

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF SECTION 20ZA LANDLORD & TENANT ACT 1985

Application No	CHI/00ML/LDC/2010/0001
Property	53 Egremont Place Brighton
Applicant	Foxglade Properties Ltd Represented by Altermans, Solicitors
Respondents	Elizabeth J Phillips, 1 st Floor Flat represented by Edward Harte LLP Mr & Mrs A Bonnet, Ground Floor Flat represented by Griffin Smith Farrington Webb LLP
Members of the Tribunal	Ms H Clarke (Barrister) (Chair) Mr N Robinson FRICS
Date of hearing	29 January 2010
Date of decision	29 January 2010

1. THE APPLICATION

The Applicant Landlord asked the Tribunal to dispense with the consultation requirements imposed by statute in relation to work required to the building, on the basis that all parties consented to the dispensation.

2. Both of the Respondents wrote to the Tribunal through solicitors stating that they consented to the application.

3. THE DECISION

The Tribunal dispensed with the statutory consultation requirements in relation to the work set out in a Schedule of Works prepared by Mr G Adams of MacConvilles Surveying as directed by paragraph 1 of the Schedule to the Consent Order dated 20 October 2008 and made in Case No 6BN00153.

4. THE LEASES

The Tribunal was shown copy leases for the 1st/2nd floor Maisonette and the Ground Floor Flat at the property. Nothing in the Application turned on any provisions of the Leases.

5. **THE LAW**

Section 20 Landlord & Tenant Act 1985 (as amended by the Commonhold & Leasehold Reform Act 2002) states:

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.*

6. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 2003/1987 and in summary the relevant part of the regulations at Schedule 4 Part 2 requires the landlord to give each tenant written notice of intention to carry out works, to invite observations on the works and invite the tenant to nominate a person from whom an estimate should be obtained, and subsequently to obtain estimates and provide information about them to the tenants before entering into a contract for the works to be done. The minimum time required for the entire consultation procedure to be completed is 60 days, but this does not take account of any additional time for matters such as service of notices, time for replies to be received from contractors invited to provide estimates, or time for the landlord to consider responses.

7. Section 20ZA(1) Landlord & Tenant Act 1985 states: *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.*

8. **THE INSPECTION**

Immediately before the Hearing the Tribunal inspected the exterior of the Property. The Property constituted a mid-terrace house probably built in the late 19th or early 20th century which had been converted into flats. The slate roof was steeply pitched with a central valley gutter, although its condition could not be seen. None of the parties or their representatives attended at the hearing and the Tribunal was unable to gain access to any of the

interior. From the road at the front the Tribunal was able to note that the external render showed signs of cracking and deterioration, there were signs of movement of the building, particularly adjacent to the bay window at second floor level, the joinery on several windows had deteriorated, and there was corrosion to metal elements of a small balcony. To the rear of the property there were additions at ground and first floor level. Decorations to the rear were cracked and peeling, and there were further signs of movement. However the inspection itself did not disclose to the Tribunal any defects which were obviously dangerous.

9. As none of the parties had requested a hearing, the Tribunal proceeded to make a paper determination of the application.

10. **REASONS AND DETERMINATION**

The essence of the Applicant's case was that the parties had all entered into a Consent Order dated 20 October 2008 in the Brighton County Court, which included a clause that the tenants would consent to an application such as the present one. The Consent Order made provision for certain work to be carried out to the property, by reference to a survey report and a schedule of work which was to be prepared by Mr G Adams BEng (Hons) PgDIP MRICS of MacConvilles Surveying, under an agreed timetable. The Application stated that the matter was urgent because the work was due to be commenced in January 2010 and a contractor was ready to start.

11. The Respondents made no submissions beyond stating their consent and filed no evidence.
12. The Tribunal was not provided with a copy of the survey nor the schedule of works. There were no details at all of the work that was proposed, no photographs, and no explanation of whether any of the work was considered to be urgent. There was no information as to whether informal consultation had been undertaken, whether a tendering process had been used as provided for in the Consent Order, what details the tenants had been given about the work proposed, nor whether they had had any opportunity to comment on the extent and scope of works. Whilst the Consent Order made provision for the tenants to nominate a contractor, there was no evidence as to whether this had happened. None of the court documents, statements of case, witness statements or disclosure were provided save for the Consent Order. The Tribunal was given several schedules which appeared to estimate the tenants' respective liabilities to contribute to the cost of the works, but there was no explanation

of these documents and the only information that could be derived from them was that the total cost of the works would probably exceed £54,000 plus VAT.

13. Whilst the Application asserted that the matter was urgent and works were due to commence imminently, there was no explanation as to why the Applicant could not simply have served the relevant notices and carried out the proper consultation procedure at any earlier stage. The Tribunal noted that over a year had passed since the date of the Consent Order.
14. It appeared to the Tribunal that the parties expected the Tribunal simply to 'rubber stamp' the Application and had not borne in mind their obligations to adduce relevant and sufficient evidence in support.
15. The Tribunal noted that s20ZA empowered a tribunal to dispense with all or any of the consultation requirements if satisfied that it was reasonable to do so. The question of whether it was reasonable was to be judged in the light of the purpose of the consultation provisions. The most important consideration was likely to be the degree of prejudice that there would be to the tenants if the consultation was not carried out as required by statute. This would not, however, be the sole consideration.
16. The Tribunal considered all the circumstances of the case. Bearing in mind the purpose of the consultation provisions, the Tribunal decided that on balance it was reasonable to dispense with the requirement for the Applicant to consult the tenants before entering into a contract to carry out the work referred to in the Consent Order, in spite of the paucity of evidence provided. This was because:
 - i) on inspection the property appeared to be in a dilapidated condition and some work did appear to be needed.
 - ii) The parties had entered into a Consent Order which expressly contemplated the provisions of s20 and the statutory consultation procedure. All parties were legally represented at the time. It was reasonable for the Tribunal to assume that all parties had acted on advice in deciding to dispense with the protection that the statutory consultation scheme would normally offer.
 - iii) The parties had in the Consent Order agreed a timetable for the work, and referred to the survey by paragraph number. The surveyor, Mr Adams, was jointly instructed by tenants and landlord. It was to be supposed therefore that the tenants and their legal advisers had had the opportunity to consider the proposed work in some detail.

18. The law provides in effect that if a landlord is required to carry out the statutory consultation, but does not do so, then the amount which each tenant may have to contribute to the cost of the work in question is limited to £250. The effect of dispensing with the consultation requirements is to remove this limit. In making its decision to dispense with consultation in this case, the Tribunal is not making a determination as to the liability of individual tenants to pay for the work. Nor is the Tribunal making any determination as to the reasonableness of the service charge costs that will or may be incurred, nor that the work will or will not be carried out to a reasonable standard. Such a determination could only properly be made on an application under s27A of the Landlord & Tenant Act 1985.

Signed-----*hmc*-----

Dated-----*29-1-10*-----