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SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case Number **CHI/24UP/LDC/2006/0005**

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

Re:	**Orchard Walk, Stoney Lane, Weeke, Winchester**
Applicant:	**HVHS Housing Group**
Respondents:	**The Leaseholders of Orchard Walk**
Date of Application:	**18 January 2006**
Date of Hearing:	**15 February 2006**
Venue:	**Wells Place Centre, Eastleigh**
Appearance For the Applicant	**Mr Denis Duggan (Contracts Surveyor)**
Appearance For the Respondents	**None**
Members of the Tribunal:	**Mr J H S Preston JP FRICS** **Mr D Lintott FRICS**
Clerk to the Tribunal:	**Mrs J Rhodes**
Date of Decision:	**17 March 2006**

The Application

1. This is an application under Section 20ZA of the Landlord and Tenant Act 1985 made by HVHS Housing Group for dispensation of all of the consultation requirements contained in Section 20 of the Landlord and Tenant Act 1985 ("the Act")

2. The qualifying works are to install a new control unit and associated wiring to the lift. A long-term agreement was entered into by the applicant about six years ago and has been renewed annually using a schedule of rates for payment for goods and/or services. This agreement is for maintenance and insurance purposes for all lift works throughout the Group.

3. There has been no consultation at the time of the application.

4. As an organisation, the Group uses McBains Cooper (MC) as consultant engineers. On behalf of HVHS, MC have entered into a contract for lift maintenance, improvement, repairs and any works that are necessary for insurance purposes. They do not consider it advisable to use a different contractor for the qualifying works. Thus it is not possible to seek alternative quotations from the leaseholders.

The Property

5. The tribunal inspected the property before the hearing. Mr Duggan attended on behalf of the applicant. None of the respondents was present or represented. The property comprises a two-storey block of one and two bedroom flats, twenty one in all, being a Sheltered Housing Scheme.

6. The tribunal inspected the common parts to the property including in particular the lift and associated control mechanism. The lift is a Stannah Piccolo Two-floor Hydraulic Lift. The Lift ID No. is 281A. It is the only lift serving the premises. There is a stairwell nearby. The lift installation date is stated on a plate in the control room as 26 August 1988. The Contract Number on the Service Sheet was 7060A/8. The record of inspections for the past year showed that on two occasions the monthly service inspection had not been carried out. The lift was in working order during the Tribunal's visit.

The Leases

7. A sample lease was included in the bundle. This is for a term of ninety-nine years from 25 December 1987.
8. The fifth schedule of the lease contains covenants by the lessee. Para 22.4 relates to provision for payments into a sinking fund on each transfer or underletting of each flat for defraying such items of capital expenditure as are not included in the Service charge. Allocation of funds in this way is at the discretion of the lessor. Para. 24.1 To contribute and pay an equal one twenty-

first part of the costs expenses outgoings and matters mentioned in the sixth schedule.

9 The sixth schedule of the lease contains covenants by the lessor. Para 7. "To keep the Reserved Premises and all fixtures fittings ..... properly maintained ..including renewal or replacement of all worn or damaged parts . "

The Law

10. The relevant law is contained in the Landlord and Tenant Act 1985 ("the Act"), as amended by the Commonhold and Leasehold Reform Act 2002. The following are particularly relevant to this case

11. Section 20 of the Act provides for limitation of service charges unless consultation requirements have either been complied with in relation to the works or have been dispensed with by a leasehold valuation tribunal

12. Section 20ZA of the Act provides that 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.

13. The Service Charges (Consultation Requirements)(England) Regulations 2003 relate to the amount that tenants can be required to contribute, by the payment of service charges, to relevant costs incurred by landlords in carrying out works or under certain agreements.

Directions

14. Directions were made by a member of the Panel on 23 January 2006 as to procedures to be followed prior to a hearing. The applicant had complied with these. There had been no reply from the respondents.

The Hearing

15. This was held at the Wells Place Centre in Eastleigh. Mr Duggan attended it for the applicant. None of the respondents was either present or represented

The Case for the Applicant

16. Mr Duggan stated that he had been employed by the applicant as Contract Surveyor for about fifteen months. His responsibilities included dealing with Section 20 procedures. He did not have direct responsibility for lifts; these were the responsibility of Mr John Dyson as Maintenance Manager. Mr Dyson dealt with the Group's Property Consultants McBains Cooper (MC), who in turn dealt with the contractors, ThyssenKrupp Elevator UK. (TK)

