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Residential  
Property  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

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

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**Ref : LON/00AM/LDC/2010/0091**

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**Property:** Gateway Mews, Shacklewell Lane, London E8 2DF

**Applicant:** Gateway Mews (Management) Limited

**Respondents:** The leaseholders of 1-30 Gateway Mews

**Hearing date:** 11<sup>th</sup> October 2010

**In attendance:** Mr C Phillips, Managing Director of Galbraith Property Services Limited, managing agents for the Applicant

Mrs J Phillips, Finance Director of Galbraith Property Services Limited

Mr K Abdul, agent for Dr S Prasad, leaseholder of 29 Gateway Mews

**Tribunal:** Mr P Korn (Chairman)  
Ms S Coughlin MCIEH

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**BACKGROUND**

1. The Respondents are the leaseholders of the individual units within the Property. The Applicant is the named management company under

each of the Respondents' leases and covenants (under those leases) to provide repair and decoration and other services in return for the payment of a service charge.

2. On 1<sup>st</sup> September 2010 the Tribunal received an application from the Applicant seeking dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") in respect of qualifying works.
3. The works concerned comprise (or include) the replacement, repair and/or redecoration of all the exterior woodwork and the repair and repainting of the masonry to the individual apartments and mews houses and to the doors and entranceways of the common parts.
4. Directions were issued on 3<sup>rd</sup> September 2010. The Procedural Chairman considered that the matter could be decided by way of a paper determination – i.e. without the need for an oral hearing – unless either party requested a hearing. In the event, Dr A Seray-Wurie (20 Gateway Mews) and Dr Prasad requested an oral hearing, and a hearing was held on 11<sup>th</sup> October 2010.

#### THE APPLICANT'S CASE

5. Mr Phillips explained that Galbraith Property Services Limited ("GPS") had taken over from the previous managing agents in July 2010. The previous agents, Property Maintenance and Management Services ("PMMS"), first broached the subject of external decoration with the Respondents in December 2008. There was a delay in taking forward the process and PMMS did not go through any formal Section 20 consultation process.
6. On being appointed, GPS advised the Applicant that the works were of a nature that the Applicant either needed to comply with the formal Section 20 procedure or apply to the LVT for dispensation from the requirement to do so. GPS also advised the Applicant that the works were urgent and that therefore it would be prudent to apply for dispensation.
7. Mr Phillips said that the exterior woodwork would not last until the Spring and that further deterioration would lead to increased costs. In his view some of the window frames were in a dangerous condition and could fall out, and some of the doors were so rotten that they did not afford any real security. Full consultation could, in his view, take between 6 and 9 months. He said that he understood that a number of leaseholders wanted to put forward alternative contractors.
8. GPS had received a number of emails of support for the carrying out of the works from leaseholders and – although they had not held a special consultation meeting nor been through any other formal consultation steps – they had provided information to the Respondents to keep them

informed and in particular had sent out a detailed letter on 27<sup>th</sup> August 2010 explaining why they would be making an application for dispensation on the Applicant's behalf.

9. Mr Phillips conceded that GPS had not carried out an analysis as to which elements of the work were the most urgent nor any analysis as to the likely cost of any particularly urgent work.
10. In answer to a question from the Tribunal, Mr Phillips said that invitations to tender were sent out at the beginning of July, with replies requested for the end of July, and that the chosen contractor is able to start immediately.

#### **RESPONSE FROM MR ABDUL (ON BEHALF OF DR PRASAD)**

11. Mr Abdul confirmed that Dr Prasad was contesting the application for dispensation with the consultation requirements. He considered the quotation from the chosen contractor to be too high and he wanted the Applicant to consider his suggested alternative contractor. Mr Abdul referred the Tribunal to Dr Prasad's letter dated 3<sup>rd</sup> September 2010 to GPS, in which he said that he was pleased that the works had been commissioned but was surprised that the Applicant was seeking dispensation from complying with the consultation requirements.
12. Dr Prasad's suggested alternative contractor was RML Construction, a firm which he stated was closely associated with KKB Property & Financial Services – a company which currently manage all of his properties. Dr Prasad had shown the works schedule to RML/KKB who had indicated that they could offer a lower quotation of £30,000. In his response dated 29<sup>th</sup> September 2010 Mr Phillips did not specifically state whether he would follow things up with RML/KKB but the implication was that he would not do so.
13. Mr Abdul said that Dr Prasad did not accept that the Property was in such a dangerous state that the works had to be carried out quite so urgently. He also disputed that the consultation process would take 6 to 9 months; he felt that 3 months was a more realistic estimate.
14. Mr Abdul noted that a health and safety report had been done but that it had not identified the window frames or doors as being in a dangerous condition.

