

**SOUTHERN RENT ASSESSMENT PANEL**

**LEASEHOLD VALUATION TRIBUNAL**

In the matter of section 20 and section 20ZA of the Landlord & Tenant Act 1985 (as amended) ("the Act")

**Case Number:** CHI/OOMS/LDC/2009/0012

Re: Various properties in Kent Street, York Close and Graham Street Southampton

**Between:**

Southampton City Council

Applicant

**and**

The long lessees of the blocks referred to in the Schedule to these reasons

Respondents

**Decision**

Hearing: 18<sup>th</sup> September 2009

Decision issued: September 2009

Tribunal:

Mr R P Long (Chairman)  
Mr P D Turner Powell FRICS

## **Application**

1. This is an application by Southampton City Council that seeks a dispensation from compliance with the consultation requirements of section 20 of the Landlord & Tenant Act 1985 (as amended) ("the Act") in respect of works to provide an electric rising main to serve fifteen blocks of flats within its estate in Southampton. The Respondents are the 234 long lessees of flats in those blocks.

## **Decision**

2. As it indicated to those present at the hearing, the Tribunal grants the dispensation sought in the terms set out in paragraph 15 below.

## **Determination**

3. Section 20ZA(1) of the Act allows an application to be made to a Leasehold Valuation Tribunal for a determination to dispense with all or any of the consultation requirements otherwise imposed by section 20 of the Act and the regulations made in accordance with it in relation to any qualifying works, and provides that the Tribunal may make such a determination if it is satisfied that it is reasonable to dispense with the requirements.
4. For the avoidance of doubt, it appears to the Tribunal that any requirement to give public notice of the works in question does not form part of the jurisdiction vested in the Tribunal so that it has no power to grant dispensation from any need to comply with that requirement should it otherwise arise.
5. The Tribunal had issued directions in this matter that included notice of its intention to deal with the matter without an oral hearing unless any of the parties required one. One lessee, Mr J S Sahota, gave notice that he required that a hearing should take place. He neither made any representations concerning the matter nor attended the hearing.
6. The hearing was attended by four officials from Southampton City Council, namely Mrs M Kigonya, a solicitor who represented the Council, Mrs C Ward Mr M Rich and Mrs S Floody. Mrs Kigonya explained that Mr Butler, the design team leader who had made a written statement to the Tribunal explaining the technical background to the matter, had been taken to hospital for an operation and that Mr Rich was present to answer any questions the Tribunal might have had for him arising from the statement.
7. The Tribunal in turn explained that it had read the statements provided both by Mrs Ward and by Mr Butler and the accompanying documentation that the City Council had provided. It would not require them to be read into evidence. Whilst those statements referred to the Council undertaking a qualifying long term agreement in respect of the matter it appeared to the Tribunal that so far as the tenants were concerned what was to happen amounted to qualifying works in that one set of capital works would take place at each of the affected blocks. Mrs Ward said that the Council saw the matter

as a long term agreement in that it had to enter into an agreement with the contractors to carry out works at the various blocks over a period of more than a year, but accepted that the matter amounted to qualifying works from the point of view of the tenants whose interests were intended to be protected by these provisions of the Act.

8. The effect of the evidence placed before the Tribunal is that the blocks in question were erected some thirty or forty years ago and provided with electricity mains of a standard sufficient to meet the demands to be expected at that time. It had become apparent that the mains were no longer of a specification sufficient to meet the considerably increased demands of the present day, and in one block there had been a blackout in the electricity supply that was attributable to overloading of the existing mains. Since the electricity supply powered the heating in the blocks as well as all domestic electric appliances and lighting it was not acceptable risk a recurrence of such a blackout.
9. The Tribunal had been supplied with a specimen of the leases under which the properties affected by the application are held. This showed plainly in paragraph (i)(h) of Part B of the Fourth Schedule that the cost of replacing electrical installations of the sort the subject of this application falls to be repaid by the lessee as part of the service charge regime.
10. The Council had been informed by Scottish and Southern Energy in a letter dated 30 April 2009 that the work of replacing electric rising mains where there was an existing supply was work that could be carried out only by the Distribution Network Operator ("DNO"). Such work was described as "non-contestable" It could not be the subject of competitive tender because only the DNO was permitted to carry out such work on its existing system.
11. The result of this state of affairs was that the Council was unable to obtain tenders for carrying out the work from anyone other than Scottish and Southern Energy. That meant in turn that it could not carry out the procedures required by section 20 of the Act because the obtaining of competitive tenders was central to those procedures. Mrs Kigonya said that the cost of the work was likely to vary between £200 and £3000 per flat so that the requirements of section 20 of the Act would plainly be engaged. She did not anticipate that the overall cost of the work would be so great that public notice of them would be required.
12. Mr Rich explained that technically some 80% of the work that was required to be done was non contestable. The remainder related largely to the heating systems, but the supply would have to be laid through the same ducts as that for the primary rising main. There would be great difficulty if more than one contractor were engaged both in terms of practical working and possibly in terms of liability for any defects in areas where both had been at work. He was in any case emphatic that it would inevitably be considerably more expensive to employ contractors other than the DNO to carry out the "contestable" work (that is to say work that was permitted to be put to tender) than it would be to have the DNO do the whole of the work.

13. The Tribunal was satisfied that it is plainly in the interests of the lessees at the blocks in question that the new electric rising mains should be provided. If that does not happen they risk material interruption of their electricity supply, including their heating systems that may constitute a grave inconvenience and possible discomfort to the lives of most residents and a possible risk to the life of some of them.
14. The lessees had all been invited to make any representations that they wished in opposition to the proposals, and none had done so. The Tribunal was further satisfied that it was impractical for the reasons indicated above for a partial tender process to take place in respect only of the contestable work. In its judgement therefore it is reasonable to grant the dispensation that it seeks through this application.
15. Accordingly the Tribunal determines that Southampton City Council may dispense with all of the consultation requirements of section 20 of the Act in respect of the work of installing replacement electric rising mains at the fifteen blocks referred to in the Schedule to this decision.
16. The Tribunal makes plain that the dispensation granted relates only to the need to comply with the consultation requirements it has mentioned. In particular its decision in this matter does not express any view concerning the reasonableness or otherwise of any cost that may be incurred for carrying out the work in question nor in any way restrict the ability of any lessee to bring an application to determine the reasonableness or otherwise of such costs when they are known under section 27A of the Act.

  
Robert Long  
Chairman

22 September 2009.

THE SCHEDULE above referred to

Aquitania House, Kent Street, Southampton SO14 5SN

Armada House, Kent Street, Southampton SO14 5ST

Arundel House, Kent Street, Southampton SO14 5SX

Avon House, York Close, Southampton SO14 5SE

Belvidere House, Kent Street, Southampton SO14 5SA

Clarence House, York Close, Southampton SO 14 5RU

Clyde House, Kent Street, Southampton SO14 5SG

Coburg House, York Close, Southampton, SO14 5RT

Forth House, Kent Street, Southampton SO14 5SF

Graham House, Graham Street, Southampton SO14 5RW

Mauretania House, Kent Street, Southampton SO14 5SL

Saxon House, Kent Street, Southampton SO14 5SU

Shannon House, Kent Street, Southampton SO14 5SJ

Trent House, Kent Street, Southampton SO14 5SH

York House, York Close, Southampton, SO14 5RS