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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 20ZA OF THE LANDLORD AND TENANT
ACT 1985

Case Reference:	LON 00BC/LDC/2012/0056
Premises:	211 Westwood Road Ilford IG3 8SE
Applicant(s):	Harjit Singh
Representative:	Ms Derveni solicitor of D H Law
Respondent(s):	(1) Rashpal Singh Jain (2) Jolyon Caplan (3) Walli Uddin (4) Overseas Investment Homes Limited
Representative:	Mr Uddin in person
Leasehold Valuation Tribunal:	Mr P L Leighton LLB (Hons) Mr T Johnson FRICS Mrs L West
Date of decision:	9 th July 2012

Decision of the Tribunal

The tribunal refuses dispensation under section 20 ZA of the Landlord and Tenant Act 1985 in respect of the statutory consultation requirements with regard to the building works carried out at 211 Westwood Road Ilford IG3 8SE.

Reasons for the Decision

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The Application

- 1 The tribunal considered the application by the freehold owner of 211 Westwood Road Ilford IG3 8SE to seek dispensation under Section 20 of the Landlord and Tenant Act 1985 following the service of a planning enforcement notice served by the London Borough of Redbridge in August 2010.
- 2 The application was issued on 18th May 2012 and directions were given on 25th May 2012 for the conduct of the application and it was listed for hearing on 9th July 2012.
- 3 On 27th June 2012 the applicant through his agents Hexagon Property Co Ltd applied for a postponement of the hearing on the grounds that the witness Mr Qalab Ali the managing agent would be unavailable because of family difficulties.
- 4 The application was refused on 4th July on the grounds that no sufficient evidence had been forthcoming as to the reason for Mr Ali's anticipated absence.
- 5 On 6th July the application for postponement was renewed with supporting evidence that Mr Ali would be in Pakistan where his mother was undergoing a serious operation and he needed to be present. He further stated that he would be returning after 15th July and asked for a hearing date thereafter. The second application was refused on the grounds that Mr Ali's evidence was uncontroversial and that it would be possible for the freeholder to make arrangements for someone else to attend the hearing to present the case.

The Hearing

- 6 On 9th July Ms Derveni of D H Law solicitors attended on behalf of the applicants and Mr Uddin, one of the leaseholders, accompanied by his wife attended to oppose the application. None of the other leaseholders appeared or had sent in objections.
- 7 At the outset Ms Derveni applied again for an adjournment of the hearing on the grounds of Mr Ali's absence and further on the grounds that she had not received a copy of the notice of opposition sent in by Mr Uddin on 27th June 2012. It was clear that Ms Derveni had limited information but stated that she would proceed in the event of the tribunal refusing the application. Mr Uddin opposed the application on the grounds that he suffered ill health and a further attendance would be difficult for him.

- 8 The tribunal having carefully considered the application decided that Mr Uddin who stated that he was in poor health would be prejudiced if the matter were adjourned to another date. The tribunal was also of the opinion that the freeholder should have made arrangements either to attend himself or arrange for alternative cover for Mr Ali at an earlier stage as he knew that Mr Ali might have to go to Pakistan . The tribunal therefore refused the application to adjourn to another day but granted time for Ms Derveni to consider the statement of Mr Uddin of 27th June 2012 and to take instructions.
- 9 The hearing proceeded on the basis that each side would put their respective representations before the tribunal and the tribunal considered whether or not dispensation should be granted.

The Facts

- 10 The property consists of seven flats on three storeys although there are in fact nine leases. Two of the leases appear to relate to areas where there are no residential flats although they refer to flats in the leases themselves. The upper flats are reached by external staircases and there are no internal common parts. Photographs of the property were shown to the tribunal and neither side requested an inspection.
- 11 The property was built in about 2006 and leases were granted by the original freeholder 7 Kings Properties Limited to 4 different leaseholders on 99 year leases at a commencement rent of £350. The leases contain a covenant to pay an interim and a final service charge each year.
- 12 In 2009 the freehold property was assigned to the current freeholder Mr Harjit Singh who appointed Hexagon Property Co Limited as managing agents.
- 13 In August 2010 the London Borough of Redbridge planning authority served an enforcement notice on the property, alleging breaches of the planning conditions which were granted at the time when the property was built.
- 14 These consisted of a number of items mainly related to the cladding of external staircases and the placing of windows on the side walls. It was alleged by the Applicant that some of these items had possible implications for health and safety whereas others related merely to the condition of the premises and its failure to comply with the original planning conditions.
- 15 Following the service of the notice the Applicant was given six months within which to comply namely by February 2011. They took no steps to comply with the planning enforcement notice at that time nor did they serve any notices under section 20 of the Act on any of the leaseholders indicating that they wished to carry out major works to the premises.
- 16 The first time that leaseholders were informed that any potential works might be carried out to the premises was in September 2011, over a year after the service of the planning enforcement notice. The explanation given was that the landlord was in negotiation with the local authority with

