

8403

LEASEHOLD VALUATION TRIBUNAL



**HM Courts
& Tribunals
Service**

S.20ZA Landlord & Tenant Act 1985

(Application to dispense with all or any of the Section 20 Consultation requirements)

DECISION & REASONS

Case Number: CHI/21UD/LDC/2012/0040
Property: 17 Chapel Park Road, St. Leonards-on-Sea, East Sussex
TN37 6HR
Applicant: Southern Land Securities Limited (represented at the
Hearing by Mr. Green, solicitor Agent for Hamilton
King Management)
Respondent: Mr. Arthur Topham (Flat 1), Mr. N. Blair & Ms. D. Davis
(Flat 2), Mr. and Mrs. Austin (Flat 3) and Mr. and Mrs.
G. Thompson (Flat 4)
Date of Application: 23 October 2012
Date of consideration: 23 November 2012
Date of this determination: 23 November 2012
Tribunal members: Mr. R. A. Wilkey FRICS (Valuer/Chairman)
Ms J. Morris (Lay Member)

DECISION

1. The Tribunal determines to dispense with the consultation requirements contained in Regulation 13 of the Service Charges (Consultation Requirements)(England) Regulations 2003 and the Section 20 procedure in relation to the qualifying works the subject of this application.

REASONS

INTRODUCTION

2. This is an application by the freeholders of the block, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the consultation requirements in respect of qualifying works.

THE LAW

3. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
4. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.
5. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.
6. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.
7. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI2003/1987. These requirements include amongst other things a formal notice procedure, obtaining estimates and provisions whereby a lessee may make comments about the proposed work and nominate a contractor.
8. S.20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

BACKGROUND & EXTENT OF PROPOSED WORK

9. The work involves replacement of a defective flat section of the main roof, together with associated works to the adjacent fascia boards and gutters.
10. The occupier of the top flat (Flat 4) has been experiencing water penetration over many months and a report from a builder states that "due to the location of the leaks no temporary repairs e.g. tarpaulin can be fitted to prevent any further water ingress

11. As a result of the defects, the occupier of Flat 4 has contacted Hastings Borough Council and they have inspected the premises.

INSPECTION

12. The property comprises a substantial semi-detached, Victorian building which has been converted into four self-contained residential units on four principal floors. The main roof is pitched and has been re-covered with tiles. It incorporates a flat section which is surfaced with mineral felt. The main walls are cement rendered and painted. The building as a whole appeared to be reasonably well maintained but paint was flaking to some external timbers.
13. The Tribunal inspected the property prior to the Hearing and were met by Mr. Moore (Managing Agent for and representing the lessee of Flat 4), Mr. Blair (Lessee of flat 2), Mr. Topham (Lessee of Flat 1) and Mr. Green representing Hamilton King Management Limited. No representative of Flat 3 attended.
14. The interior of the top flat was inspected. There were stains to several ceiling surfaces and the occupier advised that water was often visible to other wall surfaces in the flat and could be heard behind plaster to walls in some rooms. It was apparent that water penetration in places was close to light fittings and a consumer unit. Some wiring had been disconnected by an electrician for safety reasons.
15. Mr. Blair kindly provided a long ladder which enabled an inspection by Mr. Wilkey, Mr. Blair and Mr. Green of the roof coverings above flat 4 by way of a velux window in the ceiling of the top half landing of the public ways.
16. The Tribunal noted that repairs had been carried out to the valleys in the tiled part of the roof and that the flat section was old. There were no obvious, significant splits or defects to the flat roof covering but it was apparent that work was required.

THE LEASES

17. The Applicant has provided a copy of the lease of Flat 1 which is for a term of 999 years from 1st January 2005. It is assumed that the leases of other flats in the building are in similar form.
18. The Landlord covenants to maintain and keep in good and substantial repair and condition:-
 - (i) The main structure of the building including...the roof thereof...

19. The tenant covenants, amongst other things, to pay one quarter of the total annual costs incurred in carrying out the landlord's obligations.
20. The Tribunal has not interpreted the lease to determine whether or in what proportion a service charge may be levied on the tenant.
21. There were no matters raised by either of the parties in respect of the interpretation of the lease.

