



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

Case reference : LON/00AW/LDC/2014/0035

Property : 245 Old Brompton Road London
SW5 9HP

Applicant : Spot Property Company Limited

Representative : Metrus Property Advisors

Respondent :

1. Ms P Reed (Flat 1)
2. Ms A Riaz (Flat 2)
3. Mr P Jacobs (Flat 3)
4. Mr L Julienne (Flat 4)
5. M & M Wiedersum (Flat 5)
6. Daria Guastella (Flat 6)

Representative : None

Type of application : Section 20ZA Landlord and Tenant
Act 1985- To dispense with the
requirement to consult
leaseholders about the works to the
roof.

Tribunal member(s) : Judge: N Haria LLB (Hons)
Valuer: T Johnson FRICS

Date of decision : 2 April 2014 (Extempore)

DECISION

Decision of the Tribunal:

The Tribunal grants an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of the works specified in the Schedule of repairs and maintenance to the main roofs prepared by SPS Associates Limited dated March 2014 Ref: 02/SPS/0139/14 for works to be carried out by Capricorn in accordance with their tender dated 25 March 2014 in the sum of £21,561.00 subject to the condition that the works commence immediately that the licence for scaffolding is granted and in any event on a date no later than 1st June 2014.

The application:

1. 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 replacement of repairs and maintenance works to the main roofs at the property.

Hearing

2. Ms Rosie Gill of Metrus Property Advisors and Mr Sanjay Samaroo of SPS Associates Ltd Chartered building surveyors attended a hearing on the 2nd April 2014. None of the respondents attended the hearing.
3. Upon conclusion of the hearing after a short recess the Tribunal delivered an extempore decision.

Background:

4. The property is a block comprised of four terraced properties containing 6 flats.
5. The Applicant is the landlord and is represented by the managing agent of the block.
6. Each of the four terraced properties has a mansard roof at 3rd floor level, with dormers to the front and rear, and a section of flat roof to the top. Each roof is generally separated by a short parapet wall running front to back. The sloping sections of the mansard roof are covered in slate at the front and rear. The front elevation dormers have slate covered cheeks and pitched roofs with a gable end, running into the sloped section at the valley. The rear elevation dormers have slate covered sides, and the flat

section of the roof extends to form the top of the dormer. There is a parapet gutter at the rear elevation.

7. The flat roof sections are generally overlaid in felt, with flashing detailing at the edges with sloping roofs and parapet walls. Generally a proprietary aluminium edge trim is present to the top of the rear flat dormer.
8. The Managing Agent claims that the flat roof covering is in poor condition and approaching the end of its serviceable life, and they have obtained a surveyors report which recommends that:
 - (i) the existing roof covering should be overlaid with a waterproof liquid plastic coating,
 - (ii) the pitched roof coverings should be cleaned and overhauled so that any defective slates and ridge capping sections are replaced,
 - (iii) the parapet walls should be re- pointed,
 - (iv) new sealing applied to the gutter flashing dressings, and
 - (v) the front gutter is fully cleared.

9.

Directions:

8. The Tribunal issued Directions in the matter on the 11.03.2014 and the matter was set down for a hearing on the 2.04.2014.

Inspection:

9. The Directions issued did not provide for an inspection of the property and no request for an inspection was made by either party.

The Applicant's Case:

10. The Applicant's case is fully set out in the application.

11. The Applicant produced a copy of a sample lease, the report dated December 2013 produced by SPS Associates Ltd following an inspection in November 2013 in relation to the condition of the main roof, copy correspondence ("the report"), copies of quotations and additional miscellaneous information.

12. Ms Gill on behalf of the Applicant submits that there have been leaks from the roof over a number of years. In an effort to minimise service charge costs patch repairs have been carried out to sections of the roof. The latest section of patch repairs were as a result of continuing leaks to flat 5 and were instructed on the 14.03.2014 after obtaining estimates in November 2103 from three contractors for the patch repairs. The patch repairs were undertaken by Capricorn at a cost of £1224.00 inclusive of VAT. The flat has since experienced further leaks when it rains. Ms Gill referred to the email from AGAP Architects dated 26 .02.2014 following an inspection on the 25.02.2014 to show the extent of the damage to flat 5 due to water ingress and to highlight the urgency of dealing with the full repairs as soon as possible. Ms Gill submits that there are leaks into flat 3 as well due to the faults with the roof. Ms Gill submits that in order to gain access to all areas of the roof to undertake repairs to the roof scaffolding will be required. Ms Gill submits that due to the limited success of the patch repairs it is preferable to carry out the major repairs without delay.
13. On the 05.02.2014 the Managing Agent held a conference call which was open to all the Respondents in order to discuss the roof repairs. The leaseholders of flat 3, 4 and 5 dialled into the call and following the call the Managing Agent sent an email to all the Respondents summarising the discussion during the call and setting out the action required. The Managing Agent circulated a copy of the report to all the Respondents.
14. Mr Samaroo of SPS Associates Ltd invited three contractors to tender for the works but only two contractors, Polyteck and Capricorn responded. The lowest tender was from Capricorn at £21,560.00.
15. Mr Samaroo recommended Capricorn's tender be accepted as their tender was the lowest received and they are a competent contractor known to SPS Associates and have been involved in works of this nature at other buildings managed by the Managing Agent and they have knowledge of the property.
16. Miss Gill stated that if they did not obtain dispensation from the consultation process they would have no option but to continue carrying out patch repairs as required and to undertake a full consultation before commencing the works.