a view to modifying the requirements of the notice, although no documentation was provided by the Applicant to support this claim. It is said that those negotiations were concluded sometime in the spring of 2012.

- 17 It is also said in a statement from Mr Ali that the original notice required urgent works to be undertaken to the property. He stated that he had carried out an initial health and safety assessment (although no written support was given) and he noticed that works required urgent attention. He does not say in his statement when that initial assessment was carried out. He then goes on to state that an independent health and safety adviser Mr Adam Mukhtar was instructed on 10th May 2012 and that he compiled a report which also identified the same issues that are referred to in Mr Ali's statement.
- 18 It appears however that Mr Ali decided to instruct contractors to supply estimates of the work prior to April 2012 and therefore before Mr Mukhtar's survey. On receipt of that survey this application was then issued on 18th May. It was made clear in the directions that notwithstanding the alleged urgency of the works that consultation should still continue as far as possible.
- 19 The only consultation which appears to have taken place was that letters were sent on 13th April 2012 from Hexagon Properties indicating that various works would need to be carried out and indicating that each of the leaseholders would be required to contribute £2,978. It also stated that there was a deadline of the 15th May to complete the works and there was a request for payment in advance to enable the works to proceed stating that if they were not completed by that date that there would be a breach of planning law leading to criminal convictions and a potential fine of up to £20,000.

The Law

- 20 The obligations of the landlord when undertaking major works are set out in section 20 as amended of the Landlord and Tenant Act 1985. That section requires that the landlord should comply with the 2003 Regulations. Section 20ZA of the Act enables the tribunal to grant a dispensation from those requirements where it considers it reasonable to do so. That discretion conferred upon the tribunal can be exercised either before or after the completion of the works and confers a wide discretion depending on the circumstances of each case.
- 21 From the reported cases it appears that the essential test is for the tribunal to consider what steps the landlord has taken or proposes to take and what opportunities have been afforded to the tenants by way of meaningful consultation. Ultimately the test is whether or not a tenant has been prejudiced by the failure of the landlord to comply with the provisions.

Conclusion

- 22 There is no issue in the present case as Ms Derveni agrees that there has been a failure to comply with the regulations because no notice under section 20 was served, no opportunity for the leaseholders to suggest alternative contractors was offered and no stage 2 notice of proposal was put forward. The question therefore is on what grounds is the landlord to be relieved from the consequences of the breach of the regulations.
- 23 On the basis of the facts previously stated the tribunal can see no grounds whatsoever for relieving the landlord from the consequences of the breach. It was suggested that the works were to be carried out because of an emergency, but if there was an emergency it would have arisen far earlier than May 2012. Indeed it may be that the state of the premises justified immediate action on health and safety grounds as early as August 2010. Notwithstanding this the landlord took no steps whatsoever to keep the tenants informed or indeed to consult about the possible works to be carried out.
- 24 It cannot realistically be suggested that the landlord took all reasonable steps nor can it be suggested that the tenants were not prejudiced by the failure to do so. As Mr Uddin pointed out he could have put forward an alternative contractor who may have been able to undertake the works at a more economic price than that put forward by the contractors selected by the landlord. In addition it is also clear that the remainder of the works were not urgent except that the landlord had delayed carrying them out and risked receiving a heavy fine.
- 25 In the circumstances the tribunal considers that this application must fail and that any claim to recover the cost of the works under the service charge provisions in the lease is limited to £250 to each leaseholder. It may be in the light of some of the issues raised by Mr Uddin in his statement that he or any of the other leaseholders may be entitled to reduce that sum even further but the tribunal is not concerned on this application with the ultimate amount to be recovered. The only issue to be decided is whether dispensation should be granted and that application is refused.

Chairman Peter Leighton

Date 9th July 2012