17. Item A of the applicant's bundle is the Procedure Objective for Lift Maintenance and Repair It refers to a maintenance contract with TK and to MC's role as Lift Consultant.
18. In MC's letter of 11 May 2005 to Mr Dyson they include, as works recommended for next year, Item 6 Orchard Walk New Controller including wiring £15,000, giving it relatively low priority.
19. In his letter of 7 November to HVHS, Mr Stratton, the tenant of No 11, among other matters reported the residents' concern at the service of the lift contractors, the lift having been out of action for a week recently. The was passed on to MC for investigation.
20. A quotation was received from TK in their letter dated 5 December 2005. They recommended to supply and fit a new Lester Controller Their price to include test and test weights, wiring, tapeheads and limits for the sum of £9494.33 +VAT The price was valid for 30 days
21. The applicant's plan was for the cost to be met from the Sinking Fund, which currently had a credit balance of nearly £87,000.
22. Mr Duggan reported on a meeting with residents on 8 February About ten residents attended this No minutes of the meeting were available The proposed works were explained and there were no objections from the residents.
23. Mr Duggan said that he understood that there was a long-term agreement with TK and that it had been in existence for about six years. The agreement was reviewed annually when revised rates were agreed. He was not able to produce any documentary evidence of any such agreements or contracts.
24. On application, the Tribunal adjourned the hearing for thirty minutes to enable Mr Duggan to make telephone enquiries to his office and to MC
25. On resumption, Mr Duggan said that the Group had an agreement with MC starting with a tender document in about 1999 for a term of three years in respect of their consultancy role; this has since been renewed annually.
26. TK were appointed Service Engineers in the early 2000's on what is believed to be an annual contract
27. HVHS had merged with Kingfisher effective from 1 January 2006 The Service Provider for the combined Group would be Wessex Housing Partnership Limited.
28. Mr Duggan did not expect there to be any changes to maintenance arrangements and commitments within the current year. The contracts / agreements with both MC and TK will be under review and were expected to be subject to a re-tender. Mr Duggan had already initiated the Section 20 procedure with a view to entering into new long-term agreements. Lift maintenance contracts had already gone out to tender.
29. On application, the Tribunal adjourned the Hearing for production of documentary evidence by HVHS and for further representations. These were to be submitted to the Tribunal's office by 22 February The tribunal would then make their decision without a further Hearing
30. The chairman issued written directions accordingly
31. Mr Duggan, with his letter of 21 February, enclosed documents relating to the meeting with tenants on 8 February 2006 and a lift maintenance report for HVHS prepared by MC and dated 20 February 2006

32. Mr Duggan asked for an order from the tribunal that the respondents reimburse the fees incurred by the applicant in respect of the application and the hearing.
33. The notification of the meeting was dated 23 January. Item 3 of the Agenda related to the "Lift Works" The minutes of the meeting set out details of the discussions relating to the lift, including the statutory and contractual procedures and liabilities. Questions from tenants were answered None of the tenants wished to attend the hearing.
34. The report by MC on lift maintenance at Orchard Walk bears the reference Job No. LME 22072 MC have been lift advisory consultants for HVHS since 1997 The original contractor was D & A Lifts They were taken over by TK in 2001 though they continued to trade as D & A until July 2005 Since then TK have carried on the business using the same rates as D & A.
35. Following faults in the controller in October 2005 a controller processor had to be obtained from Stannah The remaining parts of the controller are still the original and any subsequent breakdowns could involve a lengthy downtime. Following further investigation it was recommended that a new control system be installed.
36. TK's quotation was obtained and they have subsequently confirmed that this price would hold notwithstanding that the 30-day validity had been exceeded The quotation of £9,493.33 +VAT is stated to be fair and reasonable and in line with similar costs received on other projects The Lift Maintenance Contractor will maintain the new controller. MC do not recommend that it be supplied and installed by an outside agency so as to avoid the situation of split responsibilities In any event having now to obtain competitive quotations for the work would delay the project by up to six months. This would not be in the best interests of the residents
37. The appendices to the MC report contain extracts from the original 1997 maintenance contract, including schedules of works and rates
38. Other appendices are copies of breakdown reports, the last being dated 28 July 2005.

The Case for the Respondents

39. Mr Stratton, in his letter of 27 February, stated that the residents were in favour of the work being carried out as soon as possible to ensure an efficient, breakdown-free lift with the minimum of fuss. No one wished to make representations, seventeen out of nineteen residents having attended the meeting on 8 February. No other representations were received.

Findings and Decisions

40. The tribunal found that the applicant had established the need for the specified works to be carried out urgently They had demonstrated that there was a practical case for the works being done by TK They had shown that there was a long-term relationship with MC and with TK and/or D & A Lifts. They had argued effectively that to use another contractor could be detrimental to future maintenance liabilities and to the interests of the respondents.

41 The tribunal were satisfied that HVHS had provided the residents with sufficient information to enable them to understand what was involved in the works and the costs thereof and that the residents were in favour of the works proceeding on the basis that the costs came out of the sinking fund

42. The tribunal accordingly determined that it is reasonable to dispense with the consultation requirements of Section 20 of the Act in respect of the matters, which are the subject of this application.

43. In response to the applicant's request (paragraph 32 above) for reimbursement of fees from the respondents, the tribunal determined that it would be just and equitable in the circumstances to order that the respondents reimburse the applicants their fees incurred in respect of the application.

Signed ..... J H S Preston JP FRICS Chairman

Dated 17 March 2006