

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/OOHN/LDC/2009/0002

REASONS

Application : Section 20ZA of the Landlord and Tenant Act 1985 as amended ("the 1985 Act")

Applicant/Landlord : Belle Vue Flat Management Limited

Respondent/Leaseholders : The leaseholders of the Flats

Blocks : Blocks A, B, C and D, Foxholes, 12 Belle Vue Crescent, Southbourne, Bournemouth, Dorset, BH6 3BS

Flats : The residential Flats in the Blocks

Date of Application : 21 January 2009

Date of Directions : 6 March 2009

Date of Hearing : 7 April 2009

Attendance on behalf of the Applicant/Landlord : Mr John Woodhouse and Mr Jason Dean of Homecare Property Management

Attendance on behalf of the Respondent/Leaseholders : none

Members of the Leasehold Valuation Tribunal : Mr P R Boardman JP MA LLB (Chairman), Mr K M Lyons FRICS, and Mr J Mills

Date of Tribunal's Reasons : 9 April 2009

Introduction

1. This Application by the Applicant/Landlord is under section 20ZA of the 1985 Act, namely for the Tribunal to determine whether it is reasonable to dispense with the consultation requirements referred to in section 20 of the 1985 Act, and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations")
2. On the 6 March 2009 the Tribunal gave directions
3. The hearing of the application took place on the 7 April 2009

Statutory provisions

4. Section 20 of the 1985 Act provides as follows :

20 Limitation of service charges: consultation requirements

(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

5. The material parts of the 2003 Regulations are :

Reg. 2 (1) In these Regulations-

"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice

Reg. 6

For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250

Schedule 4 Part 2

Para 8

(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.

Para 11

(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.*
- (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.*

Documents

6. The documents before the Tribunal are the application and supporting documents numbered 1 to 48 in the Tribunal's bundle

Inspection

7. The Tribunal inspected the exterior of the Blocks on the morning of the hearing on the 7 April 2009. Also present was Mr Dean.
8. The Blocks were adjacent to each other. Block A was to the south and Block D was to the north. Mr Dean said that the Tribunal was only concerned with Block B in these proceedings. Block B was a three-storey building with a brick face and a tiled mansard roof
9. One of the Tribunal members climbed onto the roof for the purposes of inspection. There was no obvious evidence of any significant current damage to the felt covering
10. Mr Dean said that the tenant of flat 19 in Block C wished the Tribunal to inspect that flat. However, there was no answer from the tenant at the flat and it was not possible for the Tribunal to carry out the inspection

The Leases

13. Mr Woodhouse informed the Tribunal that all the Flats were held on leases in similar terms to the lease copied at pages 9 to 42 of the Tribunal's bundle. The Applicant/Landlord was Belle Vue Flat Management Limited. All the lessees were shareholders in that company. There were 30 flats in four blocks, despite the reference in the application to there being only three blocks. There are were only three flats in Block A
14. For the purposes of these proceedings the material parts of the lease are as follows :

Fifth Schedule Tenants covenants

To pay to the [Applicant/Landlord] a proportionate part of the expenses and outgoings (herein called "the service charge") incurred by the [Applicant/Landlord] in the performance of its obligations and covenants..... set out in the Sixth and Seventh Schedules.....

Sixth Schedule Applicant/Landlord's covenants Paragraph 1

Well and substantially to repair maintain paint pave cleanse amend redecorate and renew (a) the exterior and the structure (including in particular but without prejudice to the generality of the foregoing the roofs and walls foundations gutters and down pipes) of all [Blocks].....

