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HM Courts &
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NORTHERN RENT ASSESSMENT PANEL

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

Case Reference: MAN/00BU/LDC/2013/0006

Premises: Timperley Flats, 63-71 Stockport Road, Altrincham,
Cheshire, WA15 7LH

Applicant(s): Timperley (Services) Limited

Representative: Rebecca O'Neil of The Guthrie Partnership

Respondents: Various leaseholders named in the Application

Representative: N/A

**Date of paper
Determination:** 15 May 2013

**Leasehold Valuation
Tribunal:** Mr H Aziz LLB
Mrs E Thornton-Firkin BSc MRICS

Date of decision: 15 May 2013

Decision of the Tribunal

1. The Tribunal determines that an order for dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the works outlined below.

The Application

2. 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 the installation of a hard wired fire alarm.
3. The property concerned is Timperley Flats, 63-71 Stockport Road, Altrincham, Cheshire, WA15 7LH and the application is made against all the leaseholders.

The Issue

4. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act given that urgent works were said to be necessary to install a hard wired fire alarm.

The Background

5. The Applicant is the landlord, Timperley (Services) Limited. The Premises are described as a residential conversion comprising of 15 apartments split across 5 terrace houses.
6. The Respondents each hold long leases. The leases require the landlord to provide services and the Respondents to contribute towards their costs by way of a variable service charge.
7. The application was made on 12 March 2013. Directions were given on 28 March 2013 which provided an opportunity for the Respondents to file any statements/evidence by 18th April 2013.
8. The directions also provided for any party to make a request for a hearing and if one was not requested, the matter would be dealt with via a paper determination. There has been no response from any of the Respondents. As there was no request for an oral hearing, the application proceeded as a paper determination.

Inspection

9. The Directions issued provided for an inspection of the Premises and an inspection took place on 15 May 2013. There were three properties containing 2 flats and two containing 4 flats. One of the four flat properties was having its basement converted into another flat bringing the total number of apartments to 15. The proposed wireless system consists of a separate control panel in each of the hallways with a heat detector in each flat and a smoke alarm in each hallway. The system will interlink all the properties. In addition, there would a separate smoke alarm in each flat which runs on a long life battery.

The Applicants Case

10. The Applicant's case is as set out in the application form and in the letter to the Respondents dated the 18th April 2013.
11. The application form states that the dispensation is sought to *"urgently satisfy the recommendations of the fire risk assessment"*. The qualifying works required are that *"that a hard wired fire alarm needs to be installed."* The risk assessment notes a substantial risk to life without the installation.
12. The Applicants letter to the Respondents dated 18th April 2013 informs the Respondents that an application has been made to dispense with the consultation process to install a communal fire detection system across the whole development. It notes that due to the *"risk to life"* and to comply with recommendations and legislation, the Applicant is looking to install the system as a matter of urgency.
13. The Applicant submits that there is a fire escape policy in place which requires the residents to evacuate in the event of a fire. However, a fire detection system is required in order to notify the residents when to evacuate. The construction of the property means that the dividing floors between the properties are of timber construction and flammable if a fire were to break out, it would spread.
14. The system that the Applicant proposes to install is a mixed signal system made up of both heat and smoke sensors with heat sensors in the flats and smoke sensors in the communal areas. The Applicant stated as an added benefit, the system will minimise the number of false alarms from cooking incidents in the kitchen.
15. A copy of the recommendation of the fire risk assessor was said to accompany the letter to the Respondents. The Applicant did not enclose the specification of works or copies of any estimates obtained.
16. The Tribunal was also provided with a summary of significant findings which related to the development. Although it did not directly refer to the properties subject to this application, the Tribunal had no reason to believe it did not apply to them.

The Respondents' position

17. The directions provided that any Respondent who wished to serve a statement could do so if they wished. A copy of the relevant directions was sent to each Respondent on 28th March 2013. None of the Respondents served any statements or filed any other evidence.

The Law:

18. 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."

19. 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.

20. "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.

21. 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."

22. 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.

Reasons for the Tribunal's decision

23. 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.
24. 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. The landlord has not complied with the consultation requirements set out in the 2003 Regulations save as to serving a notice of intention being served on 12 March 2013. However, the Tribunal is satisfied that the proposed works are of an urgent nature and are for the benefit of the interests of both landlord and leaseholders and the health safety or welfare of the occupiers of the Premises.
25. The Tribunal has taken into consideration that the leaseholders have not had the full opportunity for consultation under the 2003 Regulations. The Tribunal notes that leaseholders have not made any representations within these proceedings despite being given an opportunity to do so. However, the works are urgent and the Applicant has taken reasonable steps in the circumstances and time available, to provide the leaseholders with relevant information.
26. The Tribunal took into account the fire risk assessors report. The Tribunal had some concerns that the report provided was not dated and was only a summary. The Tribunal noted it is not clear when the report was commissioned as it recommends a review date in November 2010. If the report was commissioned earlier than November 2010, it was not clear to the Tribunal why the works have not been undertaken earlier or why it is now seen as urgent by the Applicant. However, the Tribunal took the view that whatever the date of the report, the works needed to be done quickly as without the fire detection system the risk was assessed as "*substantial*".
27. The Tribunal therefore determined that it had the jurisdiction to grant dispensation under section 20ZA of the 1985 Act and that it was reasonable to dispense with the requirement.
28. The Tribunal would stress that it is not making any assessment of the reasonableness of the charges or whether the works fall with the Applicant's repairing obligations under the terms of the lease. A challenge to the charges may still be raised under section 27A of the 1985 Act in the future.

Chair:

Mr H Aziz

Date:

15 May 2013