

9027



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AW/LDC/2013/0061**

Property : **12 Ladbroke Terrace, London W11
3PG “the property”**

Applicants : **Goldsborough Estates Limited**

Respondents : **All 31 Leaseholders of 12 Ladbroke
Terrace**

Type of Application : **Application for a determination
under Section 20ZA for a
dispensation under Section 20 of
the Landlord and Tenant Act 1985**

Tribunal Members : **Ms M W Daley LLB (Hons)
Mr S Mason FRICS**

**Date of Paper
determination and
venue** : **7 August 2013 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **7 August 2013**

DECISION

Decisions of the Tribunal

- (1) The Tribunal having considered all of the circumstances of this Application have decided that it is reasonable to dispense with the Section 20-consultation requirements.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant sought a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985.
2. The Application for dispensation was issued on 20 June 2013.
3. Directions were given by the Tribunal on 1 July 2013.

The matter in issue

4. At the Directions hearing On 1 July 2013 the Tribunal determined that this matter was suitable for a paper determination, and that the only issue for the tribunal was whether or not it is reasonable to dispense with the statutory consultation requirements. The Tribunal stated that "This application does not concern the issue of whether any service charge costs will be reasonable or payable.
5. The relevant legal provisions are set out in the Appendix to this decision.

The background

6. The premise which is the subject of this application is a purpose built development of 31 retirement/assisted living flats for the elderly.
7. The Respondents hold long leases of the flats, which require the landlord to provide services and the Respondent leaseholders, to contribute towards the cost of the service, by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

8. The Paper Determination

9. In compliance with the directions, the Applications had provided an indexed bundle of documents which set out the circumstances in which this application was sought.
10. The freehold of Chartwell House 12 Ladbroke Terrace ("the property") is owned and managed by Goldsborough Estates part of Bupa. The development comprises 31 assisted and retirement dwellings for occupation of those above retirement age.
11. Each flat is linked to a 24 hours emergency call system; the call system is also linked to the communal areas. The rationale behind the system is to provide additional security for the occupants, and enable any emergency needs of the residents to be responded to appropriately.
12. In paragraph three and four of the statement of case, the Applicant stated -:" Over recent times the 24 hr emergency call system located in each flat and throughout the communal areas has become a concern.
13. For example smoke detectors sending false alarms, door entry faults, poor speech quality and wireless difficulties. This is an indication that weaknesses are developing in the system equipment and the problems are likely to become more frequent."
14. The Applicants proposed upgrading the system, and as a result noted that the only person who would be able to up grade what is regarded as "a complex system" is the original supplier.
15. The upgrade consists of replacement of the call points and smoke detectors, the wireless relay units in the communal corridors, additional installations in the equipment room and replacement of all of the pendant alarms.
16. A quotation for the cost of the work was obtained from Tunstall Healthcare UK in the sum of £19,185.48. (No information was provided to the Tribunal about any commercial or other links between the Applicant and the contractor.)
17. In compliance with the directions, (this required information to be enclosed in the bundle concerning any steps taken to comply with the requirements to consult.) The Applicant provided copies of a bulletin dated 23 May 2013
18. All of the information provided to the Tribunal concerning the system was set out in the bulletin, with the additional information that the cost of the work would be paid for from the existing sinking fund, and as such, there would be no need for an additional contribution from the leaseholders.
19. A pro forma letter was sent to the leaseholders and they were asked to indicate whether they agreed to the proposed upgrade. The Tribunal have some concerns about the phrasing of the letter which are set out below.
20. All save one of the leaseholders indicated their agreement to the proposed work. Of the one leaseholder who did not respond he no longer resides at the flat and currently lives abroad.

21. *The Tribunal's decision*

22. The Tribunal having considered the written submissions relied upon by the Applicant and have determined that the major works are required, and that in all of the circumstances of this Application have decided that it is reasonable to dispense with the Section 20-consultation requirements.

The Reason

23. The Tribunal determine on a balance of probabilities that it is reasonable to dispense with the consultation requirements, the Tribunal note that the nature of the occupancy of the building and the degree upon which the safety and security of the occupancy might be compromised by the faults in the existing system,

24. The Tribunal note, that no information has been provided about whether it might be cheaper to replace the old system with a newer system altogether, and given this whether this may have led to a wider pool of contractors. The Tribunal note that there is no objection to the cost.

25. The Tribunal noted the wording at paragraph three of the pro forma which stated -: "*...In order to avoid a pointless tender process and comply with the Commonhold and leasehold Reform Act, all leaseholders have to agree that they have no objection to Goldsborough Estates placing an order on Tunstall for the costs indicated without seeking other tenders and dispensing with the need for the "Section 20" requirements...*"

26. The Tribunal note that this does not accurately set out what the section 20 procedure is for; it protects the leaseholders, and enables them to play a meaningful part in decisions to incur major expenditure for work to their homes.

27. This decision of the Tribunal is limited to the need to consult under section 20 of the Landlord and Tenant Act 1985, given this the Tribunal have not made a determination on the reasonableness and payability of the service charges under section 27 A of the 1985 Act.

Application under s.20C and refund of fees

28. The Tribunal notes that there is no application for a re fund of the fees, or any information concerning whether the Applicant intends to claim any cost associated with this hearing as a service charge.

29. The Tribunal makes no order for reimbursement of fees, and any application for a claim related to the cost of these proceedings, may be considered under section 27A of the Landlord and Tenant Act 1985 on application to the Tribunal.

Name: Ms M W Daley

Date: 7 August 2013

Appendix of relevant legislation

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, 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.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

S20ZA Consultation requirements:

- (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.
- (2) In section 20 and this section—
 - "qualifying works" means works on a building or any other premises, and
 - "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the Recognised tenants' association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

- (6) Regulations under section 20 or this section—
- (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. [...]
1. The relevant Regulations referred to in section 20 are those set out in Part 2 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).