Seventh Schedule costs expenses and outgoings to the [Applicant/Landlord] in respect of which the

tenant is to make a contribution
Paragraph 1

All costs and expenses whatsoever incurred by the [Applicant/Landlord] in complying with the obligations contained in the Sixth Schedule hereto

Estimates and Quotations Provided in Evidence

15. An estimate from R Sullivan Roofing & Building dated the 25 November 2008 stated that the re-felting of the flat roofs to blocks 1 to 3 and 4 to 12 would need to be done as soon as possible as the felt was now no longer suitable for the job as it had begun to break down and come apart. That was the problem in relation to flats 3 and 11 were some of the layers of felt had come off
16. The cost of the work would be £5,975 for Block 1 to 3 and £12,180 for Block 4 to 12
17. It was hoped that the insurance company would pay for the storm damage to the sum of £3,097.50 for Block 1 to 3 and £6,981.25 for Block 4 to 12
18. A further estimate from R Sullivan Roofing & Building dated the 5 January 2009 stated that the flat roof to Block 4 to 12 had had some storm damage during high winds on the 1 November 2008. An area of approximately 112 m² from the total area of 358 m² had been damaged and some of the lead on the drip edge was displaced and would have to be renewed and repaired
19. To do the job properly because of a slight pitch of the construction and to keep the roof watertight it would have to be renewed and replaced from the bottom up so that there was no likelihood of any water ingress
20. The cost of the work would be £2,761.75 for the safety scaffold consisting of a hand rail all round the block and one accessed out of the car park area for getting materials up and down from the work area and a workman's compound for toilets and storage of materials
21. The cost of repairing and renewing the flat roof area would be £4,220 for new lead drip edge and three layer roof construction with high-quality polyester felt two 2 mm and one 4 mm topcoat in green mineral to match existing
22. All work was insured and guaranteed
23. A quotation from C & D Roofing dated the 13 January 2009 gave the following prices :
 - a. Strip off edge detail, prime roof area and overlay with 15 year Soprema insurance-backed warranty membrane £18,892 plus VAT
 - b. strip off old roofing material and clear from site. Supply and install Plusitec 15-year insurance-backed warranty membrane to entire roof area to include all edge details, pipes and outlets £22,794 plus VAT
24. Prices included taking off and refitting the lightning conductor but did not include for the necessary scaffold
25. A full material manufacturers specification was being prepared and would be available in due course
26. An estimate from Steven Morton Felt Roofing dated the 12 January 2009 stated that the roof

area was approximately 310 m²

27. The cost would be £11,757 plus VAT at 15% :

- a. erect access scaffold with perimeter safety rail all round
- b. strip and dispose of existing waterproofing
- c. inspect decking material and report any defects to client
- d. supply and fix a High Performance roofing system :
 - one layer 2 mm glass fibre-based underlay, partially bonded to deck
 - one layer 4 mm polyester-based cap sheet
- e. including all perimeter detailing, dressing to raised box sections and pipes
- f. finished with a mineral surface
- g. remove scaffold
- h. the system had a ten-year manufacturers-backed guarantee

28. No allowance had been made to the re-placement of decking material should that arise

29. No allowance had been made for the addition of insulation

The Application

30. The Applicant/Landlord stated that the case was urgent because the quotations explained that there was now ingress of water to the upper floor flats because the flat roof was no longer suitable

31. Page 7 of the application, entitled "grounds for seeking dispensation" was blank

Directions

32. In the directions dated the 6 March 2009 the Tribunal directed that the Applicant/Landlord should prepare a bundle of documents for the Tribunal containing copies of all documents, witness statements, and reports which the Applicant/Landlord relied on in support of its application

33. No further documents were received by the Tribunal prior to the hearing

The hearing

34. Mr Woodhouse said that the works which were the subject of this application were the replacement of the roof to Block B

35. The quotation from R Sullivan Roofing & Building dated the 5 January 2009 had been for insurance purposes, but the insurance claim had been rejected. The only relevant part of that quotation was now the figure of £2,761.75 for scaffolding, which was in fact the figure for scaffolding for the complete roof replacement, and not merely the scaffolding for the partial roof replacement referred to in the quotation of the 5 January 2009. The figure quoted by R Sullivan Roofing & Building for the complete re-roofing was the figure of £12,180 in their quotation dated the 25 November 2008, which related to Block B. That figure did not include scaffolding, so that their total quotation figure was £14,941.75, which was not subject to VAT, because R Sullivan Roofing & Building were not VAT registered

