

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00HB/LDC/2009/0024

In the matter of an application under Section 20ZA of the Landlord and Tenant Act 1985 (as amended)

And in the matter of Kings Court, Colston Street, Bristol, BS1 5AY

Between:

Queenwood Group Limited

Applicant

and

The Lessees of Kings Court

Respondents

Date of application: 28 July 2009

Date of hearing: 7 September 2009

Members of the Tribunal: Mr. J G Orme (Lawyer chairman)

Mr. M Ayres FRICS (Valuer member)

Mrs. M Hodge BSc (Hons) MRICS (Valuer member)

Date of decision: 12 September 2009

Decision of the Leasehold Valuation Tribunal

For the reasons set out below, the Tribunal determines that it is not reasonable to dispense with all of the consultation requirements in relation to the qualifying works at Kings Court, Colston Street, Bristol, BS1 5AY which are the subject of the Application but that it is reasonable to vary the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (as amended) by reducing the relevant period referred to in paragraph 11(10)(c)(iii) of schedule 4 part 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 from 30 days to 14 days.

Reasons

The Application

1. On 28 July 2009, the Applicant, Queenwood Group Limited, applied to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985 for the dispensation of all of the consultation requirements set out in Section 20 of the Landlord and Tenant Act 1985 ("the Act") and in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations") in relation to qualifying works to repair drains and sewers at Kings Court, Colston Street, Bristol BS1 5AY. The Respondents to the application are the leasehold owners of the residential premises and shops at Kings Court. Their names and addresses are set out in a schedule to the application.
2. The Tribunal issued directions on 5 August 2009 providing for the Applicant to prepare a bundle of relevant documents; to send copies to the Tribunal and all Respondents at least 10 days before the hearing; for any Respondent to attend the hearing if they contested the application; and for the application to be heard on 7 September 2009.
3. In accordance with the directions, the Applicant filed a bundle of relevant documents. Mr. C Fletcher-Wood, the leasehold owner of apartment 13 Kings Court, wrote to the Tribunal on 18 August indicating that he did not oppose the application. No other Respondent filed any documents with the Tribunal.
4. The application was heard by the Tribunal on 7 September.

The Law

5. Subsection 1 of Section 20 of the Act as amended provides:
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.
6. Qualifying works are defined by Section 20ZA (2) as works on a building or any other premises.
7. The effect of subsections 2 and 6 of Section 20 and the Regulations is that the consultation requirements apply where the contribution which each tenant has to pay towards the cost of qualifying works by way of service charge

exceeds £250. The consultation requirements are set out in the Regulations. Those that apply in this case are those set out in Part 2 of Schedule 4 to the Regulations.

8. Subsection 1 of Section 20ZA of the Act provides:

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.

Inspection

9. The Tribunal inspected Kings Court prior to the hearing on 7 September in the presence of Mr. Jonathan Holmes and Miss Yasmin Miles both employees of Torbay Management Services Limited, the managing agents employed by the Applicant.

10. Kings Court was formerly a set of almshouses which was founded in 1483 and rebuilt in 1883. The building has an intricate design and is listed grade II* as being of architectural or historic interest. It was converted into 18 residential apartments in 2007. There are 3 retail units at basement level opening onto the adjoining Christmas Steps. Kings Court is built on a steeply sloping hillside just above Bristol City Centre. Access to Kings Court is from Colston Street which is on the uphill side of the property.

11. It was not possible to inspect the drains and sewers which are the subject of the application but the Tribunal was shown the location of the siphon trap which forms the main access to the drainage system, the location of the inspection chambers numbered 2 and 10 on the plan attached to the Bonds report and the approximate run of the drains across the courtyard. Mr. Holmes informed the Tribunal that some of the drains are up to 30 feet deep and that they flow into the main sewer which runs along Colston Street at a similar depth.

The Hearing

12. The Hearing took place at Whitefriars, Bristol on 7 September 2009. It was attended by Mr. Holmes and Miss Miles on behalf of the Applicant and by Mrs. Montague, who, together with her husband, is the leasehold owner of apartment 11 Kings Court. No other Respondent attended any part of the hearing.

