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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTIONS 20ZA & 20C OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference:**

**LON/00AJ/LDC/2012/0067**

**Premises: Kingdowne  
Court, 10 The Common,  
Ealing, London W5 3TT**

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**Applicant:**

Kingsdowne Court Residents Association Ltd [List  
using full names or annexe full list]

**Representative:**

Colin Bibra Estate Agents Ltd

**Respondent(s):**

The Leaseholders of Kingsdowne Court [List  
using full names or annexe full list]

**Representative:**

**Date of hearing:**

26 June 2012

**Appearance for  
Applicant(s):**

Mrs Antonia Cooper- director of Kingsdowne  
Court Residents Association

**Appearance for  
Respondent(s):**

The Respondents did not appear and were not  
represented

**Leasehold Valuation  
Tribunal:**

Ms MW Daley LLB (Hons)  
Mrs L Hart BA

**Date of decision:**

## Decisions of the Tribunal

- (1) **The Tribunal having considered all of the circumstances of this Application have decided that notwithstanding the urgent nature of the work, it is not reasonable to dispense with the Section 20-consultation requirements.**
- (2) The reason for the Tribunal's decision is set out below ( in particular at paragraphs

## The application

1. On 14 June 2012 The Applicant applied for dispensation from all of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985, on the basis that urgent works, to replace the existing flat roof above part of the premises known as Kingsdowne Court were necessary, on the grounds that the existing flat roof had failed and temporary repairs had not rendered the property water tight.
2. The problem had become more apparent due to the recent unseasonably heavy rainfall, and in the circumstances carrying out the full consultation required under section 20 of the Landlord and Tenant Act 1985 would lead to continued deterioration in the interim.
3. Directions were given on 18 June 2012, This directions stated that- " The Tribunal considers that the matter is so urgent that time for the hearing should be abridged" The landlord was also required to by 5pm on Thursday 21 June 2012 serve on each of the tenants at the property copies of the application and these directions.
4. The directions further stated that:- "*Any tenant who wishes to oppose the application should by Monday 25 June 2012 write to the landlord with a copy to the Tribunal setting out his or her reasons for opposing the application.*"
5. The relevant legal provisions are set out in the Appendix to this decision.

## The hearing

6. At the hearing, the Applicant was represented by Mrs Antonia Cooper who is a director of the Applicant company (a company owned by the leaseholders). There was no representative from any of the other leaseholders, and at the date of hearing there was no indication that any leaseholder had asked to be joined as a Respondent in these proceedings.

7. During the course of the hearing, the Tribunal were provided with further documents, namely copies of an email dated 19 June 2012, which had been sent by the managing agents in an attempt to comply with the directions. Mrs Cooper also had copies of photographs, which showed the extent of the damage to flat 5, and detailed the temporary repairs. There were also estimates for the cost of the works (the tribunal asked for copies of the lowest estimate, and the estimate provided by the contractor who had been chosen to carry out the work]. The final document was email correspondence from the leaseholders, which pre-dated this application and in content, set out that there was opposition, (from at least one leaseholder) to the proposed work.
8. The leaseholder was of the opinion that there had been some discussion of a deed of variation, the reason for this proposed variation was that the leaseholder of flat 5 was entitled to use the flat roof space above flat 5 and accordingly the other leaseholders considered that they should be solely responsible for the upkeep) The Tribunal also asked for a copy of the full lease document.

### **The issues**

9. The only issue for the Tribunal is whether or not it is reasonable to dispense with all of the consultation requirements. This Tribunal does not determine any issues concerning the reasonableness of the service charge or the payability

### **The background**

10. The property, which is the subject of this application, is a 19<sup>th</sup> Century period premises, which has been converted into 9 flats. It comprises a basement and two further floors, the property is partially covered by a valley roof, however to the side of the property, part of the structure is covered by, a flat roof which covers what would, in the original property, have been the coach house. The property is set within a conservation area.
11. The Tribunal were informed that the defective roof was above the former coach house, which now comprised the flat roof of flat 5, which is occupied by Mrs Antonia Cooper and her husband.
12. The Tribunal were informed that the Applicant had in the past carried out some temporary patch repairs to the roof of flat 5, however it was accepted that the roof had now reached the end of its acceptable life span. The roof, which was covered in Asphalt had not been replaced since the 1980's, the accepted life span for such material was 15-20 years.

