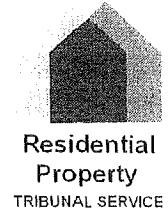


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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 20ZA OF THE LANDLORD AND TENANT ACT 1985 (as amended)

Case Reference:	LON/00AH/LDC/2012/0071
Premises:	Liberty Point, Blackhorse Apartments, 335 Lower Addiscombe Road, CR0 6RF
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Applicant:	Wideway Management Limited
Representative:	None
Respondents/leaseholders:	London & Quadrant Housing Trust Various Leaseholders of Liberty Point (as per Appendix)
Representative:	None
Date of hearing:	5 th September 2012
Appearance for Applicant(s):	None
Appearance for Respondent(s):	None
Leasehold Valuation Tribunal:	Mrs N Dhanani LLB (Hons) Mr W R Shaw FRICS
Date of decision:	5 th September 2012

The Tribunal determines not to grant an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of the roof works to the Premises.

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for a dispensation of the consultation requirements imposed under s.20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations") in respect of works to roof of the Premises.

The hearing

2. The parties did not request a hearing and so the application was decided by the Tribunal on the papers alone.

Background:

3. The Premises is a three-storey block comprising 23 flats above two commercial units on the ground floor.
4. The Applicant is the managing agent appointed by the freeholder. The First Respondent holds a long lease of all 23 flats. The First Respondent has sublet the flats to a mixture of long leaseholders (some of whom hold shared ownership leases) and weekly tenants. The Applicant states that the shared ownership leaseholders pay a variable service charge and the remaining tenants pay a fixed service charge.
5. The Applicant claims the roof terrace balcony has leaked and caused damage to a number of flats and an overlay of the roof is required. The freeholder wishes to carry out works to provide a new overlay to the roof terrace to the Premises.

Directions:

6. The Tribunal issued Directions in the matter on the 20 July 2012 and the matter was set down for a decision in the week commencing 3rd September 2012.

Inspection:

7. The Directions issued did not provide for an inspection of the Premises and no request for an inspection was made by either party.

The Applicant's Case:

8. The Applicant states that they were appointed as managing agents of the Premises in 2009. They state that they were made aware of the roof leaks in January 2011, prior to which neither they nor the freeholder of the Premises were aware of the problems. The Applicant states that since they were made aware of the problem both they and the First Respondent have jointly endeavoured to resolve the issue. The Applicant states that leaks have been notified in different areas of the roof and they have undertaken patch work repairs on two occasions but nevertheless the problem persists.
9. The Applicant states that they have since been notified that Flat 13 has been experiencing roof leaks since 2007. The Applicant states that they are unaware of the measures taken by the First Respondent to resolve the problem.
10. The Applicant states the builders who carried out the construction went into receivership in 2011 and so the matter could not be escalated to them.
11. The Applicant states that although the roof has the benefit of a 10 year warranty from the NHBC, the excess demanded by the NHBC before investigation is £18,000 plus vat. They have produced a copy of a letter from the NHBC dated 16 March 2011 and an email dated 23 March 2011 which confirms there is an excess of £817.74 per flat under the terms of the policy. The Applicant states that as a result they did not pursue a claim under the NHBC warranty and agreed with the First Respondent to carry out a survey and proceed with the recommended works.
12. The Applicant produced a copy of a letter addressed to the leaseholders. The letter states the estimated cost of the works to be £16738.70 plus vat, and the timescale for the works to be approximately 2 weeks. The letter sets out a brief history of the issue and states that the First Respondent has instructed Bailey Garner to carry out a survey report so that remedial works can be carried out as per their recommendations without further delay.
13. The letter to the leaseholders states:

“...As per WideWay's record there have been on-going water leaks at 335 Lower Addiscombe Road which have caused severe damages to the various flats at Liberty Point, and as per L&Q the issue is at Stage 2 complaint stage.

The problem appears to be structural as patch works and a repair of the roof was carried out but all in vain.

Wildeway were reported of water leak in Flat 13 on 6th January, 2011. A contractor was sent to carry out the patch work. There was another report from Flat 12 on 19th January, 2011 and which was attended. Yet the situation did not improve.

Another complaint from Flat 23 was received on 23rd February, 2011. The matter was escalated to a roofing specialist and remedial works were carried out in April 2011 to the balcony & flat roof of Flat 21, 22, and 23.

It was brought again to our attention on 09/12/2011 that Flat 13 was still experiencing water leaks from the balcony. And these have not stopped to date.

As the problem is obstinate, L&Q instructed Bailey Garner to carry out a survey report beginning of this year, hence remedial works ought to be carried out as per Bailey Garner's recommendations without any further delay."

14. The Applicant states that the First Respondent appointed Bailey Garner LLP to commission a survey and they have produced a copy of the project specification dated 1st June 2012 prepared for them.
15. The Applicant states that it received objections to the works from two leaseholders.
16. The Applicant has produced a copy of the Headlease of the Premises dated 18th October 2005 made between Milford Group Limited (1) Black Horse Inn Management Limited (2) and Tower Homes Limited (3) for a term of 999 years from the 1st January 2005. In addition the Applicant has produced a copy of a sample shared ownership lease.

