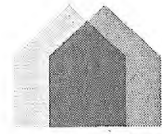


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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTIONS 20ZA OF THE LANDLORD AND
TENANT ACT 1985 (as amended)**

Case Reference:	LON/00BG/LDC/2013/0035
Premises:	19-31 Three Colt Street, Limehouse, London, E14 8HH
Applicant:	Tapestart Limited
Representative:	Peter Burgess (Compton Group) Justin Bates of Counsel
Appearance for the Applicant	Justin Bates of Counsel Mr David Evans (Property Manager, Compton Group) Mr Martin Hastings BSc (Hons) MRICS (Building Surveyor, Jarvis Blake & Glenwright)
Respondents/leaseholders:	Various leaseholders named in the Application
Respondents Representative	None
Appearance for the Respondents	None
Leasehold Valuation Tribunal:	Mrs N Haria LLB(Hons) Mrs A Flynn MA MRICS
Date of decision:	25 June 2013

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The Tribunal grants an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of additional works to the external skin of the building to prevent water ingress (including lead work, repair and waterproofing of external masonry and hacking off and re – rendering some high level rendered panels) and the repair and replacement of a number of windows and French windows as detailed in the Application.

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for a dispensation of the consultation requirements imposed under s.20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations") in respect of additional works to the external skin of the building to prevent water ingress (including lead work, repair and waterproofing of external masonry and hacking off and re – rendering some high level rendered panels) and the repair and replacement of a number of windows and French windows at the Premises as detailed in the Application
2. The relevant legal provisions are set out in this decision.

Background:

3. The Premises is a block of eighteen flats on four floors (above a secure basement car park) converted and refurbished in 2003/2004. The flats are all let on long leases for a term of 199 years from 29 September 2003.
4. The Applicant is the landlord and has been the freehold owner of the building since December 2004.
5. The Applicant claims that in December 2012 scaffolding was erected on the building in order to undertake major works, this facilitated a closer examination of the building which revealed further defects in the building as detailed in the report dated 11 February 2013 produced by Jarvis Blake & Glenwright Ltd (Chartered Building Surveyors), including the need to repair and replace a significant number of windows.

Directions:

6. Directions were issued in the matter on the 19 April 2013 setting the matter down for a hearing on the 9 May 2013.

Inspection:

7. The Directions issued did not provide for an inspection of the Premises and no request for an inspection was made by either party

The Applicant's Case:

8. Counsel for the Applicant appeared the hearing and produced written submissions as well as oral submissions at the hearing. He stated that in 2011 Jarvis Blake & Glenwright Ltd were commissioned to carry out a survey of the general condition of the building including in particular the damp problems ("initial survey"). A survey a report ("initial survey report") was produced and as a result the Applicants undertook a full consultation on the works recommended by the survey report ("the initial works"). These works are currently ongoing.
9. Counsel submits that during the works the surveyor overseeing the project discovered further defects which had not been identified in the initial survey report. The additional defects are detailed in the report dated 11 February 2013 produced by Jarvis Blake & Glenwright Ltd ("secondary survey report"). The report included in the hearing bundle is a draft report, fortunately Mr Hastings was present at the hearing and he was able to produce to the Tribunal a copy of the final report which was also dated 11 February 2013. Mr Hastings confirmed that the final report included an additional paragraph at 3.1.8 and some other minor in consequential amendments which made no change to the substance of the report. The works identified by the secondary survey report are additional works to the to the external skin of the building to prevent water ingress (including lead work, repair and waterproofing of external masonry and hacking off and re-rendering some high level rendered panels) and the repair and replacement of a number of windows and French windows at the Premises as detailed in the Secondary survey report. Counsel explained that the Applicant after taking legal advice on the matter had come to the view that it is responsible for replacement of window frames in the external walls of the building and that these too need replacing.
10. The Applicant wishes to carry out these additional works and window frame replacements at the same time as the existing works as the Applicant is of the view that this will be more cost effective for all parties if the existing scaffolding can be utilised. Mr Hastings has estimated that around £25,000 would be saved by undertaking the works now, simply by making use of the exiting scaffolding. The Applicant estimates the proposed additional works will cost around £46860.96. In addition Counsel stated that even if the Applicant were to obtain quotes from other contractors, it would not be advisable for the Applicant to appoint an alternative contactor other than Healey Construction to undertake the additional works as it may invalidate the guarantees and warranties issued by Healey Construction in respect of the initial works.
11. Counsel submits that there is no need for additional consultation as the leaseholders have been informed of developments and been invited to

make their views known. He stated that the Applicant wrote to all leaseholders on the 7 March 2013 giving details of the proposed works including a quote from the contractors Healey Construction and setting out the options to the leaseholders. The letter informs the leaseholders that they have two options, either pressing ahead with the additional works and seeking retrospective dispensation from the s.20 consultation process or stopping the works and undertaking full consultation. The letter offers the leaseholders a choice as to whether to instruct Healey Construction or go through a competitive tender process with full consultation. Although the letter of the 7 March 2013 includes a s. 20 notice relating to the additional works, a copy of this notice was not included in the papers before the Tribunal. Counsel stated that there is significant support for the Application.

