

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**



Re : 10 Clifton Crescent Folkestone Kent CT20 2EW

**Application under Section 20ZA Landlord and Tenant Act 1985 (“the Act”)**

(Application for dispensation from consultation requirements)

**DECISION AND REASONS**

Case Number : CHI/29UL/LDC/2010/0022

Applicant : Col E A Wilde

Respondents : Mr D M & Mrs K F Owens (Flat 1)  
Mr P A Lanza (Flat 2)  
Mr P J Keeley (Flat 3)  
Mr Hancox (Flat 4)  
Mrs T Osborne (Flat 5)  
Ms S M Griffiths (Flat 6)  
Mr Andrews (Flat 7)  
Mr M Summers (Flat 8)  
Marnier Wright Associates (Flat 9)  
Mr J Tolson (Flat 10)

Appearances : Mrs L Keeler for Maltby’s  
Mrs T Osborne (Flat 5)  
Mr J Tolson (Flat 10)

Tribunal Members : R T Athow FRICS MIRPM (Valuer/Chairman)  
J B Tarling MCMI (Lawyer Member)

Hearing Date : 1 September 2010

Decision Date : 8 September 2010

**The Decision**

1. The Tribunal determined not to grant dispensation under Section 20ZA of the Act.
2. The full reasons for the decision are set out below.

**The Application and Proceedings**

3. The Application dated 12 July 2010 was made by Maltby's, managing agents, on behalf of the freeholder, named in the Application as Colonel E A Wilde.
4. Directions were issued by the Tribunal on 19 July 2010. The Tribunal dispensed with the required 21 day notice period to hold a Hearing, on account of the apparently urgent nature of the proposed works. - A Hearing ('the Hearing') took place on 1 September 2010 at the Holiday Inn Express, Folkestone.

### **The Law**

5. The statutory provisions primarily relevant to these applications are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act).
6. 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.'
7. In Section 20ZA (4) the consultation requirements are defined as being:  
  
    'Requirements prescribed by regulations made by the Secretary of State'. These regulations are The Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations').
8. In Section 20(2) of the Act 'qualifying works' in relation to a service charge, means works ..... to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge.
9. If the costs of any tenant's contribution exceed the sum set out in section 6 of the Regulations (which is currently £250) the Landlord must comply with the consultation requirements. The relevant requirements applicable to this application are those set out in Part 2 of Schedule 4 of the Regulations.
10. The Tribunal may make a determination to dispense with some or all of the consultation requirements but it must be satisfied it is reasonable to do so. The Tribunal has a complete discretion whether or not to grant the application for dispensation and makes its determination having heard all the evidence and written and oral representations from all parties and in accordance with any legal precedent.

### **The Lease**

11. The Tribunal was issued with a copy of the lease of Flat 9 and, for the purposes of this hearing; it is assumed that all leases are in a similar form. The copy provided

was of poor quality and some words had been obliterated to such an extent that it made them illegible. Despite this the Tribunal were able to make out the essential provisions in the Lease

### **The Inspection**

12. Prior to the hearing, the Tribunal members inspected the premises in the presence of Mrs Keeler (from the landlord's managing agents), Mrs Osborne, and Mr Tolson. During the inspection, the Tribunal paid particular attention to the electric wiring and observed that there were many old light switches and ceiling fittings. Where visible, electric light cords were of the twin flex cotton covered type indicating that the wiring was of a substantial age. Most of the wiring was concealed but there was some old surface conduit wiring in the tank room.
13. The building comprises a substantial detached mansion dwelling set just back from The Leas and thought to have been built in about 1880 and subsequently converted into ten self-contained flats. Two of these flats are situated in the basement and the central communal hallway, stairs and landings serve eight flats. On the attic floor are two store/water tank rooms.

### **The Hearing**

#### **Applicant's Case**

14. Mrs Keeler, for the Applicant, explained that Kent Fire and Rescue Service had carried out an audit of the Premises and wrote on 12 April 2010 to Maltby's with a schedule of items which they considered to be the best practise for the deficiencies to be rectified. They stated in their letter that a further visit would be made on 4 May to ensure that the requirements of the schedule had been carried out. Maltby's had replied to this on 16 April requesting they be allowed due time to investigate the points raised and subsequently a further letter was issued by Kent Fire and Rescue Service dated 20 April which deferred the further visit until 25 June.
15. Maltby's replied on 22 April explaining the action that they were taking but that because the likely cost of the works was over £250 per flat, Section 20 consultation would be needed. In that letter, it was stated that the process could take up to three months but that the Section 20 Notice of Intention had been issued that day. Additionally, the letter confirmed that because of the time process required to comply with the Section 20 Notice, they would not be able to comply with the request for the works to be carried out by 4 May.
16. Maltby's wrote to the lessees with a letter dated 22 April enclosing the Section 20 Notice of Intention stating that they were obtaining three separate quotes for the works which would be forwarded within the next 28 days. The Notice of Intention was dated 26 April with the 30 day observation period expiring on 27 May. The works stated to be carried out were 'Fire Safety Works to Communal Hallway' and the schedule which had been provided by Kent Fire and Rescue Service was attached to that Notice of Intention.

