

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/OOMS/LDC/2007/0012

REASONS

Application : Section 20ZA of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

Applicant/Landlord : Southampton City Council

Respondent/Leaseholders : all the leaseholders in the Buildings, as listed in appendix 2 to the application (pages 12 and 13 of the Applicant/Landlord’s bundle)

Buildings : blocks in Howards Grove, Ridding Close, St James Close, Vaudrey Close, Golden Grove, James Street, and St Michaels Square, all in Southampton, as listed in appendix 1 to the application (page 11 of the Applicant/Landlord’s bundle)

Flats : The residential Flats in the Buildings

Date of Application : 30 March 2007

Date of Directions : 11 April 2007

Date of Hearing : 5 July 2007

Venue : Wells Place Centre, Eastleigh Baptist Church, Wells Place, Eastleigh

Attendances on behalf of the Applicant/Landlord : Mrs Mary Kigonya, Mrs Christine Ward, and Mr Michael Cummine

Also in attendance : Mrs Jill Campbell

Attendances by Respondent/Leaseholders : Mr C A Trowbridge (57 St James Close) and Mrs D M Lamb (68 St James Close)

Members of the Tribunal : Mr P R Boardman JP MA LLB (Chairman), Mr P D Turner-Powell FRICS, and Mrs M Phillips JP

Date of Tribunal’s Reasons : 9 July 2007

Introduction

1. This Application by the Applicant/Leaseholders is under section 20ZA of the 1985 Act, namely for the Tribunal to determine whether it is reasonable to dispense with certain of the consultation requirements referred to in section 20 of the 1985 Act, and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”)
2. On the 11 April 2007 the Tribunal gave directions
3. The hearing of the application took place on the 5 July 2007

The 1985 Act and the 2003 Regulations

4. Section 20 of the 1985 Act provides as follows :

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, 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.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined

5. The material parts of the 2003 Regulations are :

Reg. 6

For the purposes of subsection (3) of section 20 [of the 1985 Act] the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250

schedule 1

consultation requirements for qualifying long term agreements other than those for which public notice is required

Notice of intention

Para 1

(1) The landlord shall give notice in writing of his intention to enter into the agreement-

(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 relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;

(b) state the landlord's reasons for considering it necessary to enter into the agreement;

(c) where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;

(d) invite the making, in writing, of observations in relation to the proposed agreement; and

(e) 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 in respect of the relevant matters.

Inspection of description of relevant matters

Para 2

- (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 relevant matters 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 agreement

Para 3

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

Estimates

Para 4

- (1) *Where, within the relevant period, a single 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 single 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).*

Preparation of landlord's proposals

Para 5

- (1) *The landlord shall prepare, in accordance with the following provisions of this paragraph, at least two proposals in respect of the relevant matters.*

- (2) *At least one of the proposals must propose that goods or services are provided, or works are carried out (as the case may be), by a person wholly unconnected with the landlord.*
- (3) *Where an estimate has been obtained from a nominated person, the landlord must prepare a proposal based on that estimate.*
- (4) *Each proposal shall contain a statement of the relevant matters.*
- (5) *Each proposal shall contain a statement, as regards each party to the proposed agreement other than the landlord-*
 - (a) *of the party's name and address; and*
 - (b) *of any connection (apart from the proposed agreement) between the party and the landlord.*
- (6) *For the purposes of sub-paragraphs (2) and (5)(b), it shall be assumed that there is a connection between a party (as the case may be) and the landlord-*
 - (a) *where the landlord is a company, if the party 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 party 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 party 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 party 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 party 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.*
- (7) *Where, as regards each tenant's unit of occupation and the relevant matters, it is reasonably practicable for the landlord to estimate the relevant contribution attributable to the relevant matters to which the proposed agreement relates, each proposal shall contain a statement of that estimated contribution.*
- (8) *Where-*
 - (a) *it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7); and*
 - (b) *it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of his expenditure under the proposed agreement,*
each proposal shall contain a statement of that estimated expenditure.
- (9) *Where-*
 - (a) *it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7) or (8)(b); and*
 - (b) *it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters,*
each proposal shall contain a statement of that cost or rate.
- (10) *Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants*

which relate to the management by him of premises to which the agreement relates, each proposal shall contain a statement-

(a) that the person whose appointment is proposed-

(i) is or, as the case may be, is not, a member of a professional body or trade association; and

(ii) subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and

(b) if the person is a member of a professional body trade association, of the name of the body or association.

