

9019



HM COURTS AND TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00MR/LDC/2013/0019

Between:

Mrs M Banyard (Applicant/Freeholder)

and

All Leaseholders (Respondents/Tenants)

In the Matter of : Section 20ZA of The Landlord & Tenant Act 1985
(‘The Act’)

Premises: The Reldas, Oyster Street, Old Portsmouth, PO1 2JB

Date of Hearing: 3rd May 2013

Tribunal: Mr A.J. Mellery-Pratt FRICS Chairman
Mr R Dumont

Introduction

- 1.1 On the 11th March 2013, through its managing agent, Miss Z Smith of Countrywide Property Management, the applicant submitted an application under s 20ZA of The Act requesting dispensation from the consultation requirements of The Act in relation to qualifying works that were urgently required to the rear wall of flat 10 on the 2nd floor
- 1.2 On 20th March 2013 the tribunal issued directions detailing the information required by the tribunal and the timetable for dealing with the matter.
- 1.3 On the 3rd May 2013 the Premises were inspected and following that inspection a hearing was held at The Tribunal Offices, Market Avenue Chichester

The Law

2.1 20ZA. 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.

(5) Regulations 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.*

2.2 **Daejan Investments Limited v Benson and others** [2013] UKSC 14:

The Tribunal has also been given guidance by the Supreme Court in **Daejan Properties Ltd v Benson** (2013) UKSC 14.

“The correct question is whether, if dispensation was granted, the respondents would suffer any relevant prejudice, and, if so, what relevant prejudice, as a result of the failure to comply with the Requirements.

The purpose of the Requirements is to ensure that tenants are protected from paying for inappropriate works, or paying more than would be appropriate.

In considering dispensation requests, the LVT should focus on whether the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.

The Requirements are a means to the end of the protection of

tenants in relation to service charges. There is no justification for treating consultation and transparency as appropriate ends in themselves. The right to be consulted is not a free-standing right. As regards compliance with the Requirements, it is neither convenient nor sensible to distinguish between a serious failing, and a minor oversight, save in relation to the prejudice it causes. Such a distinction could lead to uncertainty, and to inappropriate and unpredictable outcomes.

The LVT has power to grant dispensation on appropriate terms, and can impose conditions on the grant of dispensation, including a condition as to costs that the landlord pays the tenants' reasonable costs incurred in connection with the dispensation application.

Where a landlord has failed to comply with the Requirements, there may often be a dispute as to whether the tenants would relevantly suffer if an unconditional dispensation was granted. **While the legal burden is on the landlord throughout, the factual burden of identifying some relevant prejudice is on the tenants. They have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Once the tenants have shown a credible case for prejudice, the LVT should look to the landlord to rebut it and should be sympathetic to the tenants' case.**

Insofar as the tenants will suffer relevant prejudice, the LVT should, in the absence of some good reason to the contrary, effectively require the landlord to reduce the amount claimed to compensate the tenants fully for that prejudice. This is a fair outcome, as the tenants will be in the same position as if the Requirements have been satisfied.

This conclusion does not enable a landlord to buy its way out of having failed to comply with the Requirements, because a landlord faces significant disadvantages for non-compliance. This conclusion achieves a fair balance between ensuring that tenants do not receive a windfall, and that landlords are not cavalier about observing the Requirements strictly."

The inspection.

- 3.1 At 1.00pm on the 3rd May 2013, the tribunal inspected the property, accompanied by Miss Smith of Countrywide Property Management, and Mr Harvey of Daniells Harrison, chartered surveyors.
- 3.2 The tribunal noted that:-
- 3.2.1 The Reldas is situated at the corner of Oyster Street and High Street and opposite open space which surrounds Portsmouth Cathedral.
- 3.2.2 The building appears to have been constructed around the 1960s of brick walls under a flat roof. The accommodation, which totals 20 flats, is on ground and 3 upper floors with 3 entrance halls and staircases serving these flats
- 3.2.3 At the rear of the building is a small courtyard and the tribunal was shown scaffolding which had been erected to give access to the 2 rear windows of flat 10 on the 2nd floor. Access to the scaffolding was not possible, nor was it possible to inspect the interior of flat as the leaseholder was unavailable.
- 3.2.4 Between the 2 windows, a sheet of boarding had been fixed to the brickwork to cover the hole that had been created to inspect the cavity at the start of the proposed works.

