RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 section 20ZA

LON/00AU/LDC/2008/0006

Addresses: **1-24 Park View, Collins Road, London N5 and 1-36 Vaudeville Court, St Thomas Road, London N4**

Applicant: **HOMES FOR ISLINGTON**

Respondents: **Flats 5, 11, 16 and 23 Park View and flats 3, 17, 28, 34 and 36 Vaudeville Court**

Tribunal: **Mr N. GERALD**
Mr C. Kane FRICS

Date of decision: **26th March 2008**

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

Introduction

1. On 8th January 2008 the Applicant landlord Homes for Islington applied for dispensation of the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") in respect of its proposed installation of water pumps to boost the mains water pressure at 1-24 Park View, Collins Road, London N5 ("Park View") and 1-36 Vaudeville Court, St Thomas Road, London N4 ("Vaudeville Court") consequent upon the reduction of water pressure throughout the London Borough of Islington by Thames Water (respectively, the "Park View Works" and the "Vaudeville Works").

2. Park View and Vaudeville Court are independent blocks of flats some distance from each other. It is proposed to install separate booster pumps to service each block separately. Flats 5, 11, 16 and 23 Park View are held on long leases ("the Park View Respondents"). Flats 3, 17, 28, 34 and 36 Vaudeville Court are held on long leases ("the Vaudeville Respondents"). Given that the Application relates to two quite separate buildings, it is surprising that two separate Applications have not been made.

3. On 18th January 2008, the Tribunal gave directions for the determination of this Application to be dealt with on paper track unless a hearing is requested ("the Directions"). By direction 2, the Applicant was directed to provide a copy of the Application and Directions to each Respondent.

4. On the evidence provided by the Applicant, it has complied with direction 2 in respect of the Vaudeville Respondents but has not complied with direction 2 in respect of the Park View Respondents.

5. By undated letter, three of the five Vaudeville Respondents (flats 17, 34 and 36) objected to dispensation with regard to the Vaudeville Works because "we feel we have a right to a full consultation with regard to the final design, cost and siting (*sic*) of the proposed pumping station... [we] feel we will obtain the best value for money with regard to this development through a proper process of consultation and planning."

6. No response has been received from Park View Respondents – no doubt because they have not been provided with copies of the application and directions by the Applicant in breach of direction 2 of the Directions.

7. The Tribunal also notes that section 7 of the Application states that the Application does not concern any qualifying works or long-term agreement. If that is correct, no dispensation would of course be required under the Act. However, in view of the content of the rest of the Application, the Tribunal assumes that that is in error and that the Application does concern qualifying works.

8. The Tribunal also notes that is has not been provided with copies of the long leases of each of the Respondents. The service charge provisions set out in the Third Schedule, paragraphs 1(a)(iii) of the leases would appear to result in the costs of the Park View and Vaudeville Works being recouped from the long leaseholders.

The law

9. Section 20(1) of the Act provides that, where the section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with sub-sections (6) or (7) or both unless the consultation requirements have been either –

   (a) complies within 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.

10. Section 20ZA(1) 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 an determination if satisfied that it is reasonable to dispense with the requirements.

11. Section 20ZA(2) defines "qualifying works" as "works on a building or any other premises" and "qualifying long term agreement" as (subject to sub-section (3) and agreement entered into, by or on behalf of a landlord or a superior landlord, for a term of more than 12 months.

12. Section 20(3) of the Act provides that section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate

amount, defined by Regulation 6 of The Regulations, as an amount which results in the relevant contribution of any tenant being more than £250.

13. By Regulation 4 of the Regulations,, section 20 of the Act applies to a qualifying long term agreement if relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.

14. Section 20ZA does not require a Tribunal to make any determination on the costs of the works or the proposed agreement.

The decision

15. The consultation provisions of section 20 of the Act are intended to ensure that long leaseholders who will have to bear a proportion of the costs of any intended works under the service charge provisions of their leases are properly consulted. Those are important safeguards for long lessees.