(11) Each proposal shall contain a statement as to the provisions (if any) for variation of any amount specified in, or to be determined under, the proposed agreement.

(12) Each proposal shall contain a statement of the intended duration of the proposed agreement.

(13) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, each proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

Notification of landlord's proposals

Para 6

(1) The landlord shall give notice in writing of proposals prepared under paragraph 5-

(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) be accompanied by a copy of each proposal or specify the place and hours at which the proposals may be inspected;

(b) invite the making, in writing, of observations in relation to the proposals; and

(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.

(3) Paragraph 2 shall apply to proposals made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

Duty to have regard to observations in relation to proposals

Para 7

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

Duty on entering into agreement

Para 8

- (1) Subject to sub-paragraph (2), where the landlord enters into an agreement relating to relevant matters, he shall, within 21 days of entering into the agreement, by notice in writing to each tenant and the recognised tenants' association (if any)-*
- (a) state his reasons for making that agreement or specify the place and hours at which a statement of those reasons may be inspected; and*
- (b) where he has received observations to which (in accordance with paragraph 7) he is required to have regard, summarise the observations and respond to them or specify the place and hours at which that summary and response may be inspected.*
- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the agreement is made is a nominated person or submitted the lowest estimate.*
- (3) Paragraph 2 shall apply to a statement, summary and response made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.*

Documents

6. The documents before the Tribunal are the Applicant/Landlord's bundle numbered 1 to 115, and a bundle submitted by Mr Trowbridge numbered 1 to 31

Inspection

7. The Tribunal inspected the exterior and internal ground floor entrance area of the block known as 84 to 124 Howards Grove on the morning of the hearing on the 5 July 2007. The Applicant/Landlord was represented at the inspection by Mrs Kigonya, Mrs Ward, and Mr Cummine
8. The block was of concrete frame construction, with brick cladding and a flat roof. The central section comprised 3 storeys. There were 4 storeys at each end. There was an open-access balcony access-way to the first and second floors. It appeared to have been built in the late 1960's
9. In the ground floor entrance area was an intake cupboard. The mains power cable went into 2 boxes, out of which 4 smaller cables took power up to the first floor
10. Mr Cummine told the Tribunal that there was a similar arrangement in each of the other Buildings
11. Mr Trowbridge had asked the Tribunal to inspect his block, namely 37 to 60 St James Close. The Tribunal attended that block, but were unable to gain access to Mr Trowbridge's Flat

Preliminary and procedural matters

12. The Tribunal explained at the hearing that the Tribunal's jurisdiction in this case was limited to

the question raised in the application, namely whether it was reasonable to dispense with certain of the consultation requirements. Other matters, such as whether the proposed works were reasonable, or whether a service charge was or would be payable in relation to the costs involved, were not the subject of the present application

The Leases

13. Samples of leases are copied at pages 18 and 33 of the Applicant/Landlord's bundle, and include obligations by the Applicant/Landlord to maintain electric cables and wires, and obligations by Respondent/Leaseholders to pay a service charge

Applicant/Landlord's statement of case (Applicant/Landlord's bundle page 71)

13. The Applicant/Landlord wished to enter into a long term agreement to replace the electrical supply cables running through the Buildings. Before doing so, the Applicant/Landlord would consult with the Respondent/Leaseholders in accordance with the 2003 Regulations. However, part of the work, namely upgrading the Respondent/Leaseholders' domestic electricity supply, had to be carried out by Scottish and Southern Energy. Although the remainder of the work was suitable for tender in the usual way, the Applicant/Landlord was proposing to use Scottish and Southern Energy to carry out both parts of the work, to avoid the cost and disruption of having two separate contractors
14. The relevant consultation procedure was the procedure set out in schedule 1 to the 2003 Regulations. However, the consequence of the proposal to contract only with Scottish and Southern Energy was that the prescribed consultation procedure could not be carried out in full. The Applicant/Landlord was therefore seeking dispensation from carrying out that procedure in full by seeking permission :
 - a. not to invite nominations for a contractor from Respondent/Leaseholders
 - b. not to obtain estimates from any nominated person should nominations be made in any event
 - c. not to prepare two estimates from two contractors
 - d. not to send a letter informing Respondent/Leaseholders of the award of contracts
15. The consultation process would then continue. Respondent/Leaseholders would still have an opportunity to comment on and make informed decisions about the proposed works, despite the lack of choice of contractor

Statement of Mr Cummine (Applicant/Landlord's bundle page 77)

