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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

DECISION ON AN APPLICATION UNDER SECTION 20ZA LANDLORD AND TENANT ACT 1985

Ref : LON/00AG/LDC/2010/0008

Property:	144-148 Chalton Street, London NW1 1NP
Applicant:	London Borough of Camden
Respondents:	Mrs C Johnson (Flat 144), Executors of Ms J Cliff (deceased) (Flat 146) and Mr J Barton (Flat 148)
Decision date:	9th March 2010
Tribunal:	Mr P Korn (Chairman) Mr P Tobin FRICS MCI Arb

BACKGROUND

1. The Applicant is the Respondents' landlord at the Property.

2. On 27th January 2010 the Tribunal received an application from the Applicant seeking dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (as amended) ("**the 1985 Act**") in respect of qualifying works.

3. The works concerned are works to the portico wall made necessary by subsidence at the Property.

4. Directions were issued on 28th January 2010. The Tribunal Chairman considered that the matter could be decided by way of a paper determination – i.e. without the need for an oral hearing – and without an inspection, and neither party has requested a hearing.

THE APPLICANT'S CASE

5. The reason why the initial work to carry out structural repairs to the portico was not the subject of a consultation with leaseholders under Section 20 of the 1985 Act was that the Applicant's understanding at the time was that the cost of the works would be fully covered by insurance.

6. After commencement of the works in June 2009 a sizeable gap was discovered during the cutting back of the existing render between the portico and the main building. The loss adjuster concluded that some of the structural cracks and movement (including the gap that had been discovered) predated the recent structural movement which was the subject of the insurance claim and that therefore the insurers were not liable for this element. Nevertheless, in the Applicant's view, unless these other cracks and movement were undertaken at the same time as the insured works those insured works could not prudently be completed as this would cause the portico to remain free-standing and it was not originally designed to be an independent structure.

7. The Applicant therefore requested a quotation for the additional works from the contractor carrying out the insured works (Stress UK Ltd) and received this quotation about a month later. Stress UK Ltd was then given authority to proceed with the additional works and these works commenced in early August 2009. The Applicant then – on 17th August 2009 – wrote to the Respondents to inform them of the additional works and to inform them that the Applicant would be applying to the Leasehold Valuation Tribunal for dispensation with the relevant consultation requirements under Section 20ZA of the 1985 Act. That application was made on 22nd January 2010.

8. The Applicant has argued that the urgency and speed with which the additional works needed to be carried out means that it would be unreasonable to expect the Applicant to have consulted with the Respondents.

THE RESPONDENTS' RESPONSE

9. The Respondents have contested the application for dispensation with the consultation requirements. They consider that they were not properly consulted, that the tendering process was flawed, that the Applicant failed to appraise the works correctly and that the Applicant has failed to keep the Property in good repair.

10. The Respondents have submitted that the need for repair work to this part of the Property was identified back in August 2006 and that the Applicant only finally took any action – by raising the subsidence issue with the insurers – over 2 years later. Contrary to the suggestion that the cost of the works as initially envisaged would be met entirely by the insurers, in fact there was an excess of £833 per leaseholder (well over the £250 limit for consultation) which the Respondents were asked to pay and did pay. In the Respondents' view, although at this stage the need for consultation was at least recognised, the consultation was irregular, flawed and incomplete (and the Respondents have provided some details of what they mean by this).

11. The Respondents impliedly accept that they gave their authority for the initial work to be carried out, but it seems from their statement of case that – in their view – they did so only because they had been waiting for over two and a half years for the work to be carried out and because they had been told their liability was limited to the £833 per leaseholder excess.

12. The Respondents have provided details of specific decisions that, in their submission, were made by the Applicant without any consultation with the Respondents, for example the agreement to split the cost of the works 50-50 between the leaseholders and the insurers. In their submission, the Respondents lost confidence in the process and, as a result, raised objections with their ward councillor.

THE LAW

13. Under Section 20(1) of the 1985 Act, in relation to any qualifying works *"the relevant contributions of tenants are limited ... unless the consultation requirements have been either (a) complied with ... or (b) dispensed with ... by ... a leasehold valuation tribunal"*.

14. 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"*.

APPLICATION OF FACTS TO LAW

15. The Applicant impliedly accepts that the works concerned are qualifying works within the meaning of Section 20(1) and Section 20ZA(1) of the 1985 Act and that these provisions therefore apply to the works.

16. Section 20ZA of the 1985 Act does not specify in detail the basis on which the Tribunal is to exercise its discretion to dispense with the consultation requirements. Case law indicates that the need to carry out work urgently is regarded as the classic case justifying dispensation,

but dispensation has been given in other situations, for example where a landlord has been able to demonstrate a real attempt to comply and/or substantial compliance, in circumstances where it seems that the element of non-compliance has not prejudiced the leaseholders in practice.

17. In this case, the Applicant not only failed to consult at the point at which the need for additional works was discovered but also failed properly to consult in relation to the initial works. Although a large part of these initial works was covered by insurance, there was an excess for the Respondents to pay which significantly exceeded the £250 threshold. An analysis of this point is noticeably absent from the Applicant's statement of case, and in the absence of an oral hearing the Tribunal only has the Respondents' evidence on this issue. Based on the evidence before it, the Tribunal is of the view that the Applicant materially failed to comply with the Section 20 consultation requirements in respect of the **initial** works.

18. In the Tribunal's view, the above point has a bearing on the plausibility of the Applicant's arguments in support of the application for dispensation for the additional works. The Applicant should **already** have consulted and therefore this issue need never have arisen.

19. Although the Applicant's statement of case is a little unclear in some respects, the Applicant appears to be arguing that – having discovered the need for the additional works – it could not delay matters and it was not practical to use a separate contractor. However, the Applicant has not provided any compelling evidence that at the point at which the need for additional work was discovered it was suddenly so urgent that there was no possibility of consulting with the Respondents at all. Also, if indeed the need for the additional works was discovered in mid June then why – if the works were so urgent – did they not commence until August? And if the need for the additional works was known about since June, why did the Applicant wait until 17th August (**after** the works had commenced) before notifying the Respondents of the need for the work and why did it seemingly make no attempt during that period to at least *start* to comply with the Section 20 consultation requirements?

20. In addition, once the Applicant had identified that it needed to apply to the Leasehold Valuation Tribunal for dispensation why did it not do so in June 2009? Instead, it did not apply until **January 2010**.

21. In conclusion, based on the evidence in front of the Tribunal and in the absence of an oral hearing, it seems to the Tribunal that the Applicant has failed to satisfy the Tribunal that it is reasonable in this case to dispense with the consultation requirements in relation to the works which are the subject of this application. It could easily have complied with the consultation requirements at an earlier stage in respect of the initial works but chose not to do so. It seemingly made no attempt to

comply even partially with the consultation requirements in respect of the additional works when it had ample opportunity to do so. The Applicant apparently did not even notify the Respondents of the need for the additional works until after the works had commenced and it has failed to demonstrate to the Tribunal's satisfaction that the additional works were so urgent that they could not wait. Furthermore, it took the Applicant from June 2009 until January 2010 to make the application for dispensation, which suggests that the matter was not considered to be a priority.

DETERMINATION

22. The Tribunal hereby determines **not** to dispense with the consultation requirements in respect of the works which are the subject matter of this application.

23. No cost applications have been made.

Chairman:  P Korn

Dated: 9th March 2010