36. The quotes from C & D Roofing and Steven Morton Felt Roofing also related to Block B. The latter included scaffolding, and was for £13,520 including VAT
37. The three quotations had been sent to the directors of the Applicant/Landlord, but Mr Woodhouse did not know whether they had been sent to the tenants. However the tenants were aware of the likely costs because a special levy of £300 a flat had been raised to cover the costs, and a majority of tenants had already paid that levy
38. Mr Woodhouse had not yet made a recommendation to the tenants, but would be doing so and would be recommending acceptance of the quote from R Sullivan Roofing & Building. The cost for each of the 30 flats would be £498 including scaffolding
39. It was proposed to recommend R Sullivan Roofing & Building rather than Steven Morton Felt Roofing, even though the quote from the latter was cheaper and offered a ten-year guarantee, and even though the quote from the former did not refer to offering a specified period of guarantee. This was because R Sullivan Roofing & Building had dealt with the replacement of the roof to Block A, and had done a lot of work at the Blocks over the years, and was the directors' preferred contractor
40. However, Mr Woodhouse said that he had received advice from a surveyor in relation to another property which indicated that under new building regulations insulation was required on replacing a roof, and Mr Woodhouse needed to investigate whether insulation was required here. If so, he would not expect the extra cost to be more than about £10,000 for Block B
41. The need for urgency, despite depriving the tenants of their protection under section 20 of the 1985 Act, was that there had been storm damage to the felt roof covering in early November. Although Steven Morton Felt Roofing had repaired that damage on the 16 February 2009 by making the felt secure where it had been flapping, there was a high risk of further damage and further water ingress if there was another severe gale. The Blocks were in an elevated position and were a target for coastal winds. Steven Morton Felt Roofing had been asked to do the repair work because R Sullivan Roofing & Building were on leave. Mr Woodhouse said that there had been no reports of water ingress into Block B since the completion of the re-roofing work to Block A in December 2008
42. However, Mr Woodhouse accepted that work would not start until sufficient funds had been received by way of the special levy. Mr Woodhouse was not sure about the state of the reserve fund, and whether a further levy would be required if insulation was required

The Tribunal's findings

43. It is of course open to the parties to a lease to agree that any works should be carried out and that the cost should be included in the service charge payable by the tenants. However, in an application under section 20ZA of the 1985 Act to dispense with the consultation requirements referred to in section 20 of the 1985 Act, the Tribunal has to be satisfied, among other matters, that :
 - a. the costs are relevant costs for the purposes of section 18 of the 1985 Act, and, in turn, that the proposed works are works for which the landlord is entitled to include the cost in a service charge payable by the tenants
 - b. it is reasonable in all the circumstances to dispense with the protection given to the tenants by the consultation requirements referred to in section 20 of the 1985 Act
44. Having considered all the evidence in the round, the Tribunal finds, in relation to the proposed

works, that :

- a. there is before the Tribunal no specification for the proposed works to enable the Tribunal to assess whether the quotations received were on a like-for-like basis
- b. there is before the Tribunal no evidence whether or not insulation is required, nor, if so, any written quotation for the cost
- c. there is before the Tribunal no persuasive evidence to support the suggested choice of contractor
- d. there is before the Tribunal no persuasive evidence that the proposed works are so urgent that the tenants should be deprived of some or all of their protection under section 20 of the 1985 Act, in that :
 - there is no evidence before the Tribunal of any recent water ingress
 - there was no evidence on inspection of the felt flapping following the temporary repair by Steven Morton Felt Roofing in February 2008
 - in any event, it is likely that the Applicant/Landlord would not carry out the proposed works until sufficient funds had been received from the tenants, including such further funds as might be requested from them if insulation were required
- e. even though the Applicant's agent had been aware of the need for roof repairs since December 2008 there had been no attempt to commence any part of the procedures required under section 20 of the 1985 Act to provide the tenants with information

45. In all the circumstances it is not reasonable to dispense with the consultation requirements referred to in section 20 of the 1985 Act, so far as the proposed works are concerned

46. The application is dismissed

Dated the 9 April 2009



.....
P R Boardman
(Chairman)

A Member of the Southern Leasehold Valuation Tribunal
appointed by the Lord Chancellor