

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/19UJ/LDC/2009/0027

REASONS

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

Applicant/Landlord : Weymouth and Portland Housing Limited

Respondent/Leaseholders : Mrs D Parry (Flat 3), Mrs S Stuart (Flat 5), Mr & Mrs K Forden (Flat 7), and Mr S Phillips (Flat 9)

Building : Carless Court, 1-11 Woolcombe Road, Portland, Dorset, DT5 2HY

Flats : The residential Flats in the Building

Date of Application : 24 August 2009

Date of Directions : 28 August 2009

Date of Hearing : 18 September 2009

Venue : Casterbridge Room, Kings Arms Hotel, 30 High East Street, Dorchester

Appearances on behalf of the Applicant/Landlord : Ms Dawn Dalkins and Mr Chris Blackbeard

Appearance on behalf of the Respondent/Leaseholders : no attendance or representation

Members of the Leasehold Valuation Tribunal : Mr P R Boardman JP MA LLB (Chairman), Miss R B E Bray BSc MRICS

Date of Tribunal’s Reasons : 18 September 2009

The Application

1. The application was dated the 24 August 2009. It was made under section 20ZA of the 1985

Act, namely for the Tribunal to determine whether it was reasonable to dispense with 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. The Applicant/Landlord stated that the application was urgent because the asbestos soil vent pipe was leaking. Repairs had been attempted but had been unsuccessful. It needed replacing as sewage water was leaking into the ground floor flat. Residents needed “decanting” as asbestos was involved
3. The Applicant/Landlord set out details of the proposed work. A section 20 notice of intention to carry out the works had been sent to each leaseholder. Estimates of the cost of works were being obtained and would be sent to each leaseholder concerned as soon as available. A signed agreement had been received by the Applicant/Landlord from the leaseholders of Flats 3 and 7 consenting to the works commencing prior to the full section 20 procedure being completed
4. The Applicant/Landlord was seeking dispensation from the consultation requirements because sewage water was leaking into the ground floor Flat 11, causing a health risk to the residents of the flat. Repairs had been attempted but were unsuccessful. Because of the severity of the problem the residents of Flat 11 had already had to be relocated to a holiday caravan until the work was completed

Directions

5. On the 28 August 2009 the Tribunal gave directions

Statutory provisions

6. 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

7. The material parts of the 2003 Regulations are :

Reg. 2 (1) In these Regulations-

"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice

Reg. 6

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

Schedule 4 Part 2

Para 8

(1) The landlord shall give notice in writing of his intention to carry out qualifying works-

(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 works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
- (c) invite the making, in writing, of observations in relation to the proposed works; and
- (d) 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.

Para 11

- (1) Where, within the relevant period, a 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 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).
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)-
 - (a) obtain estimates for the carrying out of the proposed works;
 - (b) supply, free of charge, a statement ("the paragraph (b) statement") setting out-
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
 - (c) make all of the estimates available for inspection.
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)-
 - (a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(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.*

Documents

8. The documents before the Tribunal are the application and supporting documents numbered 1 to 89 in the Tribunal's bundle, and the subsequent documents attached to the letter from the Applicant/Landlord dated the 8 September 2009

Inspection

9. The Tribunal inspected the exterior of the Building on the morning of the hearing on the 18 September 2009. Also in attendance were Ms Dalkins and Mr Blackbeard. None of the Respondent/Leaseholders was present
10. The Building was a 3-storey block of 6 Flats. It appeared to have been built in about the 1950's. It had a rendered finish, and had a pitched tiled roof
11. The Tribunal inspected Flat 11. The bathroom was bounded by the hall, the kitchen, the lounge, and a small room between the kitchen and the lounge. Behind the toilet was a boarded section from floor to ceiling, with a new skirting board around its base. Ms Dalkins and Mr Blackbeard said that behind it was a new soil pipe, which had just been installed to replace the old soil pipe which was the subject of this application. There was some evidence of damp at floor level in the small room between the kitchen and the lounge behind the new boarded section in the bathroom