16. Mr Cummine stated that he was the Assistant Electrical Engineering Manager for the Applicant/Landlord
17. As a result of an incident at another similar block elsewhere, the Applicant/Landlord had reviewed the capacity of all similar cable installations, including the Buildings
17. The Buildings were 35 to 45 years old. They were fitted with a landlord-controlled partial heating system, provided by two under-floor heating mats. No heating was provided for bedroom areas. The landlord-controlled heating was supplemented by a focal electric fire installed in each living room, but supplied from the tenant's fuse board. The cabling was the original cabling, based on typical use at that time. Electrical use had increased dramatically since then, with the increased use of white goods, computers, and increased heating. The present cabling had no capacity for, and had proved unreliable with, any extra load
18. A single common riser cable fed through each block to junction boxes on each floor. From the junction box two cables ran into each flat. One fed the tenant's domestic supply for sockets and lighting, which was metered in each flat. The second fed the landlord's heating, which was metered on each floor
19. The Applicant/Landlord had asked Scottish and Southern Energy for an increase in the electrical supply to the Buildings to resolve the risk of overload. Scottish and Southern Energy had stated that only they could undertake the work to upgrade the tenant's domestic supply in each case, whereas any approved contractor could undertake the work for the landlord's supply. The Applicant/Landlord had checked the position, and accepted that Scottish and Southern Energy were correct
20. The Applicant/Landlord proposed to use Scottish and Southern Energy to carry out both elements of the work, because :
 - a. both elements would involve working along the same cable trunking
 - b. using two contractors would involve two different contracts which was likely to involve double costs and more disruption
 - c. there would be a greater disruption in electrical supply because reconnection could not take place until both elements of the work had been completed
 - d. there were contractual complications such as determining who would be responsible for the work and cabling for the site
21. The Applicant/Landlord realised that this would cause a problem with the consultation process because the 2003 Regulations required quotes to be obtained from at least two contractors, and the Applicant/Landlord was asking for dispensation from those parts of the consultation

procedure accordingly

Letter from Scottish and Southern Energy 12 January 2007 (Applicant/Landlord's bundle page 84)

22. Scottish and Southern Energy stated that where alterations and upgrades were made to existing Scottish and Southern Energy equipment, the work was "non-contestable". It could be carried out only by Scottish and Southern Energy

Scottish and Southern Energy statement of charging methodology 23 March 2006 (Applicant/Landlord's bundle page 87)

23. In his statement, Mr Cummine referred to section 2, paragraph 1 table 2 (page 99) as detailing "non-contestable" connection work, and point 8 ("carry out any reinforcement/diversion work on [Scottish and Southern Energy's] existing system") as showing the relevant details for the upgrade of the tenant's domestic supply
24. In his statement, Mr Cummine referred to section 3, paragraph 1, table 3 (page 102) as detailing "contestable" connection work, which might be carried out by Scottish and Southern Energy or the customer, and point 5 ("undertake construction of contestable connection works") as showing the relevant details for the "contestable" element of the proposed works

Statement of Mrs Ward (Applicant/Landlord's bundle page 104)

25. Mrs Ward stated that she was a Leasehold Sales Supervisor for the Applicant/Landlord
26. The Applicant/Landlord wished to consult the Respondent/Leaseholders about the proposed works in accordance with the 2003 Regulations, but to seek dispensation from certain of the requirements for the reasons set out in Mr Cummine's statement
27. Mrs Ward set out in her statement the requirements in respect of which dispensation was sought, as set out in the Applicant/Landlord's statement of case, and the stages of the consultation process which the Applicant/Landlord would adopt if dispensation were granted, and exhibited drafts of the letters and notices which would be sent to Respondent/Leaseholders during that process

Oral evidence of Mrs Kigonya

28. Mrs Kigonya stated that she was a solicitor for the Applicant/Landlord. She summarised the Applicant/Landlord's application as set out in the statement of case
29. There was no cross-examination