17. Kent Fire and Rescue Service wrote on 14 May stating that a further inspection would therefore be made on or after 8 September to ensure the requirements of the schedule had been carried out.
18. Maltby's received a detailed report from Fairhurst Ward Abbots (FWA) dated 17 May which referred to a fire risk assessment that had recently been carried out. They strongly recommended that, before their risk assessment was issued, the electric wiring be renewed immediately so as not to cause the Fire Officer any reason to condemn the property out of hand as it could possibly mean the removal of the residents from the property. Their report continued and gave a quote of £3390 plus VAT for the total renewal of the mains electric lighting and addition of power points in the common areas. A further quote was obtained from E T Bass dated 4 June which gave a detailed specification for similar works and the emergency lighting system in the sum of £2485 plus VAT.
19. Mrs Keeler said after subsequent conversations with FWA Maltby's received a revised quote from them of £2800 plus VAT to include the emergency lighting. This revised quote was received on 10 June.
20. Maltby's then wrote on 12 July to the leaseholders, informing them that, in the process of obtaining the Fire Risk Assessment, the need for renewal of the electric wiring had come to light and informed the residents of the quotes of £2800 and £2484 plus VAT, and also that the urgency of these works meant that they would need to apply for dispensation regarding consultation under Section 20.
21. As a result of this, they made the application to the Tribunal for dispensation under Section 20ZA which was issued that day and sent under cover of a letter dated 13 July to the Southern Rent Assessment Panel.

### **Respondents' Case**

22. Mr Tolson was concerned that, having suggested Invicta Power Service as a suitable electric contractor, no quote had been obtained from them. He had also recommended a fire extinguisher and maintenance company in a letter to Maltby's. He was of the opinion that the whole project appeared to be in a mess that had not been professionally handled.
23. Mr Tolson was concerned that the letter from FWA, who carried out the inspection, produced the opinion of the works required and also quoted for the job. They had also mentioned 10 Clifton Gardens rather than 10 Clifton Crescent. He queried why E T Bass's quote had been forwarded to FWA and it would appear that, as a result of that, they then reduced their quote. This caused him some suspicion firstly with FWA being employed as a consultant and then being given the opportunity to revise their quote when a cheaper quote was received.
24. The residents want to see the work done but it needs to be done properly and at an appropriately quoted price. Mr Tolson therefore suggested that another report be obtained to verify FWA's opinion and that a fuller specification be drawn up so that comparable quotes could be obtained.

## **The Consideration**

25. The Tribunal was unclear as to the extent of the works on which this application sought to obtain dispensation. The Section 20 Notice of Intention was for a much more comprehensive amount of work than the Section 20ZA application, which was restricted to electric rewiring being only one element of the overall project. Mrs Keeler was unable to give any answers on this.
26. The Tribunal questioned the reason for the Section 20ZA application because the rewiring project could have been processed as part of the main Section 20 consultation process where the Notice of Intention had already been issued. The timetable would mean that the first phase of consultation would have ended on 27 May. By that time, the instructions were already out with FWA and E T Bass to provide quotes. The final quotes were in on 7 June. Therefore, the second phase of the consultation process could have been undertaken from that day on, with a deadline of mid-July.
27. Had this process been pursued, and the landlord intended to go with the cheaper quote, this work could have been undertaken from that time on, and completed well before the date of the hearing, thus negating the need for a Section 20ZA application.
28. The remaining work required under the risk assessment could have followed, and the Fire and Rescue Service would have seen that some progress had been made. In deciding to take this through the Section 20ZA process, the matter has been unnecessarily delayed.
29. The Tribunal enquired of Mrs Keeler as to her knowledge of the Section 20 process. She stated that she had only been working for Maltby's for the past year. She confirmed that she had no management qualifications or previous management experience, but received training from the firm's principal. Mr Tolson had mentioned that some of the addresses of the Lessees in the List the managing agents had provided were incorrect and he had not been able to contact two or three of the other Lessees. Mrs Keeler appeared not to know of the incorrect addresses and it seems that the original Section 20 Notice of Intention as well as the letters from the Tribunal may not have reached all of the Lessees. If that was so, those Lessees may not have had notice of the Hearing nor had an opportunity to make representations.

## **The Findings and Reasons**

30. The Tribunal finds that, had the standard Section 20 consultation process been adhered to rigidly; there would have been no need for a Section 20ZA application to be made. It deemed that it would not be appropriate to grant dispensation from the full consultation process as explained in point 26 above. Indeed, the S20ZA application was deemed superfluous to requirements and the Tribunal was concerned that an inexperienced and unqualified representative of the landlord's managing agent should be presenting a case of this technical nature. The Tribunal

would expected to have seen the chartered surveyor principal or someone appropriately qualified to be conducting a case of this nature.

31. As it seems not all of the Lessees had received the Section 20 Notice of Intention to carry out works, nor had notice of the Hearing, not been able to make any representations, the Tribunal decided it was unsafe to dispense with the consultation procedures. The List of Lessees addresses had been prepared by the landlord's managing agents and they should have taken greater care to make sure that list of addresses was accurate.
  
32. It occurred to the Tribunal that the threshold for consultation in this case was 10 Flats X £250 = £2,500. The lowest quotation obtained by the landlord's managing agents was very near that threshold. If the tendering process were to be dealt with more sensibly, then it is possible the actual cost may fall below the threshold and so make any Section 20 procedure unnecessary. No reason was given by Mrs Keeler as to why she had not sought an estimate from Invicta Power Service, the firm which had been nominated by Mr Tolson.
  
33. This decision does not prevent another application for dispensation being made, or alternatively the landlord can either proceed with the work or commence new Section 20 Notice procedures. From its inspection of the property it is clear to the Tribunal that a considerable amount of repair and decoration is needed to the common parts and it may be that it would be more sensible for a full schedule of work to be prepared and incorporated into a planned maintenance timetable. This then could be incorporated into a new Section 20 Notice for all the proposed major works. After the work have been carried out and any subsequent Service Charges demanded, any party may apply to the Tribunal under Section 27A of the Act for a determination as to the amount or liability of any of the tenants to pay such Service Charges.

Signed:

Richard T Athow FRICS MIRPM  
Valuer/Chairman

Date: 8 September 2010