The Hearing

- 4.1 The hearing, later that morning, was attended by Miss Smith and Mr Harvey
- 4.2 The tribunal established that :-
- a) when the contractors commenced work and opened up the brickwork, they discovered that there was a concrete ring beam on the internal skin of wall and that the steel reinforcing within the beam, had started to corrode due to continuing dampness in the beam.
 - b) as a result, it was necessary that specialist repairs be carried out to the ring beam to prevent further corrosion and to protect the beam from future damp penetration
 - c) the timing of events for this contract was:-
 - 16.10.2012 contractors instructed.
 - 15.11.2012 contractors on site.
 - 03.12.2012 work commenced.
 - 07.12.2012 problem discovered.
 - 13.12.2012 specialist concrete contractor on site.
 - 17.12.2012 new specification sent to main contractor.
 - 19.12.2012 specification sent to concrete specialist.

- 19.12.2012 quotation received from concrete specialist.
 03.01.2013 quotation received from main contractor.
 09.01.2013 report on revised specifications sent to
 Countrywide
 11.03.2013 application made under section 20ZA
- d) Mr Harvey confirmed that the initial quotation from the contractor in August 2012 had been by way of a competitive tender and that he had provided a report on tenders, which was with the tribunal's papers, to Countrywide.
 - e) he also confirmed that, having studied the details, it was his opinion that the revised quotations, based on the new specifications, were reasonable.
 - f) the additional cost for the scaffolding for the period from 25th February to the end of April, was £312.50 + VAT
 - g) when the works recommenced, it should take about 2 weeks to complete the contract.
 - h) possible earlier works to window lintels, which may have been undertaken in 2005/6 were being investigated by Countrywide to see if they had any relevance to the present problems.
 - i) similar problems had been reported in respect of flat 16 and that these were being investigated.
 - j) the block held reserves of approximately £20,000 and it was proposed that the cost of these works should come from reserves thus no demand made to the leaseholders for additional service charge.

Consideration

5.1 The tribunal:-

- a) understood the need for the revised specification
- b) was surprised that no earlier action had been taken by Countrywide to consult with leaseholders immediately following receipt of the surveyors report in the early part of January 2013. Indeed, it appeared that the leaseholders were unaware of the problem until receipt of the paperwork from the tribunal
- c) accepted that the price for the original work was achieved by competitive tender and that the revised quotations were reasonable, as confirmed by Mr Harvey.
- d) found that no leaseholder had been financially prejudiced by the lack of consultation
- e) was concerned about the lack of positive action by the managing agent which had necessitated the current application
- f) hoped that a more extensive programme of investigation would be put in hand to determine the extent of the problem so that, if it was found to be a general defect, its treatment could be managed over a period of time
- g) determined that the application should be allowed, subject to

conditions which would ensure that every leaseholder was made fully aware of the reasons for the change in the specification, the process by which quotations had been obtained and given details of the make-up of the total cost for the contract.

Decision

- 6.1 The decision, which was verbally advised to the parties immediately after the hearing, is that, subject to the proviso set out below, the application is allowed and the consultation requirements of s20 of The Act may be dispensed with.
- 6.2 the provisos are that Countrywide Property Management must, by the end of May 2013, issue to every leaseholder Notice 2 under The Act to which must be attached:-
- a) a copy of this determination
 - b) a report prepared by the surveyors detailing in layman's terms, the original problem, the reasons for the altered specification, details of the original costs, any savings and the additional costs, and their views as to the reasonableness of the eventual cost of the works
 - c) a copy of the surveyors report on the original quotes

Dated 8th May 2012

A J Mellery-Pratt FRICS
(Chairman)

A Member of the Tribunal appointed by the Lord Chancellor