

8219

**HM COURTS AND TRIBUNAL SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/24UP/LDC/2012/0031**

**DECISION AND REASONS**

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

**Applicant/Landlord :** Helen Horton and Stephen Cavalier as Trustees

**Respondent/Leaseholders :** Rod Halls (Flat 1), Jamie MacPherson and Marcia Kausch (Flat 2), Helen Horton (Flat 3), Jeremy Dolphin (Flat 4), Elaine Harbron (Flat 5), and Stephen Cavalier (Flat 6)

**Premises :** 1 to 6 Lansdowne Court, Lansdowne Avenue, St Cross, Winchester, Hants SO23 9TJ

**Flats :** the flats in the Premises

**Date of Application :** 15 August 2012

**Date of Directions :** 22 August 2012

**Date of Hearing :** 17 September 2012

**Venue of Hearing :** The Winchester Royal Hotel, St Peter Street, Winchester SO23 8BS

**Appearances for Applicant/Landlord :** Ms Horton, and Mr James Flynn FRICS

**Appearances for Respondent/Leaseholders :** Mr Halls and Mrs Harbron

**Members of the Leasehold Valuation Tribunal :** Mr P R Boardman MA LLB (Chairman), Mr P E Smith FRICS, and Mr R T Dumont

**Date of Tribunal's Reasons :** 17 September 2012

**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. The grounds of the application were that :
  - a. the Premises were a purpose built block of flats dating from 1972
  - b. the Respondent/Leaseholders together purchased the freehold in 1999, and it was vested in Ms Horton and Mr Cavalier as trustees for the Respondent/Leaseholders
  - c. the roof of the Premises was deteriorating rapidly
  - d. dispensation was requested because the Applicant/Landlord and the Respondent/Leaseholders were in agreement that the works should be carried out as soon as possible

### Legal background

3. 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*

4. The material parts of the 2003 Regulations for the purposes of this application 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.*

**Para 13**

- (1).....where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering in to 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*

*(b) where he received observations to which.....he was required to have regard, summarise the observations and set out his response to them*

## **Documents**

5. The documents submitted to the Tribunal before the hearing were :
- a. a letter dated 18 August 2012 from Ms Horton to the Tribunal accompanying the application
  - b. an extract of notes of a meeting of the Lansdowne Court leaseholders on 30 July 2012, with the heading "7 Roof repairs", including notes as follows :
    - present at the meeting were Ms Horton, Mrs Harbron, Mr Halls, Mr Dolphin, and Mr MacPherson
    - Mrs Harbron and Mr MacPherson had obtained estimates, although not firm quotes, from various contractors
    - it would be necessary to comply with the section 20 procedure, and to obtain an independent and professional specification
    - action on the roof was taking too long as it was clearly in very poor condition
    - an application would be made to the Tribunal to dispense with the requirements of section 20 on the grounds of urgency
  - c. a declaration of trust recording that the freehold reversion in the Premises had been transferred to Ms Horton and Mr Cavalier as trustees for the Respondent/Leaseholders
  - d. the lease of Flat 3 dated 15 February 1972
  - e. a letter dated 6 September 2012 from Ms Horton to the Tribunal with documents attached with the following headings :
    - "Roof works : brief for independent Chartered Surveyor"
    - "Extract from condition survey – January 2012"
    - "List of roof works"
    - "Roof works : procurement : brief for independent Chartered Surveyor"
    - "Notice of intention to carry out work" under section 20 of the 1985 Act
    - "Summary of initial estimates from roofing contractors", including reference to the following estimates :

Elliotts Premier Roofing	£43996
Excel Roofing Services	£39477
Williams Roofing	£54474
  - f. a letter dated 9 September 2012 from Mr MacPherson and Ms Kausch to the Tribunal stating that they fully supported the application for work to be carried out on the roof; that the roof needed replacement as it leaked; but that they were unable to attend the hearing before the Tribunal because of prior commitments

## **Inspection**

6. The Tribunal inspected the Premises on the morning of the hearing on 17 September 2012. Also

in attendance were Mr Flynn, Ms Horton, Mr Halls, and Mrs Harbron

7. The Premises comprised a block of 6 flats, which the parties said had been built in 1972. The roof and its condition are helpfully described in a report by Mr Flynn which was submitted at the hearing before the Tribunal. Mrs Harbron showed the Tribunal areas in the communal stairway and in Flat 5 where leaks had occurred. Mrs Harbron said that she had repaired and redecorated some of the areas in Flat 5, but showed the Tribunal areas where there was still evidence of water damage. Following access being made available to the Tribunal onto the flat roof, the structure was found to be timber chipboard with a felt covering and chippings, some of which had shown signs of recent patch repairs. It was further noted the roof coverings were deteriorating and were nearing the point where replacement would be required.

