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**H M COURTS AND TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**Section 20ZA Landlord & Tenant Act 1985**

**DECISION AND REASONS**

**Case Number: CHI/19UH/LDC/2011/0046**

**Property: 27 Icen Way  
Dorchester  
Dorset  
DT1 1ER**

**Applicant: Mr. R. A. and Mrs. E.J. Cosgrove  
Respondents: The Leaseholders –  
Miss. B. Hill (Flat 2) and Mr. S. Green.(Flat3)**

**Directions: 22<sup>nd</sup> December 2011**

**Date of Application: 16<sup>th</sup> December 2011**

**Hearing: 20<sup>th</sup> January 2012**

**Appearances: For the Applicant:  
Mr. Richard Andrew Cosgrove accompanied by Dr. Michael  
Cosgrove (his Father)  
For the Respondents:  
None of the Leaseholders were present nor represented**

**Decision: 30th January 2012**

**Members of the Leasehold Valuation Tribunal  
Mr. S. B. Griffin LLB (Lawyer Chairman)  
Mr. K. Lyons FRICS (Valuer Member)**

**Case Number:** CHI/19UH/LDC/2011/0046

**Property:** 27 Icen Way  
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### **Application**

1. This was an Application by the Landlord Mr. R. A. and Mrs. E. J. Cosgrove in accordance with Section 20ZA of the Landlord and Tenant Act 1985 for the dispensation of all or any of the consultation requirements in respect of qualifying works. The qualifying works in the application related to the repair of the leaking roof of 27 Icen Way.

### **The Law**

2. The statutory provisions relevant to this application are to be found in Section 20ZA of the Landlord and Tenant Act 1985 as amended ("the Act"). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary to assist the parties in reading this decision.
3. Section 20 of the Act provides that where there are "qualifying works", the relevant contributions of tenants are limited unless the consultation requirements

have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.

4. The definitions of the various terms used within Section 20 for example consultation reports, qualifying works etc, are set out in that Section.
5. In order for the specified consultation requirements to be required, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by regulation and at the date of the application is £250 per lessee(inc. VAT).
6. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, S12003/1987. These requirements include amongst other things a formal notice procedure, obtaining estimates and provisions whereby a lessee may make comments about the work and nominate a contractor.
7. Section 20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied.(subsection(1)).

### **The Lease**

8. The Tribunal was provided with copies of specimen Leases for each of the three flats into which the property is now sub-divided. Although the Tribunal had

regard to these Leases, little turned on their interpretation during the course of representations made prior to and during the Hearing. Whilst the Leases are drawn in similar form, that in respect of Flat 1 provides in clause 3.3 thereof for the Lessee ".....to pay and contribute to the Lessors a one third part of the costs expenses, outgoings and matters mentioned in the Second Schedule hereto".... The Leases in respect of Flats 2 and 3 provide in clause 3.3 thereof respectively ".....to pay and contribute to the Lessor a one third part of the costs expenses outgoings and matters mentioned in the first part of the Second Schedule hereto and one half part of the costs and expenses outgoings and matters mentioned in the second part of the Second Schedule hereto"... .... The Tribunal apprehended that such disparity was not relevant to this Application.

9. Clause 4 (3) of each Lease provides in respect of the landlord's liability that "...subject to the payment of the contributions hereinbefore provided to maintain and repair redecorate and renew (a) the structure and exterior and the roofs, chimney stacks, gutters and rainwater pipes of the building and paint the exterior wood and ironwork of the building with at least two coats of good oil and white lead paint once in every four years of the term..."
- 10, The Second Schedule of each Lease refers to the costs and expenses in respect of which the Lessee is to make a one third contribution. This includes inter alia the expense of maintaining, repairing, redecorating and renewing (a) the structure of the building and in particular the roofs, chimney stacks, gutters and rainwater pipes of the building.

11. Suffice to say that there is an arrangement within the Lease for the Lessor to recover by way of service charge its expenditure on matters which are detailed in the Lease which it covenants to undertake.
12. There were no matters raised by any of the parties in respect of the interpretation of the Leases.

### **Background**

13. On 22<sup>nd</sup> December 2011 the Tribunal issued directions for the conduct of the case. In view of the urgency expressed in the application, the matter was listed to be dealt with on the fast track.
14. Various matters including the preparation of a bundle of documents and a timetable for the presentation of representations and statements was set out in the Directions.
15. It was allowed that if any Respondent should attend the Hearing and if they wished to produce any documents then these should be brought with them to the hearing.

### **Inspection**

16. The Tribunal members inspected the subject property prior to the hearing on the 20<sup>th</sup> January 2012. 27 Icen Way, Dorchester comprises a large late Victorian detached house which has been converted into three self-contained flats

seemingly in the late 1960's. It is traditionally built with pitched slated roof and walls of cavity construction faced in brick with stone detailing. Mr. Cosgrove attended the inspection, Miss Hill was not present nor represented. Mr. Green allowed the Tribunal access to his flat on the top floor, (Flat 3) to enable the Valuer Member of the Tribunal to effect an internal inspection of the roof void of his flat.

17. The Chairman explained that the purpose of the visit was to inspect the property and to identify the subject matter that would be referred to at the Hearing later i.e., the leaking roof.
18. The Valuer Member of the Tribunal also inspected externally the view of the roof in question.

### **Hearing**

19. The hearing commenced at 11am.
20. The Chairman identified the details of the application and indicated the documents that were available to the Tribunal.

### **Evidence**

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

21. The case stated in the application related to the urgency of repairing the leaking roof at the subject property. With his application the Applicant submitted a copy

of a Survey Report commissioned by him by Christmas and Brugge, Chartered Surveyors dated 15th December 2011 which stated (inter alia) in clause 2.1.1 thereof under the heading "Roofs" .....inspection of the main roof was restricted and in particular no detailed inspection was possible at the flat section of the ridge. The slating to the slopes is in good condition and the lead valleys also appear sound. Lead work to the flat roof area is however of poor appearance with the lead badly dressed and the eastern part of the roof with no visible lead rolls suggesting the lead work is inadequately detailed. We found high levels of dampness and staining on the timber decking and joists below the flat roof, indicating current leakage. The roof needs to be carefully checked and repaired or more likely replaced in accordance with good practice...".

22. In Clause 2.3 thereof under the heading "Summary" the Report recommends that the following works are carried out:-

.."Urgent – to be carried out as soon as possible – inspect and repair flat roof covering to apex of main roof"..

The Tribunal apprehended that the "qualifying works" in question are for (a) the removal of the existing lead roof covering to the centre section of the roof at the subject property and for its replacement with a fibreglass GRP system and

(b) for the supply, erection and final dismantling of independent scaffolding for lead work (excluding any adaptations or alterations) top lift boarded and (c) an extra tower and handrail for roof.

23. The Applicant has carried out some consultation outside the statutory framework. Mr. and Mrs. Cosgrove wrote to each of the Respondent Leaseholders on the 11<sup>th</sup> January 2012 and enclosed with those letters two quotations. One from Cull Services and the other from Hearn Roofing. The letters stated that based on the recommendations from Cull Services the Landlord was minded to accept their quotation which is the lower of the two quotations for the provision of GRP Roofing. The letter stated it was also proposed to accept the quotation for the updated additional cost for erection of scaffolding with the additional safety rail (from J.W.Scaffolding ).
24. Mr. Cosgrove put in evidence copies of the two quotations. One from Cull Contracting Services dated 10<sup>th</sup> January 2012 and the other from Hearn Roofing dated 11<sup>th</sup> January 2011 (the Tribunal apprehended that this was a typing error and the correct date should have read 11<sup>th</sup> January 2012).
25. The Applicant also put in evidence copies of two quotations. one from Cull Contracting Services Limited in the form of an e-mail dated the 22<sup>nd</sup> December 2011, and one from J.W. Scaffolding Limited also (erroneously) dated the 22<sup>nd</sup> December 2011 (see post). That from Cull Contracting Services Limited being in the sum of £720 plus VAT for the provision of scaffolding required to gain access and make a safe working platform and the other in the aggregate sum of £1260.00 to include the supply erection and final dismantling of independent scaffold to lead work (excluding any adaptations or alterations) top lift boarded and for an extra tower and handrail for roof.



