 20 of the Landlord and Tenant Act 1985 under section 20ZA of that Act. The application relates to the repair of a lift servicing Block B of the Property.
2. By a directions order dated 23<sup>rd</sup> January 2013, the Tribunal determined that there were exceptional circumstances justifying less than 21 days notice of this hearing being given to the Respondents and allocating the application to the fast track.
3. The hearing of this application was convened at the Property for the convenience and at the request of the parties. The Tribunal inspected the lift and the block.
4. The Applicant was represented by Mr Smith, Operations Manager and Mr Bath, Property Services Manager. Representatives from 23 flats were present and the Tribunal was handed a form signed by 38 of the leaseholders or their representatives which confirmed their support for the application. At the hearing a further 3 leaseholders confirmed their support. The Tribunal were informed that the remaining leaseholders were either in hospital or not in residence and had not responded. The Applicants stated that they held correspondence addresses for all the leaseholders and had sent out notices to all and no objections had been received.

### **The Property, the lift and consultation to date**

5. The Property is a purpose built retirement home comprising 47 flats and 3 cottages (one of which is occupied by the warden). All the leases contain an age restriction, setting a minimum age of 60.

6. The lift in question serves 12 flats on the first floor (as well as a guest room) and 11 on the second. It is currently out of order. It is anticipated that the cost of repair will exceed £250 per leaseholder. The necessary repair works include the replacing of the existing lift controller with associated equipment. There is an anticipated delay in obtaining the relevant parts of around four weeks as well as a period of two weeks needed for installation and testing.
7. The Applicant has obtained two quotations for the repair works. The first dated 2<sup>nd</sup> January 2013 from Stannah is £13,498.80 plus VAT. The second, dated 14<sup>th</sup> January 2013 from Pickering Lifts is for £17,900 plus VAT.
8. The problems with the lift arose on 17<sup>th</sup> December 2012 when Stannah were called out. They advised that more significant works were necessary and spent a week trying to correct the problem, but failed. On 24<sup>th</sup> December 2012, the Applicant sent out a Notice of Intention in respect of the replacement of the Lift controller mechanism. That invited observations on the works and nomination of contractors by 28<sup>th</sup> January 2013. The Tribunal was informed that there had been no adverse observations or nominations by that date or since.
9. The Applicant contracted with Stannah on 3<sup>rd</sup> January 2013 in order to expedite the supply of parts. It now anticipated that the parts will be ready by the end of this week and that if dispensation is given, works would start shortly thereafter. On the same day, the Applicants wrote to the leaseholders informing them of their instruction of Stannah and their intention to apply for dispensation.
10. In anticipation of this application, the Applicants obtained a second estimate from Pickering Lifts, which they received on 14<sup>th</sup> January 2013. That was higher than the Stannah estimate. They informed the leaseholders of this on 16<sup>th</sup> January.

## The Law

11. Section 20 of the Landlord and Tenant Act 1985 provides for a limitation on the recovery of service charges for qualifying works unless the statutory consultation requirements have been either complied with or dispensed with. In the absence of either, the limit on recovery is £250 per leaseholder.
12. Section 20ZA of the 1985 permits the Tribunal to dispense with all or part of the consultation requirements if it is 'satisfied that it is reasonable to dispense' with them.
13. In order to determine whether it is reasonable to dispense with them reference must be had to the requirements themselves which are set out in Part 2 to Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987). In outline, the requirements for consultation for qualifying works are:
  - a. A notice of intention by the landlord to the tenants:
    - i. Setting out a description in general terms of the proposed works;
    - ii. Stating the reasons for wishing to carry out the work;
    - iii. Inviting observations on the works and the nomination of contractors within 30 days of receipt of the notice.
  - b. If any observations are made, then the landlord must have regard to them;
  - c. The landlord then needs to obtain at least two estimates (including, if applicable, an estimate from at least one of the contractors nominated by the tenants) and set out at least two of the estimates (including at least one estimate from a tenant nominated contractor) in a further notice to the tenants. The notice should also contain a summary of any observations made by the tenants and the landlord's response to

them. It should also invite observations from the tenants on the estimates within 30 days.

- d. If the landlord decides to contract with a tenant nominated contractor of the lowest estimate then they need not provide any further notice. Where they contract with a different contractor, then the landlord needs to serve notice on the tenants setting out their reasons for doing so and provide a summary of any observations received in respect of the estimates and their response to the same.
14. As can be seen, both notices require 30 days within which the tenants can make observations. This provides that at the very least works cannot start until 60 days before the service of the first notice, but in reality it is likely to be longer than that.
15. When considering whether to grant dispensation of the consultation requirements, the Tribunal has regard to the extent that the consultation process has been complied with and the reasons for non-compliance.

### **The Representations**

16. The Applicant contends that dispensation should be given as full compliance the statutory consultation process would entail further delay in carrying out the necessary repair works and therefore prolong the difficulties faced by many of the elderly leaseholders in accessing their properties.
17. In particular, the Applicant seeks dispensation in relation to the requirement to serve the notice setting out the estimates obtained. It wishes to avoid the need to give 30 days for observations on the estimates and for the need to take those observations into consideration.
18. There was no objection from any Respondent.

### **Discussion and Determination**

19. It appears that the Applicant has complied with the consultation requirements to the following extent:
- a. It has served a notice of intention;
  - b. It has obtained two estimates;
  - c. It has chosen to contract with the lowest of the two estimates provided.
20. It has failed to provide the second required notice, namely a notice setting out the estimates received and therefore has not provided 30 days for the tenants to provide observations on the estimates.
21. It appears to the Tribunal that in the circumstances it would be reasonable to give dispensation to the requirement to give 30 days for the leaseholders to provide observations on the estimates. Given the nature of the accommodation, the age of the residents and the clear difficulties that the lack of a lift causes, there is urgency in carrying out these works. The Tribunal therefore grants dispensation from paragraph 11 (5) (b) (ii), and 11 (10) of Part 2 of Schedule 4 of the 2003 regulations.
22. The Applicant does need to provide the second notice setting out the two estimates obtained and should exhibit copies of the estimates, but it need not invite observations. Provided it serves this second notice and continues its contract with Stannah, it will have either complied with or have obtained dispensation from the requirements of the statutory consultation procedure.



Daniel Dovar LLB (Hons)

Chairman

4<sup>th</sup> February 2013