The Leases

13. There are before the Tribunal copies of leases of Flats 3, 5, 7, and 9. Ms Dalkins and Mr Blackbeard confirmed at the hearing that all the leases were materially in similar terms
14. For the purposes of these proceedings the material parts of the leases are as follows :
 - a. a covenant by the tenant to pay a service charge to cover the costs incurred by the landlord pursuant to clauses 3, 4 and 6 and in the 8th schedule (clause 3)
 - b. covenants by the landlord to carry out certain works, including keeping all pipes in good and substantial repair and condition (clause 4 and 8th schedule paragraph 1(ii))

Notice under section 20 of the 1985 Act

15. A notice from the Applicant/Landlord dated the 25 [sic] August 2009 stated that the Applicant/Landlord intended to enter into an agreement to carry out works in respect of which the Applicant/Landlord was required to consult leaseholders

16. A brief description of the work to be carried out was :

Renewal of asbestos soil vent pipe. Residents of Flats 3, 7 and 11 to be temporarily rehoused for approximately 4/5 days. The boxing and toilet to be removed to expose soil vent pipe. The asbestos soil vent pipe to be safely removed followed by an air test. A new soil vent pipe to be fitted and the toilets and boxing to be reinstated

17. The Applicant/Landlord considered it necessary to carry out the works because the asbestos soil vent pipe could not be repaired and had to be renewed

18. The Applicant/Landlord invited the leaseholders to make written observations in relation to the proposed works, gave a name and address for doing so, stated that observations had to be received within the consultation period of 30 days from the date of the notice, and stated that the consultation period would end on 24 September 2009

19. The Applicant/Landlord also invited the leaseholders to propose within 30 days from the date of the notice the name of a person from whom the Applicant/Landlord should try to obtain an estimate for the carrying out of the proposed works

Letter accompanying notice under section 20 of the 1985 Act

20. A letter from the Applicant/Landlord dated the 21 [sic] August 2009 stated that the notice under section 20 was attached. It also stated that because of the problems which the asbestos soil vent pipe was causing the Applicant/Landlord was inviting leaseholders to consent to the works taking place prior to the completion of the full section 20 notice procedure. The Applicant/Landlord was attaching a consent form to complete, sign, and return

Statement by Dave Trevett 7 September 2009

21. Mr Trevett stated that he was a Building Surveyor for the Applicant/Landlord. The reason for removing and replacing the defective soil pipe at the Building was due mainly to the ground floor Flat 11 being constantly exposed to the discarded waste from the Flats above. In order to be able to replace the defective soil pipe and remake all new connections to existing appliances it was necessary to remove the studwork and board (AIB) containing asbestos to provide sufficient room for the work to be achieved. The ground floor Flat experienced regular dampness due to the contents of the soil pipe leaking to the exterior of the pipe and being deposited to the lowest point, in this case the bathroom of Flat 11. There was no alternative in order to be able to provide the necessary drainage to the Building

Other documents attached to the letter from the Applicant/Landlord 8 September 2009

22. Other documents were :

- a. forms signed by Mrs D Parry (Flat 3) and Mr and Mrs K Forden (Flat 7) consenting to the works being carried out prior to the full section 20 notice procedure being completed
- b. a quotation by Merryhill Envirotec Ltd dated 7 September 2009 as follows (plus VAT in each case) :
 - A. Removal of asbestos insulating board within Flat 7 : £656.25
 - B. Removal of asbestos insulating board within Flat 3 : £656.25
 - C. Removal of asbestos cement soil vent pipe within Flat 3 : £60.00
 - D. Reassurance air test Flat 3 : £50.00
 - E. Removal of asbestos cement soil vent pipe within additional flat : £137.50
 - F. Reassurance air test for additional flat : £50.00
 - G. Removal of asbestos cement soil vent pipe within second additional flat : £137.50
 - H. Reassurance air test for second additional flat : £50.00
- c. an undated quotation by Weymouth & Portland Housing Limited in the sum of £4,040 excluding VAT
- d. a quotation by Stuart Barnes Ltd dated 7 September 2009 in the sum of £4,200 plus VAT of £630 making a total of £4,830
- e. a letter to each of the leaseholders including copies of the documents attached to the letter from the Applicant/Landlord dated 8 September 2009