13. Mrs Cooper informed the Tribunal that draft plans were being put in place for the replacement of the existing roofing, which had become more urgent due to the recent unseasonably heavy rainfall. This had caused damage to flat 5 in the form of damage to the kitchen ceiling, bathroom and two small bedrooms at the front.
14. The flat is subject to a long lease of the property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
15. The Tribunal were informed that there had been problems with the roof and as a result temporary repairs had been carried out. The Tribunal were provided with two invoices, one in the sum of £520.00 and the other in the sum of £320.00. However it was noted that these repairs had not improved the problem. It had also been recognised that the age of the roof was such that temporary repairs were likely to be ineffective.
16. The Tribunal noted from the correspondence that there had been on going discussion concerning the roof repairs. This was in the form of emails between the various leaseholders, although these emails are not dated, they appear to be in response to a "Notice Of Intention To Carry Out Work dated 17 April 2012,. The Tribunal noted that one leaseholder Mr Rackowe suggesting that sometime in 1988 the then owner -:" *undertook to take over liabilities regarding all future maintenance and repairs of the flat roof and balustrade.*", with the creation of a private roof terrace. Mr Rackowe suggested that the issue of ownership of the roof should be ignored, and the lease for flat 5 should be altered so that the leaseholders of flat 5 could have the roof space as part of their demise.
17. This was not acceptable to Mrs Cooper as the joint leaseholder ( along with her husband) of flat 5, and it would appear that Mrs Cooper had the support of the other leaseholders in this regard. Mrs Cooper in reply had informed the leaseholders that they had access over the roof space in particular for the fixing of aerials.
18. The Tribunal were informed that prior to the heavy rainfall, and in contemplation of major works, the leaseholders', Managing agents had obtained six estimates. These had however not yet been sent out to the leaseholders prior to the application being made for a section 20ZA dispensation.
19. The Tribunal asked to see the cheapest estimate, and if, the cheapest estimate had not been chosen the estimate from the successful tender.
20. The cheapest estimate was from a company Fibreglass GRP Roofing in the sum of £6480.00. The description of the work was as follows – "*...Installing new deck to existing roof balcony using 18mm tongue and groove ply.*

*Installation of 3-layer grp Fibre-Deck laminate roof using 450 gram matting and finished with a non-slip UV protected gel."*

21. Mrs Cooper informed the Tribunal that the board of directors had been keen to explore the use of fibreglass as an alternative, which was cheaper and longer lasting than the traditional asphalt roof. However, The managing agents and the director's had not gone down this route as the property was in a conservation area, and the building was listed. As a result, it was recognised that fibreglass would not be practical, to meet the needs of the building.
22. The successful tender was from Firminger Roofing Limited. Mrs Cooper stated that the work involved providing scaffolding, plant, labour and materials, and involved stripping the asphalt, the tiles and defective asphalt, with repairs to the timbers, and the provision of two coats of solar reflective white paint and re-pointing and replacing tiles . The work involved some items, which the tenant identified as solely the responsibility of the leaseholder of flat 5 in the sum of £1990 plus VAT. The sum of £7694.92 was the total cost which would then be shared for the re-roofing of the premises.
23. Mrs Cooper was asked why this particular firm had been chosen. She stated that the managing agents had recommended the firm and Mrs Cooper had also had experience of their work from, her use of the firm at a previous property that she had owned. Given this, she knew from personal experience the quality of their workmanship.
24. The Tribunal were informed that of the other estimates, a further estimate had involved the use of fibre- glass and of the others, they were either more expensive ( Skyline) or lacking in the necessary detail ( Ealing roof). The Tribunal asked how the leaseholders would have been aware of the estimates. Mrs Cooper stated that they would have been made available had the leaseholders wished to inspect from Colin Bibra ( the managing agents).
25. The Tribunal asked for details of the clauses in the lease that obliged the landlord to carry out the repairs and permitted the landlord to make a charge. Clause (i) the "Reserved Property" means those parts of the Block of flats not included in the flats being the property more particularly described in the second schedule hereto (g) "the said Flat" means the property more particularly described in the Third Schedule hereto (h) " the maintenance charge" means the monies actually expended and or reserved for expenditure in respect of all matters specified and monies expended of or in connection with the works expenditure and matters specified in clause 4(4) hereof
26. Clause (1) (4) (4) further set out the matters which were the subject of the maintenance charge, whilst clause 4(4) contained the landlord's repairing covenant in particular -: (a) to maintain repair redecorate and renew when necessary the structure and in particular the main drains roofs foundation gutters rainwater pipes and party walls and party structure of the block of flats.."

