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/00BK/LDC/2010/0110

Address: **Flats 1 to 8A Alexandra House, St Mary's Terrace, London W2 1SF**

Applicant: **Alexandra House Management Company Ltd.**

Represented by: Residential Management Group

Respondents: Various Lessees of Alexandra House

Tribunal: **Mrs JSL Goulden JP**
Mr M Taylor FRICS
Mr P Clabburn

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1 The Applicant, who is the landlord of Flats 1 to 8A Alexandra House, St Mary's Terrace, London W2 1SF ("the property"), has applied to the Tribunal by an application dated 3 November 2010, and received by the Tribunal on 5 November 2010, for dispensation of all or any of the consultation requirements contained in S20 of the Landlord and Tenant Act 1985, as amended ("the Act").

2. The property is described in the application as a *"Victorian mansion of 17 flats over four floors"* At the hearing this was amended to five floors.

3. A copy of a form of lease was in the case file. With no evidence to the contrary, it has been assumed that all leases are in the same form.

4. An oral hearing was held on 10 December 2010. The Applicant was represented by Mrs S Kainady, Property Manager, Residential Management Group (RMG). There were no appearances from or on behalf of any of the Respondents.

5. The Tribunal did not consider that an inspection of the property would be of assistance.

The Applicant's case

6. The works have already been carried out and were described in the application as *"(a) roof leaks:Scaffolding was required to facilitate access and emergency repairs had to be carried out to stop the leak (b) Damp ingress: Scaffolding was required to facilitate to a high level blocked hopper and defective rendering in some areas".*

7. The Applicant's grounds for seeking dispensation as set out in the application were *"emergency works had ot be carried out to mitigate loss and scaffolding was required for access in both cases. The majority of the expenses was the cost of scaffold hire. In the best interest of all leaseholders it was decided to carry out the urgent repairs when scaffolding was in place".*

8. In respect of consultation which had been carried out, it was said *"the works were of an urgent nature and consultation could not be carried out prior to doing the works".*

9. Mrs Kainady was questioned by the Tribunal and said that with regard to the roof leak, there had been a severe roof leak at the end of January 2010 affecting Flat 7A, one of the four flats on the top floor of the property, in the corridor leading to the living room. She described the water ingress as *"flooding".* She had appointed general maintenance contractors to inspect, but they had not been able to gain access to the roof and she gave authority for scaffolding to be erected. The scaffolding was in situ for approximately two weeks. As to consultation, she said that she had emailed about 10 residents who had email addresses, but accepted she had not communicated with the others. She said that the chairman of the Applicant company had probably told the other tenants, but she was not certain that this was the case. Mrs Kainady accepted that she was aware that formal consultation should have been entered into at the time and/or an application under S20ZA should have been made. The work had been completed in February 2010 by Matrix Maintenance Ltd. The costs as shown on invoices 18192 (£1,555.76), 18103 (£1,555.76) 18271 (£1,568.63), 18095 (£3,630.10) and 18096 (£3,630.10) totalled £11,940.35 including VAT.

10. As to the damp ingress, which was in March 2010, Mrs Kainady said that there had been a long history of damp ingress to the left hand side of the property since 2006. It usually related to the archway to the left of the property where it met the property itself. She did not have much information since this occurred before she joined the management company, although she accepted that RMG were the managing agents at the relevant time. Mrs Kainady said that she understood that the damp ingress always affected Flat 2 on the ground floor and, after having been notified of the problem, she had appointed a company who specialised in damp problems, Strand Preservations Ltd in April 2010. Mrs Kainady could not provide a letter of instructions. Strand Preservations Ltd. had been told to inspect the property and report. That company did so in May 2010 (no copy provided). The company suggested that an external inspection be carried out by surveyors, but the chairman of the Applicant company had been reluctant to incur these costs and instructed Mrs Kainady to ask Strand Preservations Ltd to prepare a schedule of works. On 5 August 2010 Strand Preservations Ltd sent an email to Mrs Kainady which stated *"we feel that there are so many items relating to these*

flats we would not know where to start and what to price. In our opinion what you actually require is a full external building repair schedule and we would be pleased to submit our price for any works that have been put together by your surveyors". Another firm who had also tendered, Grange Roofing, carried out the work in September/October 2010 and the costs, including scaffolding, as shown on invoices 0001382 (£763.75) and 0001388 (£11,985) totalled £12,748.75 including VAT. Mrs Kainady confirmed that no formal consultation had been carried out.

The Respondents' case

11.No written representations were received by the Tribunal from any of the Respondents.

The Tribunal's determination

12.In the view of this Tribunal, the Applicant's case was ill prepared. Documentation and/or other written evidence in support which could reasonably be expected was not provided. The Applicant's representative appears to have taken instructions, in the main, from one person, namely the chairman of the Applicant company. This cannot and should not absolve the Applicant from its statutory requirements under the Act.

13.Although the Tribunal has received no communication from the Respondents, the Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that tenants 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.

14. The problems with regard to the roof leak were identified as long ago as 29 January 2010, and the works were completed in February 2010 . Although Ms Kainady was well aware that the cost of the works exceeded the threshold for consultation, as set out in her email to the chairman of the Applicant company and those lessees for whom she had email addresses on 12 February 2010, she did not enter into any form of consultation. Although her email of 12 February 2010 indicated that *""we will make an application to the LVT for dispensation from the consultation requirements"* she did not do so. With regard to the damp ingress to the side of the property, the problems had been identified as long ago as March 2010. Due to delays, the works were not started until September 2010 . Mrs Kainady confirmed that no formal consultation has been carried out. In both instances, the Tribunal determines that, in view of the fact that the application was made so long after the problems were identified, no case of emergency has been made out.

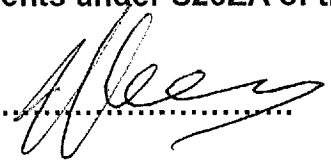
15.Since there was no emergency, and the financial burden on the tenants is potentially onerous, the Tribunal determines that the tenants may well be prejudiced by the Applicant's failure to consult properly and/or at all. The costs to date have apparently come out of the reserve fund, which was meant for other projects.

16.The Tribunal rejects the Applicant's contention that *"consultation could not be carried out prior to doing the works".* In view of the time span as set out above, this is patently untrue.

17.Accordingly the Tribunal 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 are not to be dispensed with.

18.The Applicant's application under S20ZA of the Act is therefore dismissed.

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

CHAIRMAN..... 

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