The hearing

23. Ms Dalkins and Mr Blackbeard said that four of the six Flats in the Building were owned on long leasehold by the Respondent/Leaseholders. The other two Flats, namely 1 and 11, were let to periodic tenants by the Applicant/Landlord
24. The defective soil pipe had served Flats 3 (on the top floor), 7 (on the middle floor), and 11 (on the ground floor). The tenant of Flat 11 had complained about a smell. The Applicant/Landlord inspected. The asbestos cement soil pipe from upstairs was found to be leaking at its junction with the soil pipe for Flat 11. The boarding round the pipe was asbestos boarding. Emergency repairs were attempted immediately on the 31 July 2009. They were unsuccessful. The Applicant/Landlord considered that it was necessary to replace the whole pipe urgently because there was a health and safety risk not only from the sewage leak itself, but also from the asbestos in the pipe and the boarding
25. The Applicant/Landlord served on each of the Respondent/Leaseholders the notice under section 20 of the 1985 Act, setting out the Applicant/Landlord's intentions, and a description of

the proposed work. The Applicant/Landlord then sent each of the Respondent/Leaseholders one quotation from Merryhill Envirotec Ltd relating to the asbestos element, and the two quotations relating to the replacement of the pipe itself

26. The leaseholders of Flats 3 and 7 had signed forms consenting to the work being carried out prior to the full section 20 notice procedure being completed
27. The work had now been completed. The tenant of Flat 11 had been “decanted” in the meantime
28. The Applicant/Landlord was now seeking dispensation from those parts of the consultation procedure which had not been possible to comply with because of the urgency involved

The Tribunal’s findings

29. Having considered all the evidence in the round, the Tribunal finds, in relation to the works referred to in the notice dated the 25 August 2009, that
 - a. the works carried out by the Applicant/Landlord were :
 - works for which the Applicant/Landlord was liable under the Applicant/Landlord’s repairing covenant in the leases
 - urgent, for the reasons given by Ms Dalkins and Mr Blackbeard at the hearing
 - b. the Respondent/Leaseholders were given advance notice of the works in the notice dated the 25 August 2009
 - c. by the documents sent with the Applicant/Landlord’s letter dated the 8 September 2009 the Respondent/Leaseholders were also given copies of one quotation from Merryhill Envirotec Ltd relating to the asbestos element, and the two quotations relating to the replacement of the pipe itself
 - d. it was reasonable in all the circumstances to have obtained only one quotation in relation to the asbestos element of the works, in view of the urgency, and in view of the specialist nature of that element of the works
 - e. the Applicant/Landlord had accordingly consulted the Respondent/Leaseholders, even though the strict consultation requirements referred to in section 20 of the 1985 Act had not all been complied with
 - f. the Applicant/Landlord subsequently received forms consenting to the work signed by the leaseholders of Flats 3 and 7 being carried out prior to the full section 20 notice procedure being completed, and had received no notice of objection from the other two Respondent/Leaseholders
 - g. the Applicant/Landlord had acted reasonably in all the circumstances
 - h. it is reasonable to dispense with the consultation requirements referred to in section 20 of the 1985 Act and set out in the 2003 Regulations so far as the 2003 Regulations refer

to time limits for consultation, to the number of estimates to be obtained, and to the number of notices to be given

30. The Tribunal accordingly dispenses with the consultation requirements referred to in section 20 of the 1985 Act and the 2003 Regulations, so far as the works actually carried out are concerned, and so far as the 2003 Regulations refer to time limits for consultation, to the number of estimates to be obtained, and to the number of notices to be given

Dated the 18 September 2009



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P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor