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HM Courts & Tribunals Service

LONDON RENT ASSESSMENT PANEL

Residential Property TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL APPLICATION UNDER S.20ZA OF LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00BG/LDC/2012/0053
Premises:	Mikardo Court, 260 Poplar High Street, London E14 0BQ
Applicant:	One Housing Group
Representative:	Ms Annemarie Roberts, solicitor
Respondents:	The leaseholders of the above premises
Leasehold Valuation Tribunal:	Ms E Samupfonda LLB (Hons) Mr J F Barlow FRICS
Date of Determination:	18 July 2012

Summary of Determination

The Application is refused.

Preliminary

1) The Applicant landlord seeks dispensation from some or all of the consultation requirements imposed on the landlord by Section 20 of the Landlord and Tenant Act 1985 in particular the provisions of Schedule 4 Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003. The application is dated 21st May 2012 and directions were issued by the Tribunal on 23rd May 2012 and copied to all the Respondent leaseholders. The Tribunal has received written representations from the leaseholders of Flats 8, 9, 16, 25, 28, 29 and 30 opposing the application. Flats 3, 17, 19, 22, 23, 24, 31, and 32 sent in written notice that they opposed the application. Flat 18 sent in written notice that he supported the application.

2) The application was heard on 18th July 2012. Ms Annemarie Roberts, solicitor and Mr Fabrizio Stafanoni, defects manager appeared on behalf of the Applicant. The Respondents; Mr Derek Lee of flat 16 representing flats 10 and 24 and Mr Damian German of flat 3 attended the hearing. The Tribunal has not carried out an inspection of the premises, understood to be a six storey new build property Circa 2008, having a mixed tenure of 24 leaseholders/shared owners, 11 assured tenants and commercial units.

Evidence

3) Mr Stafanoni gave the historical background, which in summary was that a fire occurred on the flat roof on 1 August 2011. Temporary patch repairs were carried out a few days later. Mr Stefanoni decided not to make a claim under the insurance policy to cover the cost of repairs because of the £15,000 excess. Shortly thereafter water penetrated into flat 30, a top floor flat, the dynamics of which suggested that water may have been trapped under the temporary repair. He explained that essentially there are two roof areas; one raised deck available for residents' use and the remainder of the flat is a restricted "non accessible" area. Morrisons, the Applicant's contractor under a long term agreement was instructed to collect tenders to carry out final roof repair and the person in charge was a Mr Ed Harrison. In an email dated 15 November 2011, he invited tenders from various companies. LTC Southern Limited submitted a tender quotation to carry out roofing works in the sum of £46,450. The debate then was whether the roof membrane was defective regardless of the fire damage. Infallible Systems Limited, the original roof contractor was asked to carry out an inspection of the roof on 21st December 2011. From the visual inspection conducted, they were of the opinion that the damage was more extensive than that caused by the fire. They requested an additional sum of £650 to instruct RAM Consultancy Limited to carry out a non-destructive electronic testing of the roof. This was carried out on 16 March 2012 and it identified 68 earth leakage pathways all at holes/splits where rainwater may penetrate through the waterproofing membrane and enter into the roof construction. On 23rd March 2012, at the request of Infallible Systems Limited, Kemper Systems Ltd, the original provider of the roof guarantee was asked to carry out a roof survey. The reports were emailed to the Applicant on 10 April 2012. Infallible Systems suggested two remedial options which were to either patch repair at a cost of £15,988 + VAT or relay completely a new waterproof membrane at a cost of £28,950 +VAT. On 20 April 2012 the lessee of flat 32 reported water ingress causing damage to walls, floors and decorations. The decision was taken by One Housing Group to relay a whole new membrane in response to this report. Flat 32 is situated under the roof area that was fire damaged but the source of ingress was not clear.

4) Mr Stefanoni conceded that there had been poor communication with the leaseholders. He acknowledged that the Respondents had not been formally informed about the concerns regarding the roof. All of the Leaseholders were informed about the works by the Notice of Intention (NOI) dated 18 May 2012 and a meeting was held on 11 June to address any concerns. Work to relay the roof membrane started at end of May, it took about four weeks and was completed in June 2012.

5) Ms Roberts submitted that the NOI dated 18 May was an attempt by the Applicant to comply with the statutory consultation requirements. It was her view that prior to April 2012, there was no legal obligation on the Applicant to inform the lessees because the Applicant did not have any intention to carry out any work. The investigations that were being carried out were a costing exercise to enable the Applicant to decide the best way forward. She confirmed that the cost of the work will be borne by the reserve fund and that each leaseholder will be asked contribute £992 inclusive of VAT.

6) Mr Lee argued that the Tribunal should not grant the order sought because the Applicant has had ample opportunity to consult leaseholders but chosen not to do so. He highlighted the fact that Ed Harrison in his email dated 15 November 2011 outlined a number of defects to the roof that he had identified and that it was his opinion that the "flat roof will continue to fail and is beyond economic repair." The tender submitted by LTC Southern Limited dated 30 November 2011 confirmed defects that could be rectified at a cost in excess of £46,000. That, he said should have put the Applicant on notice that it might need to consult leaseholders as the sum was clearly above the consultation requirement threshold. Yet the leaseholders were not informed. He added that because flat 30 continued to experience water penetration intermittently, it must have been apparent to the Applicant that the patch repairs carried out in August 2011 were not effective. Since it was known that the patch repairs were not compatible with the existing roof, the Applicant knew that the roof membrane would have to be effectively rectified at some future point. In March 2012 it was clear from the RAM report that there was extensive damage to the roof but the leaseholders were not informed. In April 2012, the Applicant signed a contract with Infallible Systems to carry out the most expensive option without consulting leaseholders. He submitted that the leaseholders had been denied the opportunity to ask questions or make any observations. The meeting held on 11 June was after work had commenced and not all leaseholders were able to attend. The NOI presented them with a fait accompli because it plainly stated that work will be carried out in the next week by Infallible Systems Ltd. He emphasised that his primary concern

was to ensure that leaseholders' right to be informed and consulted were preserved and not to reduce his level of contribution.

7) Mr German added that the leaseholders were not given any information about the fire in August last year. He said that he had made several complaints about trespassers onto the roof. He stated that the key issue for him was lack of communication.

Determination

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

> (1) Where an application is made to the 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.

9) Having considered the evidence, the Tribunal is not satisfied that it is reasonable to dispense with the statutory consultation requirements. One of the key factors behind the imposition of the consultation process is the fact that it allows tenants the opportunity to comment on, make observations on proposed works and nominate contractors from whom estimates should be obtained before landlords embark on a programme of works the cost of which they will ask tenants to contribute towards. Clearly there are circumstances in which emergencies arise requiring urgent works which, for example for health and safety reasons should not be delayed by the landlord having to comply with the fairly lengthy consultation procedures. Having regard to the chronology of events, the Tribunal does not consider that the facts of this case fall within that category. Further, the Tribunal considers that the Respondents in this case were seriously prejudiced by the Applicant's failure to comply with the consultation requirements as they were not partially but completely denied that opportunity to comment. The evidence from Mr Lee and Mr German together with the written representations from the leaseholders opposing the application demonstrated that they all had legitimate concerns and observations which they would have made had they been allowed to do so.

10) The Applicant was aware from August 2011 that the roof was in a less than satisfactory condition following the patch repairs carried out to make safe and good the damage caused by the fire. Although Mr Stefanino

suggested that Mr Harrison of Morrisons acted on his own volition by sending out invitations to tender for roofing works, the Tribunal finds that to be somewhat implausible bearing in mind that he copied Mr Stefanino into that email dated 15 November 2011 that he sent out to the various contractors. That email fully set out the defects to the flat roof which he described as being "spongey in places, has dips and troughs, and been extensively repaired/re-covered." The email also stated that "the winter is approaching and left in the current condition it will continue to fail ..." The contents of that email strongly suggest that Mr Harrison had carried out a roof inspection prior to writing. Also Mr Stefanino stated that Mr Harrison reported to him that he had received a number of tenders but only one from LTC Southern Limited actually materialised. These circumstances indicate to the Tribunal that the Applicant had been given early notice that the roof was in need of urgent attention. In the Tribunal's view it would have been reasonable at that stage to have at least notified the leaseholders that invitations to tender for the roofing works were being sent out and that a quote had been received which was under consideration or that the matter was being investigated further.

11) The Tribunal does not accept the submission that between November 2011 and April 2012, the Applicant was simply carrying out a costing exercise. The evidence was clear from the LTC Southern Report, Infallible Systems Report, Kemper Ltd report and Ram report that the roof was seriously defective and remedial action was essential. It is the Tribunal's view that it would have been reasonable for any landlord faced with that number of reports to have contemplated some form of action. Whilst Mr Stefanino concedes that there was poor communication with the Respondents, we were not provided with a plausible explanation as to why that was the case. The chronology of events indicate that several windows of opportunity were missed between those dates.

12) The Applicant submits that events were taken over by the sudden down pour in mid April 2012. However, insufficient evidence was put before the Tribunal to demonstrate that the water ingress into flat 32 was so catastrophic that the only means to abate it was to relay a whole new roof. It was said that the single down pour caused damage to the walls, floor and decorations. The Applicant was entitled to weigh up its options as to how to best tackle the problem. There was no evidence produced from which the Tribunal could assess the extent of the water damage. Insufficient evidence was submitted to explain why the Applicant considered that this was such an emergency which could not, for example be dealt with by carrying out temporary patch repairs and then consult, or

significantly prejudiced by the Applicant's failure to comply with the requirements to consult.

16) It should be noted by the parties that this determination does not affect the right of the leaseholders under s.27A of the Act to challenge the payability or reasonableness of the cost of the works to be recovered under the service charge provisions of their leases.

Signed ...Evis Samupfonda.....

18 July 2012

Ms E Samupfonda, Chairman