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**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

DETERMINATION BY THE LEASEHOLD VALUATION TRIBUNAL

**APPLICATION UNDER S 20ZA OF THE LANDLORD AND TENANT ACT 1985,
as amended**

REF: LON/00BG/LDC/2012/O131

Address: Colman's Wharf, 45 Morris Road, London E14 6PA

Applicant: Colman's Wharf Management Ltd.

Represented by: Rendell Rittner Hammond Ltd. managing agents

Respondents: The lessees of Colman's Wharf

**Tribunal: Mrs JSL Goulden JP
Mr C P Gowman MCIEH MCMI BSc**

Date of Tribunal's Decision: 11 December 2012

1 The Applicant, who is the landlord of Colman's Wharf, 45 Morris Road, London E14 6PA ("the property"), has, through its agents, Rendell Rittner Hammond Ltd., applied to the Tribunal by an application dated 5 November 2012, and received by the Tribunal on the same date, for dispensation of all or any of the consultation requirements contained in S20 of the Landlord and Tenant Act 1985, as amended ("the Act"). A schedule of the Respondents was provided to the Tribunal.

2. The property is described in the application as a "*converted warehouse formed of 24 leasehold units. There are four floors including ground floor*". The Respondents are the leasehold owners of those flats.

3. A copy of the lease of Studio 18 and parking space 3 at the property has been supplied to the Tribunal. With no evidence to the contrary, it is therefore assumed that all the residential leases are in essentially the same form.

4. Directions of the Tribunal were issued without an oral Pre Trial Review on 13 November 2012.

5. The Applicant had requested a paper determination although the Tribunal's Directions 1 stated that any or all of the Respondents were entitled to request an oral hearing. No application was made for or on behalf of any of the Respondents for an oral hearing. This matter was therefore determined by the Tribunal by way of a paper hearing which took place on Tuesday 11 December 2012.

6. The Tribunal did not consider that an inspection of the property would be of assistance and would be a disproportionate burden on the public purse.

The Applicant's case

7. In the application, the qualifying works were described, inter alia, as "*parapet walls: replace defective lead flashings and re-point after fitting, re-point defective pointing in identified areas, and replace missing tiles. Glass skylight: Replace lead flashings with deeper ones as current ones aren't deep enough and allow water in, replace missing slates, apply waterproof silicone mastic to skylights where defective or missing. + scaffolding. As quotes are based on surveys using a cherry picker it is very likely further faults will be found once the scaffolding is erected*". The work was stated to be urgent "*it has recently come to light some top floor units have significant leaks. Due to the time of the year we are likely to have adverse weather and we would like to minimise the internal damage*"

8. In respect of consultation, It was stated in the application "*we have sent out a Notice of Intention..., two comparable quotes have been obtained (a third contractor withdrew from the tendering process)...*"

9. Dispensation was required since "*it is quite urgent to carry out the works to prevent further damage inside the units that are suffering. Due to the time of the year torrential rain and possible snow are highly likely*".

10. In a further statement of case, certain issues were clarified as follows:-

"(i) The roof issues have been ongoing for some time. Originally a leak was reported to unit 23 in January 2011. Temporary repairs were carried out to this effect overseen by a resident director.

In January 2012 the same unit reported further leaks from the roof. Whilst trying to ascertain the areas the leaks were coming from, unit 24 also stepped forward at the end of February and reported leaks from the skylight. Following on from that, the company house in the commercial units 20,21 and 22 were consulted and found to have had leaks for some time, some so bad that they were required to have bowls and buckets out during periods of heavy rain.

A surveyor was instructed to look at the various issues with the roof, and said in March that whilst overhauling the roof is simple in principle, scaffolding would be required and that it would likely be more cost effective to replace the roof as a whole rather than patch it due to the potential cost of the scaffolding. Directors subsequently decided that repairing the smaller leaks would be the preferential way forward as the skylight had been replaced only 10 years earlier.

The company who carried out the smaller repair in 2011 were invited back in August 2012 to review the new or recently reported leaks, and once it had been reviewed it was established that scaffolding would indeed be required. Once the quote was received for the scaffolding with the works quote to follow it was evident that it would fall above the section 20 limit. It was therefore decided that further quotes would be obtained, with one of the resident Directors showing each company the issues from a cherry picker and any relevant documentation. Emily Bullock from Rendall Rittner Hammond Ltd. Working on behalf of the management company sought three companies appropriate to carry out such

repairs and in September organised for a cherry picker and the three companies to be present on the morning of the 11 October to quote. Two tenders were subsequently received; one company failed to respond on several occasions and did not submit a quote so effectively was removed from the tendering process. The pack for the LVT application was subsequently prepared.

(ii) The leaks affect units 20,21 and 22 which are commercial units... and residential units 23 and 24. The leaks were significant enough to at least in the commercial units require for bowls and buckets to be put down during particularly rainy periods. Unit 24 and 23 have made temporary internal repairs to prevent as much water as possible from coming in pending the external repairs.

(iii) To carry out the majority of the work requires scaffolding to be erected. As the scaffolding costs about the section 20 limit we may as well carry out the full repairs whilst it is there”..

11. Agreement in respect of dispensation was provided from the leaseholder of unit 4. In an email to the Tribunal dated 14 November 2012, the Applicant’s managing agent confirmed that there had been a recent AGM at which the lessees of 14 of the 24 flats had attended and had been supportive of the applications

The Respondents’ case

12. It appears from the case file that none of the Respondents had requested an oral hearing.

13. No written representations were received by the Tribunal from or on behalf of any of the Respondents.

The Tribunal’s determination

14. S 18(1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with. Dispensation is dealt with by S 20ZA of the Act which provides:-

“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”

15. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(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) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**
- (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period; and**
 - (iii) the period on which the relevant period ends.**

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

- (a) the place and hours so specified must be reasonable; and**
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

16. The scheme of the provisions is designed to protect the interests of tenants, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.

17. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately foot the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.

18 The Tribunal was provided with two quotations on behalf of the Applicant. One was from Gigney Property Services Ltd dated 5 September 2012 and the other was from Chrisalis Refurbishment Ltd. dated 23 October 2012.

19. The Tribunal has taken into account that it is now the winter season and that delay in dealing with water penetration to the property risks serious deterioration in its fabric. In addition, no evidence has been produced that any of the Respondents have challenged the consultation process and no written submissions have been received.

20. On that basis, the Tribunal is satisfied that it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with.

21. It should be noted that in making its determination, and as stated in paragraph E of the Tribunal's Directions of 13 November 2012, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.

22. It should also be noted that the Tribunal's jurisdiction is limited to residential units only. The Tribunal has no jurisdiction in respect of commercial units.

CHAIRMAN.....



DATE11... December.... 2012.....