12. Mr Evans stated he had received a telephone call from the leaseholders of Flats 1 and 5 in support of the works, and although he had asked that they confirm their agreement in writing he has not received a written response. The Applicant produced copies of email responses from the leaseholders of Flats 10,11,12,14,15,16,18 and 19 in support of the works.
13. Counsel for the Applicant referred the Tribunal to the photographs in the bundle and stated that the Applicant considers the works to be its responsibility. He stated that the window repair and replacement works will be undertaken to all flats other than Flats 1, 6 and 12 which do not appear to require any works. Counsel for the Applicant referred the Tribunal to the schedules at pages 45 -55 in the bundle.
14. Counsel for the Applicant clarified that the Applicant was not seeking a ruling as to whether or not it is obliged to undertake the works but were simply seeking dispensation from the consultation requirements in relation to the works. He stated that if the Tribunal were to grant dispensation there can be no conceivable prejudice to the leaseholders as they can always apply to the Tribunal and challenge the reasonableness of the works or the cost of the works at a later date.
15. The legal submissions in support of the Applicant's case are set out in the written submissions made by Counsel, it is not necessary for me to repeat in full the submissions for the purpose of this decision. Counsel referred the Tribunal to the guidance given in the case of Daejan Investments Ltd v Benson [2013] 1 WLR 854 when considering whether it is reasonable to dispense with the consultation requirements. He submits that *"...in considering whether it is "reasonable" to dispense with the consultation requirements, it must be remembered that the purpose of consultation is to ensure that leaseholders do not pay for unnecessary works and pay no more than is reasonable, i.e s.20 exists to support the rights under s.19, Landlord and Tenant Act 1985.the LVT should not adopt a "punitive" approach to dispensationit is also open to the LVT to grant "conditional" dispensation."* He referred the Tribunal to paragraph 11 of his written submissions which he states sets out the key point in support of his

contention that the factual circumstances of the case are entirely in keeping with those identified in Daejan as ones where dispensation in advance should be granted. Counsel drew the Tribunal's attention in particular to paragraph 56 of the judgement in Daejan which states:

"It is clear that a landlord may ask for a dispensation in advance. The most obvious cases would be where it was necessary to carry out some works very urgently, or where it only became apparent that it was necessary to carry out some works while contractors were already on site carrying out other work. In such cases, it would be odd if, for instance, the LVT could not dispense with the Requirements on terms which required the landlord, for instance, (i) to convene a meeting of the tenants at short notice to explain and discuss the necessary works, or (ii) to comply with stage 1 and/or stage 3, but with (for example) 5 days instead of 30 days for the tenants to reply."

16. Counsel submits that there are significant benefits to having the works done at once and there is no conceivable prejudice to the leaseholders as nothing in the present case can determine whether the service charge which relate to the works are reasonable and payable. A leaseholder who may still be able to make a separate application to the Tribunal to determine the reasonableness and the liability to pay the service charge if he wishes to do so.

17. The Applicant produced a copy of a sample lease.

Respondents case:

18. The Tribunal received no submissions or objections from the any of the Respondents, other than confirmation from the leaseholder of Flat 18, Mr Duncan confirming that he supports the application.

The Law:

19. s. 20 of the 1985 Act provides that:

"(1) Where this section applies to any qualifying works....., 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."

20. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to

those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) a leasehold valuation tribunal.

21. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

22. s. 20ZA of the 1985 Act provides:

"(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."

23. Under Section 20ZA(1) of the 1985 Act, "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 ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements". The basis on which this discretion is to be exercised is not specified.

The Tribunal's decision:

24. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any significant prejudice has been suffered by a leaseholder as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.

25. The Tribunal having considered the evidence is satisfied that proposed works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply. The landlord has not complied with the consultation requirements set out in the 2003 Regulations. However, the Tribunal is satisfied that the proposed works are of an urgent nature and are for the benefit of the interests of both landlord and leaseholders and the health safety or welfare of the occupiers of the Premises. The leaseholders have not objected to the dispensation and a significant number of the leaseholders support the application and have confirmed that the works should go ahead.

26. The Tribunal has taken into consideration that the leaseholders have not had the full opportunity for consultation under the 2003 Regulations. However, the works are urgent and the Applicant has taken reasonable

steps in the circumstances and time available, to provide the leaseholders with relevant information.

- 27.** The Tribunal notes that the leaseholders have been denied the opportunity to nominate a contractor of their own choice. The Tribunal is persuaded that in any event even if a leaseholder were to propose a contractor it would not be in the interests of both landlord and leaseholders for the works to be undertaken by a nominated contractor particularly as Healey Construction are already onsite (undertaking the works recommended by the initial survey) and using another contractor will inevitably result in additional costs and may also result in the negation of any warranties or guarantees given by Healey Construction in respect of the initial works undertaken by them.
- 28.** The Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are dispensed with in respect of the proposed additional works and window frame replacements as set out in the Application. In doing so, it is important to note that the Tribunal does not make any findings as to the reasonableness of, or the liability to pay the actual or estimated costs of the works.

CHAIRMAN Mrs N Haria LLB(Hons)

DATE 25 June 2013