### **The Lease of Flat 3**

8. For the purposes of this application the Tribunal has assumed that each of the Flats is held on a lease in materially similar terms to the lease of Flat 3
9. The material parts of the lease of Flat 3 are as follows :

#### *Clause 2 (Tenant's covenants)*

*(3) To pay to the Landlord in respect of each year ending on the Twenty fifth March a sum of money equal to one sixth of :*

*(c) the actual cost (as certified by the Managing Agent) incurred by the Landlord in performing the covenants hereinafter contained on the part of the Landlord for the maintenance and management of the Building.....*

#### *Clause 3 (Landlord's covenants)*

*(2) ..... [to] keep in good and substantial repair and condition :*

*(a) all the roofs.....*

### **Report by Mr Flynn (submitted at the hearing before the Tribunal)**

10. Mr Flynn stated that :
  - a. the roof comprised a high level flat roof covered with built-up felt and stone chippings discharging to mansard roof slopes at the perimeter of the Premises which were covered with man-made slates; the slates were from the time when they contained asbestos fibre and it was probable that the slates contained asbestos
  - b. the joints between the flat roof and the mansard slopes were protected by lead aprons; where lower flat roofs abutted walls, the joints were protected by lead flashings; part of the roof at the rear did not have a mansard slope and the joints between the flat roof and the walls was made with an aluminium strip with a lead apron below
  - c. the built-up felt coverings had a life expectancy of about 15 years and replacement was

necessary periodically; there were some blisters and splits on the surface of the felt; some sealant repairs had been made in the past; the surface of the felt had weathered and deteriorated; this indicated that the covering had reached the end of its useful life and that replacement was necessary

- d. Mr Flynn understood that the top floor flats had suffered rainwater penetration but he had not inspected them
- e. Mr Flynn's recommendation was that the flat roofs be re-covered using high-performance felt
- f. in relation to the flat roof deck, there was a hole in the flat roof fascia visible from the area accessed from the landing window; some disintegrating chipboard was visible, which would be the chipboard deck beneath the flat roof covering; the Premises were probably about 40 years old and chipboard of that age had passed its normal lifespan of about 30 years; decks were commonly replaced when coverings were renewed; leaks through the covering had probably caused the damage seen
- g. it would be necessary to insulate between roof joists, and install an insulated deck
- h. there were some broken and slipping slates; the covering as a whole showed signs of deterioration; such slates had a 30 year life expectancy when installed; they were now discoloured and weathered; if they contained asbestos, then weathering would have released some asbestos fibres; such slates contained a small percentage of asbestos and were not considered to be a health hazard unless broken or weathered; they should be replaced with a non-asbestos equivalent
- i. in relation to the lead flashings and aprons, some aprons had lifted and some had corrosive holes; Mr Flynn recommended that they be replaced
- j. Mr Flynn doubted that the cost of works would be less than £50,000 plus VAT but recommended that a specification be prepared and put out to tender to establish the level of cost

### **The hearing**

### **The attendance of the Respondent/Leaseholders**

- 11. In addition to attending the hearing, both Mr Halls and Mrs Harbron submitted letters in support of the application
- 12. Mr Halls also submitted an e-mail dated 13 September 2012 from Mr Dolphin expressing Mr Dolphin's support for the work which Ms Horton had done in her capacity as one of the landlords to expedite the roof repairs; Mr Dolphin felt that the Respondent/Leaseholders had been properly consulted on the approach to this work; his only proviso on the support was that he did feel that quotes needed to be obtained for the work as specified by an independent surveyor rather than simply rely on specifications and quotes provided by contractors; he thought that any permission by the Tribunal to proceed with the works on an accelerated basis should be made conditional on the landlords pursuing that approach

13. Ms Horton submitted letters dated 6 July 2012 and 23 August 2012 which she had sent to Mr Cavalier, in which she had :

- a. referred (in her letter dated 6 July 2012) to the agreement of the Respondent/Leaseholders at a meeting on 29 June that the repair of the roof at the Premises was now an urgent priority
- b. stated that she was asking Richard Robson, of Warner & Richardson solicitors, to draft an application to the Tribunal for dispensation with the service charge consultation procedure under section 20 of the 1985 Act on the grounds that the works were urgent
- c. asked for Mr Cavalier to indicate his support for this step and to indicate his willingness to co-sign an application
- d. expressed (in her letter dated 23 August 2012) her regret that Mr Cavalier had not replied to her earlier letter
- e. referred to the subsequent meeting of the Respondent/Leaseholders who had reiterated that the roof required immediate attention to make the Premises watertight and safe, and, in the case of Flat 5, to enable it to be let
- f. stated that she had applied to the Tribunal for dispensation with the section 20 consultation arrangements so that the works could be agreed and proceeded with as soon as possible, and that the Tribunal would be sending him a letter in his capacity as a leaseholder
- g. asked for his confirmation and support for this application in his capacity as a trustee/landlord by 31 August at the latest