The Evidence

13. Mr. Holmes gave the main evidence on behalf of the Applicant. Most of the evidence appears from the documents.

14. The Applicant purchased the freehold of Kings Court sometime before 2007. Kings Court was converted into residential apartments by a subcontractor in 2007. Between July and September 2007, the 18 apartments were sold on long leases. Torbay Management Services Ltd ("TMS") was appointed to manage the property on behalf of the Applicant in July 2007.
15. In 2008 TMS asked Bell Haynes, a firm of chartered building surveyors in Bristol, to provide a quotation for preparing building maintenance plans for Kings Court. Bell Haynes produced a quotation by letter dated 8 July 2008. In the autumn of 2008, TMS instructed them to prepare a report.
16. Bell Haynes instructed Bonds, a firm of drainage specialists, to carry out a condition survey on the drains and sewers at the property. That survey was carried out by use of manual rods, high pressure water jets and CCTV camera equipment. On 17 February 2009, Bonds produced their report. The report highlighted a number of defects in the drainage system which had the potential for causing blockage, leakage, subsidence, erosion or even collapse.
17. On 30 April 2009, Bell Haynes sent their report to TMS. The purpose of the report was to provide a statement on the general condition of Kings Court in order to inform a planned maintenance programme. The report dealt with the roof, roof voids, rainwater goods and drains. Bonds' report was annexed to Bell Haynes' report. Bell Haynes recommended that drainage repairs should be given priority over other problems. TMS discussed the report with the Applicant.
18. On 15 June 2009, TMS arranged a meeting with the leasehold owners of Kings Court. Mr. Holmes said that they have regular meetings with the owners as they are interested in the maintenance of the building. The minutes of the meeting show that a copy of the Bell Haynes report had been circulated with the notice of the meeting and that Mr. David Haynes of Bell Haynes attended the meeting to answer questions on his report. He advised the meeting that the drainage problems should be addressed as soon as possible. He said that he was due to meet with Bonds to discuss the way forward. He said that it had been discovered that there had been a historic problem with the drains and that further major works might be required once the immediate problems had been resolved. He was of the opinion that Bonds should carry out the initial works and carry out further investigations following which any further works could be put out to competitive tender. The minutes show that Mr. Holmes advised that the works may have to be the subject of consultation. The meeting agreed that a fund of £10,000 should be added to the service charge account as a reserve for the drainage works.
19. On 20 July 2009 Bonds produced a quotation for carrying out the immediate works to the drains in the sum of £8,980 plus VAT. Mr. Holmes told the Tribunal that this would result in a charge of £491.76 to each of the Respondents. The quotation set out the works to be carried out. The quotation noted that the main siphon trap was 7.5 metres deep and that some

of the other drains were also very deep. As a result, specialist working procedures would be required for working at depth.

20. A further meeting was held with the leasehold owners on 23 July 2009. Bonds' quotation was available to the owners who attended the meeting. The extent of the proposed works was explained to them. It was agreed that the works needed to be carried out as swiftly as possible. It was agreed that Bell Haynes would be asked to obtain further quotations. The owners were asked if they wanted to nominate prospective contractors and Mr. Smith, owner of apartment 14, suggested Bristol & West Preservation Ltd. Mr. Holmes told the Tribunal that Mr. Haynes subsequently told him that Bristol & West Preservations Ltd did not carry out that type of work. Mr. Holmes told the meeting that the works would be the subject of a consultation process but that an application might be made to dispense with the consultation requirements.
21. On 28 July 2009, the application was sent to the Tribunal.
22. On 31 July 2009, TMS sent a notice of intention to carry out works to each of the Respondents in order to set in motion the consultation process. The consultation period was stated to end on 30 August 2009. In the covering letter, TMS notified the owners that Bell Haynes had advised that the works had to be carried out urgently, that Bell Haynes had been instructed to obtain competitive quotations and that the Applicant had applied for dispensation.
23. On 6 August 2009, Mr. Haynes wrote to TMS in reply to the request for competitive quotations. He said that the Bonds' quotation was based on their preliminary investigations and survey findings and *"accordingly I believe it is very difficult to obtain "like for like" competitive quotations from other firms without these firms having the benefit of Bonds survey findings. In any event I believe this work could only be quoted for by specialist drainage firms as opposed to general building firms."* He went on to say that he had arranged for a schedule of works to be prepared and for that to be valued by an independent quantity surveyor in order to verify that Bonds' quotation represented value for money. Mr. Haynes wrote again on 28 August to say that that process had not been completed.
24. Mr. Holmes confirmed that only one response had been received as a result of the notice of intention to carry out works and that was an email from Mr. Dickman-Wilkes, leasehold owner of apartment 10 Kings Court, in which he expressed his hope that TMS would not dispense with the usual process of obtaining other quotations.
25. Mr. Holmes confirmed that a copy of the Applicant's bundle had been sent to all Respondents. He said that no further comments had been received from any Respondent and no other contractors had been nominated. The Tribunal noted the letter from Mr. Fletcher-Wood in which he indicated that he did not oppose the application. Mr. Holmes thought that Bell Haynes had been recommended by one of the Respondents. He was not aware of any connection between Bell Haynes and Bonds.

