

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF SECTION 20ZA LANDLORD & TENANT ACT 1985

Application No	CHI/00ML/LDC/2009/0025
Property	1 Grand Avenue Hove
Applicant	Poethurst Ltd c/o Deacon and Company
Respondents	The Lessees (see Schedule 1 attached)
Members of the Tribunal	Ms H Clarke (Barrister) (Chair) Mr B Simms FRICS MCI Arb
Date of inspection	8 January 2010
Date of decision	8 January 2010

1. THE APPLICATION

The Applicant Landlord asked the Tribunal to dispense with the consultation requirements imposed by statute in relation to the costs of erection of scaffolding and expert fees connected with defects to concrete components of the property, on the basis that the work in question was urgently required.

2. THE DECISION

The Tribunal dispensed with the statutory consultation requirements in relation to the following work;

- i) costs of erecting scaffolding identified in invoices from Packham and Clark dated 04-08-09, 17-08-09, and 25-09-09;
- ii) fees of BEP Consulting Engineers as set out in invoice 2828 dated 28 August 2009;
- iii) fees of Coppard Giles Ltd insofar as they were incurred in connection with the preparation of the report letter dated 23 September 2009 and in connection with arranging for the scaffold fan and access scaffolding.

3. THE LEASES

The Tribunal was shown a sample lease for Flat 25. It provided for the landlord to maintain the external walls of the Property and for the tenant to contribute to the costs under the service charge provisions. Nothing in the Application turned on any provision of the leases.

4. **THE LAW**

Section 20 Landlord & Tenant Act 1985 (as amended by the Commonhold & Leasehold Reform Act 2002) states:

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.

5. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 2003/1987 and in summary the relevant part of the regulations at Schedule 4 Part 2 requires the landlord to give each tenant written notice of intention to carry out works, to invite observations on the works and invite the tenant to nominate a person from whom an estimate should be obtained, and subsequently to obtain estimates and provide information about them to the tenants before entering into a contract for the works to be done. The minimum time required for the entire consultation procedure to be completed is 60 days, but this does not take account of any additional time for matters such as service of notices, time for replies to be received from contractors invited to provide estimates, or time for the landlord to consider responses.

6. Section 20ZA(1) Landlord & Tenant Act 1985 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.*

7. **THE INSPECTION**

Immediately before the Hearing the Tribunal inspected the exterior of the Property. The Property was a block of about 31 flats with garages, apparently constructed in the mid-20th century. The property was of concrete framed construction with brick panels. Scaffolding was in place to the full height of the south

face, and fan scaffolding was in place above the communal and car parking entrances.

8. **THE EVIDENCE**

The Applicant submitted relevant documents to support its case, including photographs showing the concrete and steel elements of the building.

9. Submissions were received by the Tribunal from only one Respondent, Mrs Chambers of Flat 11, who did not oppose the application but wished to reserve her position as to her liability to contribute to the costs.

10. **REASONS AND DETERMINATION**

The Applicant's unchallenged case was that in July 2009 pieces of masonry fell from the south facing exterior of the building, and shortly thereafter, from the western face. Mr Coppard MRICS of Coppard Giles Ltd was instructed to report, and he in turn instructed BEP Structural Engineers. Scaffolding was erected to allow for investigations to take place and as a safety precaution. Packham and Clark contractors were also instructed to do preparatory work to expose areas of the metal bars for inspection. It was discovered on inspection in September 2009 that metal components within the exposed edges of the concrete floors had corroded, there was significant cracking of the concrete, and the metal components appeared to be inappropriately positioned. There was a significant risk that further pieces of the concrete beams could fall from the property. Mr Coppard prepared a report on the situation dated 23 September 2009 which the Tribunal understood to have been disclosed to all lessees.

11. Following these matters it appeared that the Applicant proposed to commence, or had commenced, a full consultation procedure with regard to the works necessary to remedy the problems, and the Tribunal was not asked to dispense with consultation in relation to remedial works.

12. The Tribunal agreed with the Applicant's submission that the works to investigate the problem were 'qualifying works' under s20 Landlord & Tenant Act 1985.

13. The Tribunal noted that s20ZA empowered a tribunal to dispense with all or any of the consultation requirements if satisfied that it was reasonable to do so. The question of whether it was reasonable was to be judged in the light of the purpose of the consultation provisions. The most important consideration was likely to be the degree of prejudice that there would be to the

tenants if the consultation was not carried out as required by statute. This would not, however, be the sole consideration.

14. The Tribunal considered all the circumstances of the case, and decided that on balance it was reasonable to dispense with the requirement for the Applicant to consult the tenants before arranging for the scaffolding to be erected and engaging experts to investigate and report because:
- i) the evidence demonstrated that the concrete and metal structural components were in a defective condition and there was a real risk that more chunks of masonry could fall from the exterior:
 - ii) there was therefore an urgent need to make the building safe on an interim basis:
 - iii) Given the risk to safety it was reasonable and appropriate to have instructed both a surveyor and a structural engineer:
 - iv) It was reasonable and appropriate to have erected scaffolding in order to investigate the problem:
 - v) it was reasonably necessary to have engaged contractors to do preliminary work to expose the affected areas in order for a full assessment to be made:
 - vi) the above considerations outweighed any prejudice to the tenants which may have followed from not being consulted.
15. The law provides in effect that if a landlord is required to carry out the statutory consultation, but does not do so, then the amount which each tenant may have to contribute to the cost of the work in question is limited to £250. The effect of dispensing with the consultation requirements is to remove this limit. In making its decision to dispense with consultation in this case, the Tribunal is not making a determination as to the liability of individual tenants to pay for the work that has been done or is yet to be done. Nor is the Tribunal making any determination as to the reasonableness of the service charge costs that will or may be incurred, nor that the work will or will not be carried out to a reasonable standard. Such a determination could only properly be made on an application under s27A of the Landlord & Tenant Act 1985.

Signed-----*hmc*-----

Dated---8-1-10-----