26. The Tribunal sought clarification of two scaffolding quotations put in evidence by the Applicant both of which were from J.W. Scaffolding Limited and both of which were dated the 22<sup>nd</sup> December 2011. One being in the sum of £540.00 inclusive of VAT and the other being in the aforesaid aggregate sum of £1260.00 inclusive of VAT. The Applicant explained that the quotation of the 22<sup>nd</sup> December for £540.00 inclusive of VAT was in respect of the initial erection of the scaffolding and after such had been erected it became apparent that there would also be required the provision of an additional safety rail. He directed the Tribunals' attention to an e-mail from Mr. Keith Adams of J.W. Scaffolding Limited to himself dated 11<sup>th</sup> January 2012 which stated that it would be necessary to install a tower at the rear of the property to hold the handrail around the roof at an additional cost of £720.00 inclusive of VAT. This second quotation from J.W. Scaffolding Limited being in the aggregate sum of £1260.00 inclusive of VAT should therefore have been properly dated 11<sup>th</sup> January 2012 and not 22<sup>nd</sup> December 2011. It appeared to be the case that the date had not been updated when sending out the second quote.

27. The Tribunal also noted that in his letter to The Panel Office dated 10<sup>th</sup> January 2012 the Applicant had expressed concern that GRP used during the winter months might fail requiring further work and costs which would not all be covered by the guarantee. However the Tribunal further noted that in his letter to the Leaseholders dated 11<sup>th</sup> January 2012 the Applicant stated that he proposed to accept the quote from Cull Services to provide GRP roofing. The Tribunal accordingly adjourned the Hearing for 15 minutes in order to allow the Applicant to review his position and confirm to it whether or not he was now satisfied that a replacement fibreglass GRP system, rather than replacement with lead covering,

would be satisfactory. The Tribunal re-convened and the Applicant confirmed to it that his view now was that the GRP system would be satisfactory and it was proposed to instruct Cull Contracting Services to supply and fit the GRP flat roofing system as per their quotation of the 10<sup>th</sup> January 2012. It was also proposed to instruct J.W. Scaffolding Limited as to their (erroneously) dated quotation of the 22<sup>nd</sup> December 2011 in the aggregate sum of £1260.00 inclusive of VAT for the requisite scaffolding.

### **Decision**

28. It was apparent to the Tribunal that the proposed works are qualifying works to which the provisions of Section 20 of the Act and the Consultation Regulations apply. The Landlord has not complied with the Consultation Regulations. However, the proposed works are of an urgent nature. The Valuer Member of the Tribunal noted on his internal inspection of the roof void (accessed via Flat 3) the presence of water penetration and fungal growth to the underside of the boarding. The works are for the benefit of both Landlord and Leaseholders in the building. The Leaseholder of Flat 2 (Miss B.Hill) by letter dated 4<sup>th</sup> January 2012 addressed to the Panel Office expressed her consent to the works. The tenant of Flat 3 (Mr. S.Green) has made no written representation expressing either consent or dissent.
  
29. The Tribunal has taken into consideration that the leaseholders have not had the full opportunity for consultation under the Consultation Regulations. The Landlord has not complied with provisions of the Consultation Regulations. However the works are urgent and the Landlord has taken reasonable steps in

the circumstances and time available to provide the leaseholders with the relevant information and an opportunity to make observations and to comment. He sought dispensation from compliance with Section 20 because he wanted to complete the works before the winter set in.

30. The Tribunal indicated at the conclusion of the hearing that having considered the evidence as a whole they were minded to grant the application. The Tribunal is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an Order that the Consultation Requirements are dispensed with in respect of the proposed works to the roof as per the quotation of Cull Contracting Services Limited dated 10<sup>th</sup> January 2012 in the sum of £2,898.00 (inclusive of VAT) for the replacement fibreglass GRP system. Similarly that the consultation requirements are dispensed with in respect of the proposed supply of scaffolding to include extra tower and handrail as per the quotation from J.W. Scaffolding Limited in the aggregate sum of £1260.00 inclusive of VAT (erroneously) dated 22<sup>nd</sup> December 2011.

31. The Tribunal makes it clear that this dispensation relates solely to the requirement that would otherwise exist to carry out the procedures in accordance with Section 20 of the Act. It does not prevent an application being made by the landlord or any of the tenants under Section 27A of the Act to deal with the liability to pay the resultant service charges. It simply removes the cap on the recoverable service charges that Section 20 would otherwise have placed upon them.

Dated 30th January 2012

Signed

Stephen B Griffin LLB

Lawyer Chairman