#### **OTHER OBJECTIONS FROM RESPONDENTS**

15. On 13<sup>th</sup> September 2010 Dr Seray-Wurie wrote to GPS, having received notification from the LVT of the application for dispensation, stating that this was the first that he had heard of GPS's involvement. GPS responded on 29<sup>th</sup> September 2010 enclosing certain information and expressing either surprise or disappointment that he had not previously received that information.

## THE LAW

16. Under Section 20(1) of the 1985 Act, in relation to any qualifying works *“the relevant contributions of tenants are limited ... unless the consultation requirements have been either (a) complied with ... or (b) dispensed with ... by ... a leasehold valuation tribunal”*.
17. Under Section 20ZA(1) of the 1985 Act *“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 ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements”*.

## APPLICATION OF FACTS TO LAW


18. The Applicant accepts that the works concerned are qualifying works within the meaning of Section 20(1) and Section 20ZA(1) of the 1985 Act and that these provisions therefore apply to the works.
19. Section 20ZA of the 1985 Act does not specify in detail the basis on which the Tribunal is to exercise its discretion to dispense with the consultation requirements. Case law indicates that the need to carry out work urgently is regarded as the classic case justifying dispensation, but dispensation has been given in other situations, for example where a landlord has been able to demonstrate a real attempt to comply and/or substantial compliance, in circumstances where it seems that the element of non-compliance has not prejudiced the leaseholders in practice.
20. It should be noted that the Tribunal may only make a determination to dispense if **satisfied** that it is reasonable to do so, and therefore the burden is firmly on the Applicant to ‘satisfy’ the Tribunal in this regard.
21. In this case, the Applicant was aware since at least December 2008 that works needed to be carried out. Had the Applicant gone through a formal consultation procedure at that point then the consultation process would have been completed long before the date of this hearing. The evidence suggests that the Applicant’s then managing agents, PMMS, did not consider it necessary to go through the Section 20 consultation process and that by the time GPS were appointed in July 2010 the condition of the Property had deteriorated and GPS considered that the work needed to be done urgently.
22. It is notable that the health and safety report referred to above did not conclude that the window frames or doors were in a state that presented a pressing danger. GPS say that they do represent an immediate danger; Dr Prasad disagrees. The Tribunal has been shown photographs of certain window frames and doors, but in the Tribunal’s view those

photographs do not by themselves (given the conflicting views expressed) constitute sufficient evidence of that level of danger.

23. In addition, even if one were to concede that some of the work is very urgent, not all of the work is urgent and the Applicant has failed to do a cost analysis as to how much would need to be spent on the most urgent elements. It could well be, for example, that the most urgent elements fall below the minimum threshold for consultation and that therefore these works could be commenced whilst the Applicant consults on the remainder. The Tribunal is also sceptical as to whether it really would take up to 9 months to complete the consultation.
24. Furthermore, one of the arguments advanced by Mr Phillips was that if the Applicant consulted with the Respondents the works could end up costing more. Whilst this might be true, the Tribunal does not consider that a possible increase in cost is a sufficient reason to dispense with the consultation process which is there primarily for the leaseholders' own benefit.
25. The Tribunal also notes that there have been written objections from two separate leaseholders and that Dr Prasad's wish that the Applicant obtain an estimate from RML/KKB is credible and relates to an issue (price) which is far from trivial. Also, Mr Phillips' own evidence points to their being other possible objections to the choice of contractor.
26. In conclusion, based on the evidence presented at the hearing and the written evidence supplied, the Applicant has failed to satisfy the Tribunal that it is reasonable in this case to dispense with the consultation requirements in relation to the works which are the subject of this application.

#### DETERMINATION

27. The Tribunal determines **not** to dispense with the consultation requirements in respect of the works referred to in the application.
28. Mr Abdul on behalf of Dr Prasad has applied for an order under Section 20C of the 1985 Act that the Applicant should not be able to recover through the service charge any of its costs incurred in connection with these proceedings. The Tribunal considers the application for dispensation to have been misconceived and therefore that it would be unreasonable for the cost to be put through the service charge. Therefore the Tribunal orders that **none** of the costs incurred by or on behalf of the Applicant in connection with these proceedings may be added to the service charge.

Chairman:  P Korn

Dated: 11<sup>th</sup> October 2010