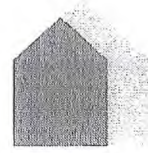




HM Courts
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Residential
Property
TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 – SECTION 20ZA

Ref: LON/00AY/LDC/2012/0042

Property: Thorncliffe Court, Kings Avenue, Clapham,
London, SW4 8EW.

Applicant: Brickfield Properties Limited

**Applicant's
Representative:** Cripps Harries Hall LLP

Respondents: The Leaseholders of the 30 flats on the list
annexed to the application.

Date of decision: 29th May 2012

Tribunal: Mrs H C Bowers (Chairman),
Mr J Francis QPM

Decision

1.) The Tribunal determines that it is reasonable to dispense with the requirements to consult under section 20 of the Landlord and Tenant Act 1985.

Introduction

2.) By an application dated 17th April 2012, the Applicant seeks a dispensation of all or any of the consultation requirements in section 20 of the Landlord and Tenant Act 1985 (the Act).

3.) A paper pre trial review was held and Directions were issued on 23rd April 2012. It was directed that this matter could be allocated to the Paper Track, unless either party requested a hearing. There was no request for a hearing and therefore this matter was considered on the basis of the papers submitted to the Tribunal.

Background

4.) The Applicant is the landlord of Thornclyffe Court, Kings Avenue, Clapham, London, SW4 8EW (the subject development). The development is described in the application as a purpose built block of 34 flats. Thirty flats are let out on a long leasehold basis and four flats (flats 5, 11,21 and 27) are retained by the Applicant and let out on assured shorthold tenancies.

5.) The application describes the qualifying works as "*replace the communal boiler serving the property; to replace the associated pipe work and to remove asbestos in the boiler room*".

6. The application seeks a dispensation for all or any of the consultation requirements.

7.) The initial section 20 notice of intent to carry out works was served on the leaseholders on 20th March 2012.

The Law

8.) Section 20ZA of the Landlord and Tenant Act 1985 states:

“(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 agreements, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

Representations

9.) A trial bundle was submitted with relevant paperwork from the applicant in this case. In addition there was correspondence submitted from several of the leaseholders.

Applicant's Representations

10.) In the Applicant's application and statement of case it was explained the communal boiler serving the property had failed and requires replacement. A temporary boiler is in place and the cost of hiring the boiler is £750 plus VAT per week. The Applicant wishes to replace the boiler as quickly as possible in order to minimise the hiring costs. A delay in proceeding with the work due to extensive consultation could result in hiring costs of £6,000 to £6,750 plus VAT. In these circumstances the Applicant considers that substantial cost savings could be made if the statutory consultation process is dispensed with.

11.) The estimated cost of installing the new boiler is £26,500 plus VAT. It is explained that asbestos is present in the boiler room and that asbestos management consultants, Environtec, have advised that the safe removal of the asbestos is necessary to comply with the Control of Asbestos Regulations 2005. Initially it was estimated that the cost of the asbestos removal would be £15,500 plus VAT., although there has been some negotiation and a lower estimate of £9,150 plus VAT is being considered.

12.) Included in the bundle is a copy of a letter dated 16th March 2012 from Freshwater Property Management sent to the leaseholders advising of the proposed work, the cost of the boiler replacement, the cost of the temporary boiler and information about the statutory consultation process. On 20th March 2012 an Initial Notice of Intention to Carry Out Works was served on the leaseholders. This notice was followed on 20th April 2012 with an Estimates Notice and a Report on Responses to initial Notice. The Estimates Notice states that based on the lowest tender the total cost for the boiler replacement and asbestos work including VAT would be £42,348.00 and that a contribution based on 3.33% would be £1,410.19. The Report on responses to initial Notice identified that no nominations for alternative contractors were received and that there were no observations.

Respondents' Representations

13.) Responses were received from leaseholders of eleven of the flats, namely 4, 7, 10, 12A, 15, 18, 19, 20, 24, 29 and 30. Ten responses indicated support for the landlord's application to dispense from full consultation. The response from flat 7 stated "The statutory consultation procedure being dispensed with, in compliance with your fiduciary duty to incur reasonable costs in running the property".

Decision

14.) The Tribunal noted that none of the Respondents have objected to the application for dispensation.

15.) The work suggested in the application may be regarded as of an urgent nature as any delay to the proposed works results in increased hiring costs in respect of the temporary boiler. It is also noted that a significant part of the consultation process has been undertaken. In these circumstances it would appear to the Tribunal that it would be reasonable to dispense with the full consultation process under section 20 of the Landlord and Tenant Act 1985 in respect of the replacement of the communal boiler serving the property; to replace the associated pipe work and to remove asbestos in the boiler room.

16.) In reaching this conclusion the Tribunal is mindful that this decision should not prevent the leaseholders from making any further application in respect of the question as to whether the cost of the works are reasonably incurred, that the works are to a reasonable standard and any question in respect of the liability to pay service charges in respect of these works.

A handwritten signature in black ink, appearing to read 'Helen Bowers', written in a cursive style.

Chairman

29th May 2012

Helen Bowers