14. Ms Horton said that she had received no reply

15. Mr Halls said that he had sent to Mr Cavalier a copy of the notes of the meeting on 30 July 2012, of which paragraph 7 had been copied to the Tribunal, but had received no reply

#### **Mr Flynn's submissions**

16. Mr Flynn confirmed the contents of his report. In his view the roof should be replaced quickly. He would be able to prepare a formal specification and send it out for tenders within about a week

#### **Ms Horton's submissions**

17. Ms Horton said that she would like the Tribunal to dispense with formal consultation because the leaseholders were keen to have the work done before the winter because the condition of the roof was deteriorating rapidly. There would be a risk of further leaks with any further wet weather which would prevent Flat 5 being let commercially. Ms Horton suggested that the first



stage "notice of intention" consultation notice under section 20 of the 1985 Act should give 7 days to respond, rather than the 30 days specified in the 2003 Regulations, and that the second notice with the summary of tenders and recommendations should again give 7 days to respond, rather than 30 days specified in the 2003 Regulations. Although Mr Cavalier had not engaged in the process so far, she was satisfied that he had been aware of the roof deterioration for a long time and that he had received her letters, the notes of the meeting on 30 July 2012, and notices from the Tribunal

### **The Tribunal's findings**

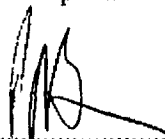
18. The Tribunal indicated at the hearing, in relation to the works referred to in the application, the following findings :

- a. the proposed works were works for which the cost could in principle be included in the service charge provisions in the lease, although this application was not an application for a determination by the Tribunal that the proposed works were reasonable, or that the estimates of cost obtained to date were reasonable, but was an application to dispense with the consultation requirements in section 20 of the 1985 Act
- b. Mr Halls, Mr MacPherson, Mr Dolphin, and Mrs Harbron had all indicated their support in principle for the carrying out of the works, their agreement that the works were required urgently, and their support for the application to dispense with the consultation requirements referred to in section 20 of the 1985 Act, subject to obtaining a formal specification from qualified surveyor and quotations from contractors
- c. Ms Horton was not only the Applicant/Landlord but was also one of the leaseholders, and was accordingly equally liable for the cost of the proposed works with the other leaseholders under the service charge provisions in her lease
- d. Ms Horton had attempted to engage Mr Cavalier in the process by keeping him informed, and Mr Halls had sent to Mr Cavalier notes of the meeting on 30 July 2012
- e. the Tribunal had also taken into account the current condition of the roof, the leaks which had occurred in the past, and the risk of further leaks
- f. in all the circumstances the Tribunal was satisfied that it was reasonable, in relation to the consultation requirements referred to in section 20 of the 1985 Act and set out in the 2003 Regulations, to dispense with the requirements to, but only to, the following limited extent:
  - in relation to the notice of intention referred to in paragraph 8 of Part 2 of the 2003 Regulations, the relevant period should be 14 days instead of the 30 days prescribed by regulation 2 of the 2003 Regulations; the Tribunal found that in all the circumstances the period of 14 days would be sufficient for any of the Respondent/Leaseholders, including Mr Cavalier, to make observations and to name any person from whom the Applicant/Landlord should try to obtain an estimate for the carrying out of the proposed works
  - in relation to the notice relating to estimates referred to in paragraph 11(10) of Part 2

of the 2003 Regulations, the relevant period should be 21 days instead of the 30 days prescribed by regulation 2 of the 2003 Regulations; again, the Tribunal found that in all the circumstances the period of 21 days would be sufficient for any of the Respondent/Leaseholders, including Mr Cavalier, to make observations in relation to the estimates

19. The Tribunal accordingly dispenses with the consultation requirements referred to in section 20 of the 1985 Act to that limited extent
20. The Tribunal also expresses the view, but without of course making any finding in that respect, that Ms Horton might well wish to take legal advice on the following matters :
- a. whether or not she would be entitled to proceed as landlord on her own, without the express consent or support of her co-trustee, Mr Cavalier, to serve formal notices and undertake work at the Premises, and, in due course, to seek to recover service charges in that respect
  - b. the drafting of the formal consultation notices pursuant to section 20 of the 1985 Act
  - c. whether or not personal service of the notices on the Respondent/Leaseholders, including Mr Cavalier, would be advisable

Dated 17 September 2012



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor