



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/00AW/LDC/2012/0041**

Premises: **Campden Hill Court, Campden Hill Road, W8
7HS**

Applicant: **Campden Hill Court (Tenants) Limited**

Respondents: **The long leaseholders of Campden Hill Court**

Leasehold Valuation
Tribunal: **Mr M Martynski (Solicitor)**

Date of decision: **28 May 2012**

DECISION

Decision summary

1. The application for dispensation from the consultation requirements imposed by section 20 Landlord and Tenant Act 1985 in respect of damp and associated works to flat 13A is refused.

Background

2. The block in question contains 119 flats.
3. By letter dated 5 April 2012, the Applicant's agents wrote to all leaseholders advising them that the damp associated work at flat number 13a was more extensive than at first thought and that the costs of that work exceeded the section 20 consultation threshold. The letter went on to say that an application was going to be made to this Tribunal for dispensation of the consultation requirements. The letter continued to say that the surveyors overseeing the works had undertaken a tender exercise for the works and gave details of the two contractors who had been appointed to carry out the works.
4. By an application dated 11 April 2012 the Applicant applied to this Tribunal for a dispensation of the statutory consultation requirements in respect of damp proof, tanking and repair works to number 13a Campden Hill Court. The reason for asking for dispensation was expressed to be the desire to press on with the works as quickly as possible. Beyond this reasonable wish to get on with the works and to have the flat in question properly reinstated to a habitable condition, the Tribunal was not given any other reason as to why consultation could or should not take place.
5. The Tribunal set the matter down on the Paper Track with the application to be decided without a hearing. The Tribunal also gave directions on the application including a direction that the Applicant serve a copy of the application upon all leaseholders by 4.00pm on 27 April 2012.
6. By letter dated 25 April 2012, the Applicant's agent wrote to all leaseholders with a first-stage consultation letter regarding the works at flat 13a. The letter stated that it was a notice issued in accordance with Section 20. The letter described the works to be done and the reasons why the works were necessary. The letter invited comments on the proposed works by 28 May. The letter then invited leaseholders to nominate contractors to be contacted for estimates to carry out the works and said that any nominations had to be received within 30 days (that is by 25 May). The letter finished as follows:-

Following expiry of this notice you will, in due course, receive a further notice providing details of the estimates received, including any put forward by a resident, and how the work is to be funded.

The letter made no reference to the application being made to the Tribunal to dispense with consultation, nor did it state how the recipient was to interpret this letter in the light of what was said in the earlier letter dated 5 April and in the light of the application to the Tribunal.


7. There was no request from any party for a hearing and accordingly this application has been decided on the papers alone, those papers being contained within a hearing bundle supplied by the Applicant's agents.

8. As to the Respondents, eight of them responded to the application and all of those who responded confirmed that they supported the application.

The issues and the Tribunal's decision

9. The question for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements in respect of these works. The Tribunal concludes that in the unusual circumstances of this case, it is not reasonable.
10. It seems to the Tribunal that a leaseholder in this block would understandably be thoroughly confused by the letters sent by the Applicant's agents which appear to say:-
- estimates for the work have been received and contractors appointed
 - an application is to be made to dispense with the statutory consultation requirements
 - consultation will be carried out, estimates will be obtained from contractors nominated by leaseholders and a further notice will be supplied with details of those estimates
11. Given the confusion in this case and the clear promise to leaseholders to consult, it would not be reasonable to now dispense with consultation. Clearly a leaseholder receiving the letter of 25 April from the Applicant's agents and who wished to make observations on the proposed works or estimates would legitimately be highly aggrieved if the Tribunal were to now take away the promise and the right to make those observations.

Chairman:



Mark Martynski

Date:

28 May 2012

EXTRACTS FROM THE RELEVANT LAW

Landlord and Tenant Act 1985

20ZA Consultation requirements: supplementary

[(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.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Service Charges (Consultation Requirements) (England) Regulations 2003

SCHEDULE 4 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

Part 2 Consultation Requirements for Qualifying Works for Which Public Notice is Not Required

Notice of intention

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(1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

- (c) invite the making, in writing, of observations in relation to the proposed works; and
- (d) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

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- (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
 - (a) the place and hours so specified must be reasonable; and
 - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

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Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

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- (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.
- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
 - (a) from the person who received the most nominations; or
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
 - (c) in any other case, from any nominated person.
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
 - (a) from at least one person nominated by a tenant; and
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
 - (a) obtain estimates for the carrying out of the proposed works;
 - (b) supply, free of charge, a statement ("the paragraph (b) statement") setting out—
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
 - (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
 - (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

- (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
- (a) each tenant; and
 - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—
- (a) specify the place and hours at which the estimates may be inspected;
 - (b) invite the making, in writing, of observations in relation to those estimates;
 - (c) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

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Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

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- (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
 - (b) where he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.
- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.