26. Mr. Holmes was asked why the work was so urgent that the consultation process should be abbreviated. He said that he had spoken to Mr. Haynes about the urgency and had asked the specific question whether the works should be done within 3 months to which Mr. Haynes had responded "yes". Mr. Holmes acknowledged that the problems with the drains had not happened over night but he said that as they were now aware of the problems, they had to be dealt with. His concern was that they did not know where the sewage was going. It could be undermining the foundations of the building. He accepted that there was no immediate health hazard, no immediate danger to life, no obvious signs of foul water escaping and that no third party was putting pressure on the applicant to carry out the work.
27. Mr. Holmes said that he was aware of historic problems with blocked drains. He produced 6 invoices for clearing blocked drains during the period from September 2007 to May 2008. He was not aware of any complaints from the Respondents about the state of the drains.
28. Mr. Holmes was asked why a second quotation had not been obtained. He was dependent on what he had been told by Mr. Haynes. He agreed that there was no obvious reason why another contractor could not be asked to quote on the basis of Bonds' report. He also agreed that there probably were other contractors able to do the work.
29. Mr. Haynes gave evidence to the Tribunal by telephone.
30. Mr. Haynes was asked why it was difficult to obtain a second quotation. He said that he thought that it may be a condition of Bonds' report that it could not be used without their consent. Further, the report was not a definitive statement of works. If a second quotation was required, he would need to prepare a schedule of works and allow provisional sums for unforeseen work. He said that there were very few specialist drainage firms able to carry out this type of work due to the depth of the drains. He had not yet completed the due diligence exercise on Bonds' quotation to ensure that it represented reasonable value for money. He was preparing a schedule of works to ensure that Bonds' quotation covered all the work. He thought that there might be room for doubt in the quotation.
31. On the issue of urgency, Mr. Haynes said that if the works are not carried out, then there is a risk of damage to the building. That damage may have happened already. He accepted that there could be a delay to sort out the question of value for money but the greater the delay, the greater the likelihood of damage. He said that if he was given the instruction to go ahead with the work now using Bonds, it would take 4 to 6 weeks to get them on site. If a full tendering process was required, it would add a month to the timetable.
32. Mrs. Montague gave evidence on behalf of herself and her husband. She accepted that the minutes of the meetings on 15 June and 23 July, both of which she had attended, accurately reflected the mood of the meetings. She

confirmed that it was agreed that the works needed to be carried out as soon as possible. She agreed that the consultation procedure and the procedure for obtaining dispensation had been discussed. She said that she was dependent on the advice that she was given as to the urgency and cost of the works. She said that Mr. Haynes had told the meeting that there might be difficulty getting a second quotation for the works because of the age and type of drains and the limited number of companies able to carry out such work.

The Applicant's case

33. Mr. Holmes said that the Applicant was seeking dispensation from the consultation procedures due to the difficulty of obtaining a second quotation and due to the need to carry out the works as soon as possible.

Conclusions

34. The question which the Tribunal must determine is whether it is satisfied that it is reasonable to dispense with the consultation requirements in whole or in part. The Tribunal is mindful of the fact that the consultation procedures have been imposed by Parliament in order to protect the interests of lessees who, ultimately, have to pay for the work.
35. The Tribunal accepts that, on the basis of the evidence before it, there is work that needs to be carried out to the drains and that the work should be carried out as a matter of priority.
36. The Tribunal is satisfied that the Applicant, through TMS, has acted properly in keeping the Respondents informed about the situation.
37. The Tribunal is not satisfied that adequate attempts have been made to obtain a second quotation for the cost of the works. The Tribunal does not seek to criticise TMS for that because it was acting on advice received from Mr. Haynes. However, the Tribunal is not satisfied that that advice was correct. The Tribunal accepts that a specialist contractor would be needed for this type of work but the evidence before it is that there are a limited number of such contractors not that there is no-one else available to carry out the work. Further, the Tribunal sees no difficulty in obtaining such a quotation based on the findings of the Bonds report. The Applicant has paid for that report and there is nothing in the report to suggest that there is any limitation on the Applicant's ability to use that report for the purpose of obtaining further quotations. It is for the Applicant to decide whether to have a schedule of works drawn up. Mr. Haynes' evidence was that a full tendering process would add one month to the timetable.
38. The Tribunal is not satisfied that the need for the works to be carried out urgently is such that the consultation process should be dispensed with. Mr. Holmes accepted that there was no immediate health hazard or danger to life.

There was no evidence of pressure from a third party to have the work done. Mr. Haynes said in evidence that the risk in delay was an increased risk of damage to the property, damage which may already have happened. Although the work needs to be done as a priority, there is no evidence of a real risk of harm if the work is delayed by a month to complete the consultation process.

39. The Tribunal notes that it was agreed at the meeting on 23 July that competitive quotations would be obtained and TMS confirmed that fact in its letter to the Respondents dated 31 July. Mrs. Montague said that she had to rely on the professional advice that she was being given. The Tribunal suspects that the same applies to many of the Respondents. Mr. Dickman-Wilkes wanted a competitive quotation. The Tribunal is firmly of the opinion that it is necessary to obtain competitive quotations for works of this nature in order to protect the interests of the lessees who will ultimately have to pay for the work. In the absence of any compelling reason for curtailing the consultation process, the Tribunal does not consider that it is reasonable to do so.
40. Having said that, the Tribunal is conscious of the fact that TMS has kept the owners fully informed and intends to continue to do so. It is also conscious that the owners have indicated in the 2 meetings on 15 June and 23 July that they wish the works to be carried out as soon as possible. The Tribunal notes that there was only one response to the initial phase of the consultation process. In those circumstances, the Tribunal considers that it is reasonable to reduce the second consultation period for considering the estimates from 30 days to 14 days. The order reflects that fact.

Dated 12 September 2009.

J G Orme
Chairman