27. In answer to the question from the Tribunal concerning whether the cost of the work was payable in advance, Mrs Cooper informed the tribunal that it was necessary under the lease for the monies to be collected in advance of the work being carried out.
28. Mrs Cooper confirmed, in answer to questions from the Tribunal, that the leaseholders had been served with the Application and the directions, and that service had been affected by email (as the Applicant had the relevant details of the leaseholders).
29. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

### **The Tribunal's decision**

30. The Tribunal in considering whether to dispense with the section 20 Consultation requirements and the Consultation Regulations 2003, have carefully considered all of the circumstances of this case and in particular have had to determine where the balance of convenience lies.
31. In reaching its decision the Tribunal have in our view given appropriate weight to the urgent nature of the work, however notwithstanding this, for reasons that are set out below, we have determined that it is not reasonable on the information before us, to dispense with the consultation requirements.

### **Reasons for the Tribunal's decision**

32. The Tribunal are satisfied that the flat roof of the premises is in need of repair, and notes that there has been discussion concerning the need for this work for from at least April 2012. The Tribunal have noted that the plans were in hand before the recent rainfall made matters more urgent.
33. However the Tribunal are concerned that the process of obtaining estimates occurred in April 2012, and although these estimates were available, they were not included in the original application and have not been made available as part of the consultation process or as part of the documents supplied together with the Application to dispense with the consultation requirements.
34. The Tribunal note that the consultation could, since April, have been complied with ( or have been substantially complied with).
35. The Tribunal also noted that in her evidence, Mrs Cooper had quite properly disclosed her interest in flat 5, and in this regard makes no criticism of her. However it is right to note that as the affected leaseholder, she is not disinterested in the outcome of the application, and that although she has properly disclosed her interest, it is clear that the chosen tender, would also be

responsible for carrying out works which are not covered by the consultation process, in that they are exclusively for the benefit of the leaseholder.

36. The Tribunal again does not criticise this aspect of the work, as it may well be prudent and cost effective for the work to be undertaken in this way. However it is also right that the other leaseholders ought to be able to nominate contractors, (or at least make detailed observations,) and separately consider whether the nominated contractor represents best value for money for the other leaseholders, even if this is at the expense of the affected leaseholder. The Tribunal also considers that the apportionment that has been provided to the Tribunal ought to be subject (should the other leaseholders wish it) to further scrutiny.
37. The Tribunal considers that these matters ought to be properly the subject of consultation, given the background of concern with the cost of these works, and the questions that have been raised concerning the benefit of these works to the leaseholder ( of flat 5), as compared to other leaseholders .The Tribunal also notes that until the leaseholders pay their contribution to the maintenance work, the applicant will not be able to press ahead with the work, given this, there is likely to be a delay, in any event, whilst the costs are apportioned.
38. The Applicant had the necessary information available at this stage as to the cost of the work, the nature and scheme of the work, and had also gone some way to evaluating tenders. It is proper that this information should be shared with the other leaseholders, it is also proper that the scope of the use of the flat roof as a terrace, and the cost and nature of the installations necessary to permit this, should be the subject of a proper consultation between the Applicant and leaseholders, so that the leaseholders may be satisfied that this matter has properly been balanced along with their interest.
39. The Tribunal were not satisfied that a proper reason had been put forward as to why the Leaseholders had not been provided with the tender documents, a matter which was of considerable importance considering the fact that one of the directors is also an affected tenant, although it is not suggest by the Tribunal that this has given rise to any impropriety on the directors behalf.
40. Whilst the Tribunal fully understands the prejudice to the owner of flat 5, The Tribunal notes that the information needed for a further Notice of intention has been available since April 2012, and could be used to take this matter further along the proper consultation route. There is also nothing to prevent the Applicant making a further application, once the estimates have been served, if the matter is still considered to be urgent.

Chairman: \_\_\_\_\_

M. O. Selny.  
[name]

Date:

19-7-2012



## Appendix of relevant legislation

### Landlord and Tenant Act 1985

#### **S20 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.]

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**S20ZA Consultation requirements: supplementary**

- (1) 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.
- (2) In section 20 and this section—
  - "qualifying works" means works on a building or any other premises, and
  - "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
  - (a) if it is an agreement of a description prescribed by the regulations, or
  - (b) in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
  - (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
  - (b) to obtain estimates for proposed works or agreements,
  - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
  - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
  - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
  - (a) may make provision generally or only in relation to specific cases, and
  - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.[...] [\[FN1\]](#)
  - (b) the whole or part of which varies or may vary according to the relevant costs.