



LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985

Case Reference: LON/00AF/LDC//2012/0058

Premises: 12a-18a Rosehill Road, Biggin Hill,
London TN16 3NF

Applicant: The Offer Group Ltd

Respondent: Mr D and Mrs S Leeves (12a)
Mr A Casey (16a)
Mr R Muir (18a)

Leasehold Valuation Tribunal: Ms F Dickie, Chairman
Mr N Martindale, FRICS

Date of decision: 11 July 2012

Decisions of the Tribunal

The application is granted.

Preliminary

- 1) The Applicant landlord seeks dispensation from some or all of the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985. The application was received on 31 May 2012 and directions were issued by the Tribunal on 8 June 2012 and copied to all the Respondent leaseholders. The Tribunal has received written confirmation from the leaseholders of Flats 16a and 18a that they do not oppose the application. A hearing was held on 11 July 2012 at which Mr Leeves of Flat 12a attended to make objection to the application in person. The Applicant was represented by Mr H Offer.
- 2) The Tribunal has not carried out an inspection of the premises, understood to be a building comprising three flats over shops below.

Evidence

- 3) The Applicant seeks dispensation from the statutory consultation requirements in respect of work to replace about two thirds of the flat roof above the flats (the

other third having been previously replaced). It is not necessary to set out the history of this matter in detail. It is not disputed that the roof is leaking and there is serious water penetration into Flats 16a and 18a, and that the situation is urgent.

- 4) Baker & Associates chartered building surveyors were instructed and, said Mr Offer, advised that the cost of a temporary roof cover would also require statutory consultation with the tenants. A specification of works for replacement of the defective part of the roof was issued to contractors. It was also sent to the tenants on 15th May 2012 under cover of a letter which invited them to make observations on the specification and to nominate contractors. Two contractors returned tenders, and a third (Masons) was invited to do so upon the request of one of the leaseholders. In a letter dated 26 June 2012 Baker & Associates recommended contracting Masons to do the work to an amended specification. At £23,000 plus VAT the estimated cost (including a provision for items in the specification for which Masons did not provide a quote) was the lowest of the three tenders.
- 5) Mr Leeves said that he thought the specification of works was excessive for the type of roof, but he had not respond to the invitation to make comments on the specification. His principal concern (shared by Mr Casey of Flat 16a in written representations from his solicitors dated 11 July 2012) was that the cost of the works should be shared by the four commercial leaseholders, and not simply divided between the three residential tenants.

Determination

- 6) Section 20ZA of the Landlord and Tenant Act 1985 provides.

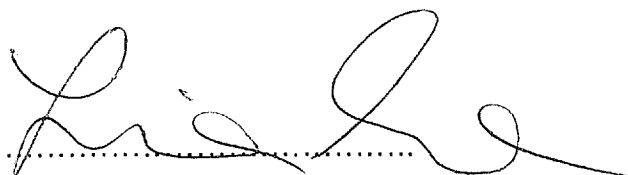
(1) Where an application is made to the Leasehold Valuation Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

- 7) The Court of Appeal in *Daejan Investments Ltd v Benson and Others* [2011] EWCA Civ 38 has considered that the following factors are relevant to the Leasehold Valuation Tribunal's exercise of its discretion under s.20ZA(1) to dispense with statutory consultation:

- a) The financial effect of the grant or refusal of dispensation is an irrelevant consideration when exercising the discretion.
- b) all other things being equal, the following situations might commend the grant of dispensation:
 - i) The need to undertake emergency works;

- ii) The availability, realistically, of only a single specialist contractor;
 - iii) A minor breach of procedure, causing no prejudice to the tenants.
- c) A less rigorous approach may be justified in respect of lessee owned/controlled landlords, but this is not relevant to the present case. The Court of Appeal emphasised that significant prejudice to the tenants is a consideration of the first importance in exercising the dispensatory discretion
- 8) The tribunal is satisfied that the repair to the roof is urgent. It notes that the leaseholders have been given the opportunity both to comment on the specification of works and to nominate contractors, and that the specification has been amended in light of the tender produced by a contractor proposed by a leaseholder.
- 9) In all of the circumstances the tribunal is satisfied that there is no prejudice to the leaseholders by virtue of dispensing with the statutory consultation procedure. The landlord has acted in the spirit of the legislation in the informal consultation which has taken place to date.
- 10) On the evidence the Tribunal therefore considers it is reasonable to grant the application and to dispense with all further consultation under the Act in respect of works partially to replace the flat roof.
- 11) It should be noted by the parties that this determination does not affect the right of the leaseholders under s.27A of the Act to challenge the payability or reasonableness of the cost of the works to be recovered under the service charge provisions of their leases. In particular, this decision has no effect on the issue of the proper apportionment of the cost of these major works to the leaseholders.

Signed:



Ms F Dickie, Barrister

Dated: 11 July 2012