The Respondent's Case:

17. The First Respondent does not oppose the application.
18. Two leaseholders have submitted objections to the works and the grant of a dispensation from the Statutory Consultation Requirements.
19. Lorraine Allen, the leaseholder of 4 Liberty Point states that as a shared ownership leaseholder she is responsible for paying a share of any costs incurred by any building repairs and she is not happy for the freeholder to make decisions without consultation. She states that there have been previous issues with the way the freeholder has conducted himself and many residents are unhappy. She provides no details as to the issues and no evidence in support. In addition she states that when she purchased

her flat in 2007 she was informed that it was covered by an NHBC warranty, and she questions why the works are not covered under this warranty and also whether this has been considered. She states that communication is poor and feels that if the freeholder is given dispensation that this would be detrimental to her.

20. Mr and Mrs Blue the leaseholders of 3 Liberty Point state that they moved into the flat on the 11th November 2011 and prior to this there was no indication of any ongoing problem with leaks from the roof or the likelihood of remedial works in the future. They state that they live on the ground floor and the leaks do not affect them so they do not understand why they should pay towards the cost of the repairs. They question the urgency of the repairs.

The Law:

21. s. 20 of the 1985 Act provides that:

"(1) Where this section applies to any qualifying works....., the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) Complied with in relation to the works or agreement, or

(b) Dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal."

22. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) a leasehold valuation tribunal.

23. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

24. s. 20ZA of the 1985 Act provides:

"(1) 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."

25. 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". The basis on which this discretion is to be exercised is not specified.

The Tribunal's decision:

26. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any significant prejudice has been suffered by a leaseholder as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.

27. The Tribunal having considered the evidence is satisfied that proposed works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply.

28. The Applicant and/or the freeholder have not complied with the consultation requirements set out in the 2003 Regulations, and prior to submitting the application for a dispensation it would seem that the Applicant has made no effort to start the consultation process.

29. The Tribunal notes that the Applicant having carried out patch repair works in January 2011 and April 2011 was notified in December 2011 that flat 13 was still experiencing water leaks from the balcony. The Tribunal notes that it took the Applicant a further 6 months to arrange the production of project specification and to submit an Application to the Tribunal seeking dispensation from the consultation requirements. The Tribunal fails to understand why during this period the Applicant appears to have made no attempt to start the consultation process in order to provide the leaseholders with relevant information and an opportunity to make observations and to comment on the works.

30. The purpose of the Consultation Regulations is to encourage practical co-operation between the parties on matters of substance, if non-compliance has not detracted significantly from the purpose of the regulations and has not caused significant prejudice there will normally be no reason to refuse dispensation.

31. In this case although the Applicant claims a survey has been conducted and has produced a copy of the project specification, this is not in fact a survey but simply a specification produced on the instruction of the contractor. The Applicant has produced no evidence to show that an independent survey has been carried out. On the evidence produced the Tribunal cannot be satisfied that the works proposed are of an urgent nature and that they are the most appropriate works in order to remedy the problem.

32. The letter to the leaseholder informs them that the works are estimated to cost £16738.70 plus vat, and the timescale for the works to be approximately 2 weeks, however the Applicant has produced no estimates or other evidence in support.
33. The consultation requirements impose a requirement on the landlord to obtain estimates (in the plural), and a requirement to make all of the estimates available for inspection. The purpose is to provide the tenants with the opportunity to see both the overall amount specified in two or more estimates and to make observations on them, and the landlord is required to take into account any such observations. The omission of this stage of the consultation requirements is a gross error, which has manifestly prejudiced the leaseholders in a fundamental way.
34. The Tribunal notes that although the Applicant claims the excess demanded by NHBC is £18,000 plus vat in fact the letter from the NHBC dated 16 March 2011 and the email from the claims co-ordinator at the NHBC states that the excess on the policy is £817.74 per flat. Since there are 23 flats in the Premises the total excess is therefore £18,808.02 which is less than the total estimated cost of the works at £16738.70 plus vat which amounts to a total of £20,086.44. The Tribunal considers that under the circumstances perhaps it would be more appropriate to undertake a further investigation to properly identify the cause of the problem and pursue a remedy for the problem under the NHBC warranty.
35. The Tribunal having considered the evidence is not satisfied that it is reasonable to dispense with the consultation requirements in this case. It is important to note that the Tribunal does not make any findings as to the reasonableness of, or the liability to pay the actual or estimated costs of the works.

CHAIRMAN: Mrs N Dhanani LLB (Hons)

DATE: 5 September 2012

Appendix

List of Leaseholders

Mr Glen Mankelow – Flat 1
Mr Nigel Cartridge – Flat 2
Mrs Joyce Blue – Flat 3
Miss Lorraine Matthews – Flat 4
Miss Winone Thomas – Flat 5
Ms Jennifer Brown – Flat 6
Mr Simon Garcia - Flat 11
Miss Patricia Brown – Flat 12
Miss Abisoye Omolola Ajose-Adeogun – Flat 13
Miss Claire Harris – Flat 18
Miss Louise Burley – Flat 19