

LON/00AH/LDC/2006/0087
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 20ZA OF
THE LANDLORD AND TENANT ACT 1985, AS AMENDED.

Address: 28 St Aubyns Road, London SE19 3AA

Applicant: Fairhold 2003 Ltd

Respondents: Mr N T Plank (Basement Floor Flat)
Mr L Sheriff (Ground Floor Flat)
Ms K Machell and Mr A Egan (First Floor Flat)
Ms D Brown (Second Floor Flat)

Paper Hearing Date: 19 December 2006

Members of the Tribunal: Mrs J Goulden JP Chairman
Mr P Roberts DipArch RIBA
Mr D Wilson JP

PROPERTY: 28 ST AUBYNS ROAD, LONDON, SE19 3AA

BACKGROUND

1. The Tribunal was dealing with an application dated 10 November 2006 under Section 20ZA of the Landlord and Tenant Act 1985, as amended (hereinafter referred to as "the Act"), for the dispensation of all or any of the consultation requirements contained in Section 20 of the Act.
2. The Tribunal was advised that 28 St Aubyns Road, London, SE19 3AA (hereinafter referred to as "the property") is a mid-terraced Victorian house converted into four flats.
3. The Applicant is Fairhold 2003 Ltd (represented by County Estate Management) and the Respondents are Mr N T Plank (Basement Flat), Mr L Sheriff (Ground Floor Flat), Ms K Machell and Mr A Egan (First Floor Flat) and Ms D Brown (Second Floor Flat).
4. The Applicant requested a Paper Hearing. No request for an oral hearing was received from or on behalf of any of the Respondents. Directions were issued by the Leasehold Valuation Tribunal on 15 November 2006.
5. Written submissions on behalf of the Applicant company were sent to the Tribunal on 1 December 2006.
6. No submissions were received from the Respondent save for a letter dated 21 November from Ms D Brown which stated:-

"I write as the leaseholder of flat B, 28 St Aubyn's Rd London SE19 3AA, and wish to confirm that I have no objection to the LVT dispensing with the consultation provisions under Section 20 of the Landlord & Tenant Act, 1987 (as amended) and Commonhold & Leasehold Reform Act 2002, as I consider the works to be a genuine emergency, and are mindful that additional costs may be incurred for scaffolding etc. should these essential works be delayed."

and a letter dated 23 November 2006 from Ms K Machell and Mr A Egan which stated:-

"We write as the leaseholders of the First Floor Flat 28 St Aubyns Rd, Upper Norwood and wish to confirm that we have no objections to the LVT dispensing with the consultation provisions under Section 20 of the Landlord & Tenant Act 1987 (as amended) and Commonhold and Leasehold Reform Act 2002, as we consider the works to be a genuine emergency, and are mindful that additional costs may be incurred for scaffolding etc should these essential works be delayed."

The Applicant's case

7. In written submissions dated 1 December 2006, Ms A Mooney, Associate Director, County Estate Management on behalf of the Applicant company stated:-

"We have managed this property since the freehold was purchased by our clients in 2003, and as such, planned a full programme of external redecoration and repairs to take place in Spring/Summer 2006.

Due to difficulties in obtaining payment from two of the tenants (Basement and Ground Floor flats), which are currently the subject of legal action for recovery, the works project was delayed until Autumn 2006, when it was agreed with the leaseholders of the first and second floor flats, who had settled their contributions, that we would undertake works to the front elevation of the property, and leave the rear elevation until such time as the contributions had been recovered from the defaulting leaseholders.

(This would not be our normal practice, but the leaseholder of the first floor was experiencing considerable water penetration through the bay window, and as such, it appeared to be the most sensible option to progress works in this manner, although it could slightly increase costs overall in the long term. The contractor and supervising surveyors were also consulted and were happy to proceed on the basis of carrying out 50% of the project, with the balance to follow in 2007)

Once the works to the front bay of the first floor flat were underway and the area behind the render exposed, it became immediately apparent to the contractors and supervising surveyor that there were serious issues that had not been apparent when the specification of works were initially drawn up. As such a structural engineer was called to site and a copy of his report and recommendation is attached with the bundle.

The contractors, having completed all other works that they are able to attend to other than the works to the front bay (which has been shielded from further water ingress by temporary coverings), have left the scaffolding temporarily on site so as to avoid the cost of strike and re-erection as and when the additional works are given the go ahead – however clearly for each week that passes, the costs are rising, which added to the potential further damage to the building should the temporary shielding fail to keep out the weather, and of course the extreme anxiety and inconvenience to all tenants, but particularly the tenants of the first floor flat, means that we would ask the Tribunal to give speedy consideration to the application before them.

It should also be noted that we do have the Landlords agreement to pre-fund the works, pending funds being available through the service charge account in the normal way."

8. In support, the Tribunal was provided with a copy of a report from Structural Reports Ltd dated 6 November 2006 which confirmed a fracture through one of the stone lintels. Demolition to first floor window cill level and rebuilding of the bay piers and lintel were recommended. In addition, a letter from surveyors, Redmond & Associates, dated 20 November 2006 stated, inter alia

“As noted by the structural engineers report, the pillars to the bay and lintols are constructed in stone and are in very poor condition, the engineer states that they are reaching the end of their economic life and his recommendations are for it to be replaced now. The external decorations cannot be carried out until these repairs are undertaken.

It is therefore imperative that these repairs are carried out as soon as possible in order that redecorations can be complete and the scaffold struck prior to Christmas. Every week of additional hire of the scaffold is costing in the region of £100 to the lessees and with a two week shut down at Christmas which will further extend the costs unless we undertake these repairs immediately.”

9. The Tribunal was also provided with copy of the Notice of Intention to carry out the original works of redecoration dated 14 May 2005 and a copy of the Section 20 Notice dated 17 May 2006.

THE TRIBUNAL'S DETERMINATION

10. Regulation 7(4) of the Service Charges (Consultation Requirements) (England) Regulations 2003 sets out the qualifying works for which public notice is not required, and, in order to assist the parties, these can be summarised as follows:-

Notice of intention

A notice of the landlord's intention to carry out qualifying works (i.e. works on a building or any other premises) must be sent to each leaseholder and to any recognised tenants' association (RTA) (if any). This notice must, inter alia,

- (a) Describe in general terms the works proposed to be carried out or specify a place and hours where the proposals can be inspected;
- (b) State the landlord's reasons for considering it necessary to carry out the proposed works;
- (c) Invite observations in writing;
- (d) Specify:
 - the address to which such observations must be sent;
 - the date on which the consultation period ends (30 days);
 - nominate a person from whom the landlord should try to obtain an estimate for carrying out the works (again within 30 days).

The place and hours for inspection must be reasonable and a description of the relevant matters must be available for inspection free of charge. If copies cannot be made on inspection, the landlord must provide a copy, on request by the tenant, and again free of charge.

Where observations are made within 30 days the landlord must have regard to them.

Obtaining estimates

At least two estimates must be obtained and where a contractor is nominated by the leaseholders, the regulations provide that if only one leaseholder nominates a contractor, the landlord must try and obtain an estimate from that contractor. There are further provisions where nominations are made by more than one leaseholder.

Following the receipt of tenders, a further notice must be sent.

Notification of the estimates

This notice must be sent to each leaseholder and the RTA (if any).

It must include a statement containing:-

- (i) for at least two for the estimates, the amount specified in the estimate as the estimated cost of the proposed works (one of which must be from a contractor wholly unconnected with the landlord. In addition, one of them must be from a nominated contractor, if an estimate was obtained);
- (ii) where leaseholders have made observations by the due date, the landlord must provide a summary of them and his responses to them;
- (iii) specify a (reasonable) place and hours at which all the estimates may be inspected;
- (iv) invite observations in writing regarding the estimates;
- (v) give the address and the date by which (30 days) observations must be sent;
- (vi) state that they must be delivered by the due date;
- (vii) if facilities to provide copies of the documents referred to in 3(i) are not available at the place specified, then copies must be provided free on request.

The landlord must have regard to any observations received by the due date.

Award of contract

Notification of the award of contract

This notice is not required if a tender from a nominated contractor or the lower tender is accepted. Otherwise within 21 days the landlord must send a notice to each leaseholder and the RTA (if any) –

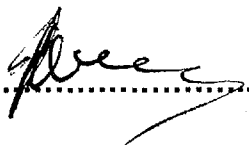
- (a) stating the reasons for awarding the contract, or giving the place and hours where those reasons may be inspected; and
- (b) giving a summary of leaseholders' observations on the estimates and the responses to them on a place and hours where they may be inspected.

11. Section 20ZA(1) of the Act states –

“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”.

- 12. In the view of the Tribunal, this legislation was enacted for a purpose which includes a greater involvement in the consultation process by those who ultimately will be paying the bill. Because of this, greater transparency must be shown by those incurring the costs in the first instance.
- 13. The question for the Tribunal in this case is clearly one of reasonableness. Section 20ZA does not require the Tribunal to be satisfied that the landlord acted reasonably but rather whether it is reasonable in the circumstances of this case to dispense with all or any of the consultation requirements.
- 14. In this case, the Tribunal has been advised that there had been considerable water penetration through the bay window of the first floor flat. We are now entering the winter period and if remedial works are not carried out quickly there may well be further deterioration to the fabric of the building.
- 15. In the view of this Tribunal, no prejudice is caused to the Respondents by dispensation of the consultation requirements and it is noted that the tenants of two of the four flats have confirmed that they have no objections and nothing has been heard from the remaining two tenants.
- 16. All cases must be decided on their merits. In the circumstances of this particular case, the Tribunal determines that that part of the consultation requirements contained in Section 20 of the Act which have not been complied with may be dispensed with.

CHAIRMAN.....



DATE.....

5 January 2007