16. However, circumstances can arise where there is a level of urgency such that the consultation requirements cannot reasonably be implemented in their entirety or in part or it would otherwise be unreasonable to do so. Typical situations would be where emergency works are required to safeguard the building or its occupants or more extensive disrepairs are revealed during the course of a major works programme making it cost-effective and in the interests of good estate management for those works to be implemented without full consultation.

17. The purpose of section 20ZA is to permit the section 20 consultation requirements to be dispensed with in whole or in part where the Tribunal is satisfied that it is "reasonable" to do so. In assessing reasonableness, the Tribunal is entitled to take into account the context of the requirement for, in this case, provision of the booster pumps and any pressing needs for them to now be installed without consultation.

18. In respect of the Vaudeville Court, the Tribunal dismisses the Application because it is not satisfied that it is reasonable to dispense with the consultation requirements of the Act for the following reasons:

    (a) The Applicant has been aware that Thames Water proposed to reduce the water pressure since 2005 and to that end carried out a section 20 consultation requirement with the Vaudeville Respondents in August 2006 having obtained competitive tenders from its approved list of contractors.

    (b) The Tribunal has not been provided with any information relating to the response of the Vaudeville Respondents to the 2006 section 20 consultation. It is not known whether they objected on similar grounds to that which is contained in their undated letter referred to above.

(c) Before proceeding with the Vaudeville Works as then envisioned, the Applicant and Thames Water reviewed the tenders as they were thought to be too high. Again, it is not known whether that review was instigated by any responses to the section 20 consultation made by the Vaudeville Respondents.

(d) The Applicant therefore decided to proceed with a modified scheme design in order to reduce costs, which resulted in the proposed works being redesigned and re-tendered in April 2007. On the evidence before the Tribunal, it does not appear that the Vaudeville Respondents were consulted or in any way informed about the nature, scope or reasons for the redesign. Equally, the Tribunal is unclear about the nature and extent of the modifications made to the Vaudeville Works as originally planned back in 2005/06.

(e) It appears that both the Applicant and Thames Water put the Vaudeville Works out to tender. Although the Tribunal does not have the results of all of the tenderers, the Applicant states that those provided by Thames Water's tenderers were approximately 20% below those obtained from the Applicant's tenderers.

(f) The Applicant proposes to award the Vaudeville Works contract to the Thames Water who, presumably, will then sub-contract to its lowest tenderer, although that is not clear.

(g) The Applicant has therefore had more than enough time to carry out the section 20 consultation process but has chosen not to do so. Section 20ZA is not intended or designed to enable a landlord to subvert or sidestep the consultation process, especially where a consultation process has already been carried out and the applicant-landlord has decided to re-design proposed works which it then seeks to impose upon the long leaseholders without (if consultation is dispensed with) any consultation at all.

(h) There may of course be circumstances that notwithstanding the landlord having had ample time to consult long leaseholders under section 20 matters are sufficiently pressing to justify dispensation of consultation.

(i) There is no evidence to satisfy the Tribunal that that applies here. Thames Water state that the pressure "changes will start to be implemented during the 3rd week of January 08". It is not known whether they have already been implemented in respect of Vaudeville Court: if they have, there is no indication that the pressure has in fact been so adversely affected to materially disrupt supplies; if they have not, there is no indication when the pressure will in fact been reduced or whether the reduction can be postponed to ameliorate the effect upon Vaudeville Court.

19. In respect of Park View, the Tribunal dismisses the Application because the Park View Respondents have not been provided with copies of the

Application or the Directions as required by direction 2. The Tribunal regards this as especially serious given the nature of the application.

20. Had direction 2 been complied with in respect of the Park View Respondents, it is likely that the Tribunal would have reached the same conclusion as it has in respect of Vaudeville Court for the essentially same reasons, save that it is not clear to the Tribunal whether or not a section 20 consultation process was carried out in respect of Park View as no related documents have been provided by the Applicant.

Decision date: 26th March 2008