The Respondent's Case:

17. The Application and the Directions as well as the hearing bundle was sent to the Respondents. The Directions invited representations from the Respondents but no representations have been received.

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) the 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 ...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.

23. The consultation requirements for qualifying works are set out in Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

Notice of intention

(1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
 - (c) invite the making, in writing, of observations in relation to the proposed works; and
 - (d) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

- (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
 - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

- (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.
- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
- (a) from the person who received the most nominations; or
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

- (c) in any other case, from any nominated person.
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
- (a) from at least one person nominated by a tenant; and
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
- (a) obtain estimates for the carrying out of the proposed works;
 - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
 - (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
- (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
- (a) each tenant; and
 - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—

- (a) specify the place and hours at which the estimates may be inspected;
 - (b) invite the making, in writing, of observations in relation to those estimates;
 - (c) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

- (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
 - (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
 - (b) where he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.
- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

The Tribunal's decision:

- 24. The Supreme Court's decision in the case of Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854 clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.

25. The scheme of the provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than they would be reasonable in the circumstances.
26. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
27. The burden is on the landlord in seeking a dispensation from the consultation requirements. However the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered as a result of the lack of consultation.
28. The Tribunal having considered the evidence is satisfied that the works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply.
29. The Tribunal is satisfied that the works are of an urgent nature given the damage caused due to water ingress. The Tribunal accepts that it is uneconomic to continue with patch repairs to the roof as it has reached the end of its serviceable life. The Tribunal considers it prudent to undertake all the repairs in one phase whilst the scaffolding is erected, as opposed to undertaking the works in two phases. The Tribunal considers this will minimise the costs of the works by removing any costs associated with the dismantling and erection of the scaffolding between the two phases and it will also minimise the inconvenience caused to the residents.
30. The Tribunal is satisfied that the works are for the benefit of and in the interests of both landlord and leaseholders in the Property. The Tribunal noted that none of the leaseholders had objected to the grant of dispensation.
31. The Tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to the failure to consult. The Tribunal noted that the Managing Agent had obtained an independent report as to options available and had obtained quotes from at two independent contractors. The Tribunal does not consider that there would have been any significant saving in the cost of the works in the event that the statutory consultation had been fully complied with. The Tribunal is not persuaded that the leaseholders have suffered any financial prejudice as a result of the failure to consult.

32. The Tribunal has taken into consideration that the leaseholders have not had the full opportunity for consultation under the 2003 Regulations. However, the works were urgent and the Applicant has taken reasonable steps in the circumstances and time available, to provide the leaseholders with relevant information. The leaseholders did not have an opportunity to make observations and to comment on the works or to nominate a contractor. The Managing Agents could have started the consultation process in November or December 2013 when it first became aware that the flat roof covering is in poor condition and approaching the end of its serviceable life. Instead the Managing Agents sought the agreement of the leaseholders to dispense with the consultation requirements and arranged for a report to be produced by a SPS Associates Ltd to analyse the various options. In view of the circumstances under which the works became necessary the Tribunal does not consider that the leaseholders, in losing an opportunity to make observations and to comment on the works or to nominate a contractor, suffered any relevant prejudice.
33. The Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are dispensed with in respect of the works specified in the Schedule of repairs and maintenance to the main roofs prepared by SPS Associates Limited dated March 2014 Ref: 02/SPS/0139/14 for works to be carried out by Capricorn in accordance with their tender dated 25 March 2014 in the sum of £21,561.00 subject to the condition that the works commence immediately that the licence for scaffolding is granted and in any event on a date no later than 1st June 2014.
34. **It should be noted that in making its determination, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

Name: N Haria

Date: 23 May 2014