Oral evidence of Mr Cummine

30. Mr Cummine summarised his evidence as set out in his statement. He was satisfied that Scottish and Southern Energy were correct to say that only Scottish and Southern Energy could carry out the work to the domestic supply. It would be more time-efficient and more cost-efficient to contract only with Scottish and Southern Energy, not also for those works, but also for other works. In terms of time-efficiency, if the Applicant/Landlord used more than one contractor there would be issues such as deciding who would put the tray-work up, providing two sets of accommodation for workers, deciding who would own the site while the work was carried out, and deciding who was responsible for making good. There would be a longer period of disruption with no power, because power would have to be switched off for one contractor, and then switched off again for the other contractor. In terms of cost-efficiency, if the Applicant/Landlord used more than one contractor there were likely to be additional costs because of the site set-up, and because of co-ordinating two contractors
31. In cross-examination Mr Trowbridge asked what could have caused the overload in the other block, bearing in mind that the existing cable appeared to be adequate. The Tribunal indicated that this was a question relating to the question whether the works were necessary at all, rather than to the present question before the Tribunal, namely whether certain of the requirements in the consultation procedure should be dispensed with, but nevertheless invited Mr Cummine to respond. Mr Cummine said that the present cables might have been adequate when the Buildings were built, but that there were now more white goods, such as microwaves, and people nowadays had electrical equipment which did not exist when the Buildings were built, such as computers and DVD players. Also, people used more heating now than in the past. Much of the fusing was old. Upgrading the cabling and wiring would enhance the value of the Flats
32. Mr Trowbridge also referred to documents and photographs dealing with ongoing asbestos works at his block and Mrs Lamb's block. Cables had been left dangling. Mr Cummine said that the works had not yet been completed, but that he would ensure that this was rectified
33. Mr Trowbridge also put it to Mr Cummine that the block where the problem had occurred which had triggered the proposals to replace the electricity rising mains was a taller block. Mr Cummine responded that that block had had cabling of a proportional size, and that the essence

of the problems in the Buildings, namely that the present cabling was inadequate for present needs, was the same as in the other block

Oral evidence of Mrs Ward

34. Mrs Ward confirmed the evidence in her statement. She said that the Applicant/Landlord was proposing to follow the whole of the consultation procedure set out in the 2003 Regulations, save only for the requirements relating to the obtaining of two estimates

35. In cross-examination, Mr Trowbridge also said that some of the current asbestos work would have to be carried out again when the proposed re-wiring was carried out. However, the Tribunal once again indicated that this was a question relating to the question whether the works were necessary at all, or to the question whether a service charge was or would be payable in relation to the costs involved, rather than to the present question before the Tribunal, namely whether certain of the requirements in the consultation procedure should be dispensed with

Oral evidence of Mr Trowbridge and Mrs Lamb

36. In answer to questions from the Tribunal, and in relation to the present application by the Applicant/Landlord, namely whether it was reasonable to dispense with certain of the consultation requirements in relation to the proposed replacement of the electricity rising mains, both Mr Trowbridge and Mrs Lamb agreed with the view of the Applicant/Landlord that only Scottish and Southern Energy should be asked to quote for the “non-contestable” work, and that it was therefore sensible that only Scottish and Southern Energy should be asked to quote for the remaining work as well

The Tribunal’s findings

37. Having considered all the evidence in the round, the Tribunal accepts the evidence given on behalf of the Applicant/Landlord as straightforward and persuasive, and the Tribunal finds, in relation to the proposed works referred to in the application, that
 - a. the proposed works comprise replacement with upgraded cables of the domestic electricity supply to each Flat and the landlord’s electricity supply to each floor of the Buildings

 - b. only Scottish and Southern Energy can carry out the proposed works to the domestic electricity supply to each Flat, for the reasons summarised by Mr Cummine, which the Tribunal find to be corroborated by the letter from Scottish and Southern Energy dated the 12 January 2007 and by the Scottish and Southern Energy statement of charging methodology dated the 23 March 2006

- c. other approved contractors could, in theory, carry out the remainder of the proposed works
- d. however, it is sensible, from the point of view of time-efficiency and cost efficiency, and in the interests of reducing the disruption to Respondent/Leaseholders of the electricity supply to the Flats, for the Applicant/Landlord to consider contracting only with Scottish and Southern Energy to carry out all the proposed works, as agreed by Mr Trowbridge and Mrs Lamb at the hearing
- e. it is therefore reasonable for the Applicant/Landlord, when carrying out the consultation procedure under the 2003 Regulations in relation to the proposed works, to dispense with those requirements which relate to the seeking of nominations from other contractors and to the obtaining of more than one estimate
- f. the points of dispensation requested in the Applicant/Landlord's statement of case are reasonable in all the circumstances

38. The Tribunal accordingly dispenses with the following consultation requirements referred to in section 20 of the 1985 Act and in the 2003 Regulations, so far as the proposed works are concerned :

- a. to invite nominations for a contractor from Respondent/Leaseholders
- b. to obtain estimates from any nominated person should nominations be made in any event
- c. to prepare two estimates from two contractors
- d. to send a letter informing Respondent/Leaseholders of the award of contracts

Dated the 9 July 2007



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P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor