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HM COURTS AND TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24UP/LDC/2012/0021

Between:

The Mill Place (Overton Road) Management Co Ltd
(Applicant/Management Company)

and

Kingfisher Housing and various shared-ownership lessees
(Respondents/Tenants)

In the Matter of :Section 20ZA of The Landlord & Tenant Act 1985 ('The Act')

Premises: Mill Place, Micheldever, Winchester, Hants, SO21 3BZ

Date of Hearing: 6th July 2012

Tribunal: Mr A.J. Mellery-Pratt FRICS Chairman
Mr D Lintott FRICS,

Introduction

- 1.1 On 24th May 2012, through their managing agent, Mr M Kemp of Belgarum Property Management Ltd, the applicant submitted an application under section 20ZA of The Act requesting dispensation from the consultation requirements of The Act in relation to works that were urgently required to the sewage treatment plant on the site
- 1.2 On 18th June 2012, the tribunal issued directions detailing the information required by the tribunal and the timetable for dealing with the matter.
- 1.3 On the 6th July 2012, the property was inspected and following that inspection a hearing was held at Norton Park Hotel, Sutton Scotney, Nr Winchester

The inspection.

2.1 At 9:15 am on the 6th JULY 2012, the tribunal inspected the property, accompanied by Mr Martyn Kemp of Belgarum Property Management Ltd, Mr Andries Van der Walt, and Mr Andrew Adams, respectively Chairman and director of the applicant company.

2.2. The tribunal noted that:-

The treatment plant and soakaway were situated in the north-west corner of the site, behind the car parking areas for the blocks of flats known as Harvest Court and Granary House.

The treatment plant is set inside a brick retaining wall, outside of which, and at a lower level was the area of the soakaway that was apparently about 10m long, 2-3m deep and 0.6 m wide

The outlet from the plant had been sealed on the instructions of the Environment Agency and the plant was having to be emptied every 2 days by contractors. At the time of the inspection the plant was completely full as apparently it was due to be emptied that day

One of the covering lids to the plant was broken

The Hearing

3.1 The hearing, later that morning, was attended by those at the inspection and in addition, Ms Karen Leach and Ms Julie Eckersley, from Sovereign Housing Association, of which Kingfisher Housing is a part, and Miss Emma Brown, one of the shared ownership lessees.

3.2 Mr Kemp provided to the tribunal and the respondents a folder of documentation relating to the works required at the treatment plant and a further folder with related correspondence, reports and invoices

3.3 The tribunal established that the whole site using the treatment plant, comprises 24 freehold houses who are covenanted to contribute to the costs associated with the treatment plant, together with 19 properties coming within the umbrella of Kingfisher/Sovereign Housing Association of which 8 are on a shared ownership basis, with the remainder being rented

3.4 The application relates to those properties under the Housing Association umbrella, being those to which The Act applies

3.5 From the information provided by Mr Vander Walt, Mr Kemp and Mr Adams, the time line of events, and the information provided to the respondents, appeared to be:-

18 th March 2011	A report from Pims, the plant maintenance company, to Belgarum, that the plant had failed and was close to overflowing. A subsequent report indicated that the failure occurred after this date and before the next maintenance visit
6 th June	A regular Pims maintenance visit which identified a problem with the system
19 th July	A further special inspection by Pims to identify the problem followed by an email to Belgarum setting out their findings and making recommendations
8 th August	Belgarum arrange the first emptying of the flooded plant
15 th September	The applicant was advised of the problem by Belgarum at a regular management meeting
15 th November	Pims report that some repairs to the plant had been carried out but query the existence of a soakaway
December	The AGM of the applicant company at which the problem with the plant was an item on the agenda. At this stage it was still thought that the problem was repairable at modest cost
1 st March 2012	Environmental Agency inspects and issues notice requiring the plant outlet to be sealed
14 th March	Letter to all respondents advising on the latest situation and noting the cost of tankerage
28 th March	Update letter to all respondents together with a request for a contribution of £500 from each property to go towards costs
16 th April	Quote received from Macob Southern Ltd for clearing and refilling soakaway, £18768 inc vat

- 9th May A special meeting of all residents to discuss:-
The background
The proposals
The reasons for failure and cost recovery
No quotes or other documents were issued at this meeting
- 24th May Belgarum submit an application under s20ZA of The Act
- 31st May Letter to all respondents with further update and a request for £1581.44, being made up of the regular half-yearly service charge of £381.44 together with a special payment of £1200 towards the cost of the works to the plant and soakaway
- Also, quote received from Easy Clean Services for repairs to and service of the treatment plant, £5540.40 inc vat

- 3.6 It was further confirmed that the applicants intend to appoint an expert to supervise the works and try to establish the cause of the problem. Quotes had apparently been obtained, but not produced, from the preferred expert indicating a cost of between £2000 and £2500
- 3.7 The cost of emptying the plant from August 2011 up to 6th July had been £32,791.10

Consideration

- 4.1 Previous warnings appear to have been given by Pims but had not been acted upon by Belgarum
- 4.2 We accept that there was some difficulty in establishing responsibility for the problem and whether this related to the original construction
- 4.3 A demand for £500 was issued to every resident on 28th March 2012 and this should have alerted Belgarum to the need to follow the consultation procedures. Had they done so at this time, it is probable that the application for dispensation would not have been required
- 4.4 We accept that residents have been kept informed of progress in resolving the problem, even if the correct consultation procedures have not been followed

4.5 We are concerned that full details of the costs and quotations have not been circulated

4.6 We accept that the work is urgently required

Decision

5.1 The decision which was verbally advised to the parties immediately after the hearing, is that:-

- a) In respect of the repairs and maintenance of the sewage treatment plant and associated soakaway that are urgently required, the consultation requirements of The Act may be dispensed with, subject to the proviso that
- b) The applicants must serve a formal Notice 2 under The Act giving full details of the costs which are to be incurred and copies of the quotations which it is propose to accept. The basis for assessment of any quotes which are not finite in their amount must be provided. The notice to be sent by 1st class post on Monday 9th July 2012 or hand delivered no later than 10th July.
- c) Any points raised by any respondent within 30 days of the issue of Notice 2, must be responded to in accordance with The Act

Dated 9th July 2012

A J Mellery-Pratt FRICS
(Chairman)

A Member of the Tribunal appointed by the Lord Chancellor