HEARING AND CONSIDERATION

22. A Hearing took place at Horntyte Sports Complex, Bohemia Road, Hastings commencing at 11.00. The parties who attended were the same as at the Inspection together with Mr. Austin (Flat 3)

PRELIMINARY MATTERS

23. The Applicant had supplied a bundle of documents in accordance with Directions issued by the Tribunal on 1st November 2012. The bundle included:
 - (a) The completed Application form and copies of the lease of Flat 1
 - (b) The Applicant's statement of case.
 - (c) Copies of correspondence sent by Hamilton King to leaseholders
 - (d) Estimates from two builders for carrying out work to the roof areas.
 - (e) Photographs and a copy of a letter from Hastings Borough Council dated 29 October 2012
 - (f) Various documents relating to a specification of major works which had been prepared in the early part of 2011
24. No written communication had been received from the Respondents.
25. The Tribunal confirmed that the Application today is solely to dispense with the consultation requirements that would otherwise exist to carry out the procedures in accordance with S.20 of the Act. It does not prevent an application being made by the landlord or any of the tenants under S.27A of the Act to deal with the liability to pay the

resultant service charges. It simply removes the cap on the recoverable service charges that S.20 would otherwise have placed upon them.

26. Part of the bundle related to the proposals for major external works last year and is not relevant to the present Application.

THE HEARING

27. Mr. Green addressed the Tribunal on behalf of the Applicant and referred to the Statement of Case and the reasons for the Application. He particularly mentioned the following:

- (a) Hastings Borough Council has now inspected and has served an Improvement Notice on the landlord under Sections 11 and 12 of Housing Act 2004. Copies of the Notice were given to the Tribunal and the lessees present. The Notice requires the landlord to commence work by 12th December 2012 and refers to such matters as (a) disrepair to roof causing severe penetrating dampness to the kitchen, hallway and bathroom of the top floor flat and (b) lack of insulation in loft and single glazed timber windows to top floor flat that are draughty and in disrepair.
- (b) All the lessees have seen the signs of water penetration into the top flat and he considers that the Application for dispensation is reasonable in the circumstances.
- (c) Mr. Green drew attention to the signs of water penetration close to light fittings and that the occupier said that she could hear water flowing in the rear bedroom.
- (d) The initial letter under the Section 20 procedure provided for observations by 24 November but the Application for dispensation had been made in view of the urgency.
- (e) The occupier of the top flat has a very young child and is particularly affected by the water penetration.
- (f) There is no prejudice to the lessees if dispensation is given

28. The Applicant's bundle included copies of a report and estimates from two builders upon the condition of the roof covering and work required. Mr. Green accepted that the lessees had not previously been given sight of these papers. In addition, they had only today been made aware that Hastings Borough Council had recently served an Improvement Notice.

29. In the circumstances, the Tribunal adjourned the Hearing for ten minutes to allow the lessees time to read and digest the contents of these documents
30. The lessees present were then asked whether there were any questions for Mr. Green. There were none. Mr. Moore took the opportunity to mention that the matter had been reported in June and that minor repairs could have been carried out since then. The situation could have been handled better and it was distressing to see the damp patches getting worse at each visit.
31. None of the lessees had any additional representations to make and all agreed that the work must be done and that they did not object to the grant of dispensation.

THE DECISION

32. The Tribunal had clarified that the work related to the roof coverings and adjacent gutters and fascias and was intended to prevent water penetration into the top flat.
33. All the lessees who were present at the Hearing agreed that the work must go ahead. Mr. Moore was representing the interests of the lessee of Flat 4.
34. The lessees had been kept informed of the developing situation and had been allowed time to peruse papers which were only received on the day of the Hearing.
35. The building is likely to deteriorate if the work is not done and the occupier of the top flat will suffer continuing distress and inconvenience. In the view of the Tribunal, the lessees would not be prejudiced if the Application were granted.
36. Taking all the circumstance into account and for the reasons stated above, the Tribunal is satisfied that it is fair and reasonable in all the circumstances for it to grant dispensation from all the requirements of Section 20(1) of the Act in respect of the works.

Dated: Friday, 23 November 2012

R A Wilkey

Roger A. Wilkey FRICS (Valuer/Chairman)