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IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AW/LDC/2010/0022

BETWEEN:

89 CADOGAN GARDENS COMPANY

Applicant

Represented by HML Hathaways

-and-

VARIOUS LEASEHOLDERS OF TEN FLATS

Respondents

89 CADOGAN GARDENS, LONDON, SW3 2RE

Premises

Mrs T Rabin
Mr I G Thompson BSc FRICS
Mrs J Clark JP

Tribunal

THE TRIBUNAL'S DECISION

Introduction

1. This is an application by the Applicant under s.20ZA of the Landlord and Tenant Act 1985 ("the Act"), seeking dispensation of the section 20 consultation requirements in respect of works to repair defective sections of stone cornicing at high level to the front elevation of the premises.

2. The premises comprise a purpose built mansion block of eleven flats, ten of which are sold on long leases. The eleventh flat is occupied by a resident porter and is owned by the Applicant Company. The Respondents are the leaseholders of the ten remaining flats.

3. The Application was submitted on 12th February 2010 with a request for the fast track preference, on the basis of urgency due to the perceived risk of falling masonry. The Applicant stated that the requisite repair works to the stone cornicing spanned across the party wall shared with the adjoining property, 91 Cadogan Gardens which was also affected. The Applicant further stated that a separate application would be made in respect of 91 Cadogan Gardens, HML Hathaways being the managing agents of both properties.

4. Directions were issued by the Tribunal on 22nd February 2010 indicating that the Application would be considered on the basis of written submissions alone without the need for an oral hearing, unless either party requested one. In the absence of such a request, the Directions advised that the Application would be determined in the week commencing 29th March 2010. No such request was made and accordingly, a separately constituted Tribunal considered the Application on 29th March 2010. That Tribunal concluded that it would not be appropriate to proceed with the determination, in view of the impending s20ZA application to be made in respect of 91 Cadogan Gardens. That Tribunal concluded, rightly in the view of this Tribunal, that both applications should be considered together by one tribunal rather than have two decisions being issued by different tribunals. The parties to this Application were notified of this decision on 29th March 2010, advising them that *"The Tribunal therefore awaits receipt of the application in respect of 91 Cadogan Gardens at the Applicant's earliest opportunity"*.

5. Despite being given ample opportunity to do so, no application has been submitted in respect of 91 Cadogan Gardens. The reason for this is unclear. The Tribunal is therefore only concerned with this Application in respect of the premises.

The Application

6. HML Hathaways submitted a statement on behalf of the Applicants setting out the basis of the Application. During the course of a regular inspection of the premises, a section of the high level stone cornice on the front elevation was noted as missing. It was not known how long ago the section had fallen away. HML Hathaways concluded that *"given the height of the building any further sections of cornice falling from the building would cause serious injury in the event that individuals were struck by the falling masonry"*. In order to mitigate this risk, a netted safety scaffold was erected at first floor level. The cost of this scaffold, including alarm and VAT was stated as being £1,727.25. HML Hathaways stated that the cost of extending the scaffold to the full height of the elevation to access the cornicing was an additional £2,021.00, including VAT. A specification of works had been prepared, but this could not be priced until the full scaffold was erected and the actual extent of the works ascertained. One contractor had provided a "verbal indication" of £1,500.00.

7. Written agreement to the Application has been received by the leaseholders of flats 2, 4, 5 and 8. The remaining six leaseholders have not responded.

The Law

8. Subsection (1) of section 20ZA of the Act states 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 the determination if satisfied that it is reasonable to dispense with the requirements."

Decision

9. The Tribunal is not satisfied that, in all the circumstances, it is reasonable to dispense with any of the consultation requirements. The Applicant has not convinced the Tribunal that the works are of sufficient urgency to grant such dispensation. The Application appears to be have been made on the basis of a perceived risk of falling masonry. However, that risk has been mitigated, at least in part, by the erection of a protective scaffold. No evidence has been submitted to support the contention that the "high level cornice appeared in poor condition", such as, for example, a surveyor's report.

10. The Tribunal, furthermore, does not agree with the contention made on behalf of the Applicant that "pricing the actual repairs may prove impossible without a full scaffold being in place". Firstly, the Tribunal notes from the photographs submitted by the Applicant, the proximity of sections of the cornicing to the windows of the top floor flat or flats, thus allowing a close inspection of those sections. Secondly, it is standard practice for a specification to include an item of work (such as the removal of defective stonework and its replacement) and specify a provisional quantity for that repair which can then be priced by contractors, thus forming the basis of any variations, once the actual extent is known with the benefit of scaffolding. That, in the Tribunal's opinion, is an industry wide standard procedure and enables landlords to obtain competitive quotations upon which it can consult with its leaseholders.

11. The Tribunal notes that six leaseholders out of ten have not responded to the Application. The consultation procedures laid out within the Act and its supporting procedure regulations are there to protect all leaseholders and are not to be dispensed with lightly. In considering whether to grant dispensation or not, the Tribunal has had regard to the extent to which a leaseholder might be prejudiced by a lack of consultation, having regard to the extent to which the leaseholders have been kept informed in respect of the proposals. If the Application was granted, the leaseholders would be denied the opportunity to comment upon the necessity of the works, nominate contractors and comment

upon the estimates. This amounts to a possible prejudice to the leaseholders, which is not overridden by the Applicant's desire to undertake the works urgently.

12. The Tribunal was surprised that HML Hathaway had not made an application in relation to 91 Cadogan Gardens. They manage both properties and their application clearly states that both properties are affected and that a similar application would be made for the adjoining property. Applications for dispensation in respect of both 89 and 91 Cadogan Square need to be considered by the Tribunal together in order for any dispensation, if it was to be granted, to be binding on all leaseholders affected. Otherwise agreement would have to be obtained from every leaseholder of both properties. The Tribunal makes this point to highlight the importance of this issue, but has reached its decision on the merits of this Application in isolation.

13. Accordingly, the Tribunal disallows the Application.

CHAIRMAN
Mrs T Rabin

Dated this 5th day of May 2010