



**HM Courts
& Tribunals
Service**

**Leasehold Valuation Tribunal
Case Number: CAM/38UE/LSC/2012/0136**

Property : Flats 1, 2, 3, and 4,
3 Bridge Street,
Abingdon,
Oxon
OX14 3HN

Applicants : E. M. Amphlett & L. J. Nielsen
G.I. & E.A. Boon
H. & S.F. Carter
G. Humphreys & G.A. Smith

Respondent : Cathedral Holdings Limited

Date of Application : 23rd October 2012

Type of Application : Application for a determination of
liability to pay a service charge,
pursuant to section 27A of the Landlord
and Tenant Act 1985

Date of Hearing : 11th March 2013

Tribunal :

Mrs. Joanne Oxlade	Lawyer Chairman
Mr. Dallas Banfield FRICS	Valuer Member
Mr. Adarsh Kapur	Non-legal Member

Attendees

Applicants

Mr. E. M. Amphlett & Mrs. L. Hugh
Mr. G.I. & Mrs. E.A. Boon
Mr. G. Humphreys &
Mrs. G.A. Humphreys

First Respondent

Mr. G. Van Tonder Counsel
Mr. W. Kramer, Solicitor
Mr. S. Mitchel, Respondent's
former consultant
Mr. M. Previte, Hicks Baker
Mr. Howlett, M.D. Howlett Assoc

DECISION

For the following reasons, the Tribunal finds that the statutory consultation requirements were not followed by the Respondent in respect of the qualifying works carried out to the premises in January 2009; accordingly, the service charge contribution for those works to be made by each Applicant, is limited to £250.

REASONS FOR DECISION

The Application

1. On 23rd October 2012 the Applicants issued an application for determination of the reasonableness and payability of some of the service charges incurred in the years 2008, 2009, 2010, 2011, 2012, and to be incurred in the year 2013.
2. The application was accompanied with a 16-page statement of case which set out the basis of the challenge, and a schedule setting out the items in dispute.
3. The Applicants raised issues as to reasonableness of costs and compliance with (a) the section 20 consultation procedure in respect of major works (b) section 20B and 21 of the 1985 Act, and (c) section 47 and 48 of the 1987 Act.
4. On 31st October 2012 Directions were made, and the Respondent filed a detailed response.
5. The Respondent agreed that major works were undertaken, but asserted that correspondence from April to August 2008 collectively constituted notice of intention, that a letter dated 17th November 2008 contained the landlord's proposals and that a letter dated 14th January 2009 was a notification of the award of the contract. Whilst it was conceded that the demands made in 2008 were not served with the prescribed information, otherwise thereafter there was compliance with all the requirements.
6. The parties filed bundles of documents, which the Tribunal read and considered.

Hearing and Inspection

Inspection

7. The Tribunal inspected the common parts and exterior of the premises in the presence of Mr. Amphlett and Mrs. Hughes, and Mr. Previte.
8. The premises are a three-storey building constructed of brick under a tiled roof, with box guttering concealed behind a low parapet wall. The premises is in part commercial and part residential use: a shop is located on the ground floor, to the left of which is an entrance door and communal hallway to the flats and to premises at the rear which are not part of this application; there are two flats on the first floor and two flats on the second floor. The common parts and exterior of the premises are in fair condition and a reasonable decorative order.

Hearing

9. At the commencement of the hearing, Mr. Amphlett said that he would speak on behalf of all Applicants.
10. The representatives agreed that as most of the disputed charges arose as a result of the major works - and so depended on a finding of the Respondent's compliance with the consultation procedure - the compliance with the consultation procedure was the first point to determine. Mr. Van Tonder said that if the finding was against the Respondent on this point, then Respondent would make an application for a dispensation from the consultation procedure, and would want this to be determined alongside an application which would be made in respect of the scaffolding erected in July/ early August 2008 (it being conceded that this was done without compliance with the consultation requirements). It was agreed that the appropriate statutory framework was Part 2, Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003, attached at Appendix A.
11. The Respondent wished to rely on witness statements filed after the date set in the Directions, the lateness arising from the Solicitor's other Court commitments. The Applicants' conceded that whilst there was considerable inconvenience and stress caused by the lateness, no prejudice had been caused by it, and so the Tribunal admitted the late evidence.

The Evidence

12. On the preliminary issue the Tribunal heard oral submissions by the Applicants and Respondent, and oral evidence from Mr. Mitchell, a former consultant to the Respondent.
13. Both parties approached the matter chronologically, placing reliance on the same correspondence, whilst giving it a different interpretation and so inviting the Tribunal to draw different conclusions.

*The Respondent's Case**Consultation with a small "c"*

14. The Respondent's case was that on 4th April 2008 the Respondent started the process of gathering views by sending a letter to all lessees (page 393) to say that (i) the Respondent proposed to redecorate the exterior of the premises in 2008, which would require scaffolding (ii) other maintenance matters would receive attention, (iii) this would result in service charges being demanded. The letter invited suggestions of wants of repair and maintenance which were needed/investigated. Three letters were received from lessees, raising maintenance and repair issues (pages 397-399); none objected to works taking place. The Respondent progressed this by inviting Nicholas Bolt Limited (page 400) by letter dated 19th May 2008 to provide a quote for internal works, erection of scaffolding, and a general quote for exterior works to be firmed up once scaffolding was erected. The quote was to be on the basis that the works would start in 4-6 weeks. The Respondent wrote to the lessees to the same effect, and said that the exterior costs would be established before hand and would be notified to the lessees before the works started.
15. On 30th June 2008 Nicholas Bolt Limited (page 415) provided a quote for the works to the internal communal areas in the sum of £10,425.77, noting that works to the electrical intercom was only an estimate. It made no mention of the costs to the exterior, save scaffolding costs of £3800 plus vat, assuming the scaffolding would be in place for 6 weeks. On 7th July 2008 the Respondent (page 417) accepted this quote, and on the same day (page 419) wrote to the Lessees, sent a service charge demand for the known costs (and pointed out that the external costs were not yet known), and said that the works would start by erection of scaffolding on 21st July 2008.
16. Several of the Lessees responded (pages 420, 421, 423), raising various questions, including one making a request for disclosure of all quotes, and asking for the Lessees to be entitled to nominate a contractor. One Lessee mentioned section 20, though saying that the costs were not totally unreasonable.
17. The Respondent wrote to the Lessees on 18th August 2008 (page 424) saying that a section 20 consultation would delay completion of the works. However, they had appointed a surveyor to advise on the scope of the works which would be required to the roof; once this was obtained the Respondent would forward it to the Lessees and invite the nomination of a contractor. This was sent to the Lessees on 27th August 2008 (page 428).
18. The Respondent received a letter from Mr. Humphreys (Lessee of flat 3) (page 442) remarking on the high costs of replacing a few tiles, and

providing a quote to undertake the decoration of the communal hall; further, a nomination was made by Ms. Hugh (page 444). Then the Respondent received a report on tenders from M.D. Howlett (page 445) reporting on the various quotes.

19. The Respondent's position is that this process was to gather views, was not part of the statutory consultation process, but was consultation with a small "c". Further, that the scaffolding was erected for the purpose of inspection to properly assess what work was necessary. The cost was a one time cost – it went up and stayed up – albeit that the weekly rental of £160 plus vat was paid after the end of the 6th week. The Respondent was content when the Lessees said that they wished to exercise their statutory rights to follow the correct process.

Formal Compliance

20. The Respondent's case is that what then followed was a consultation process which was compliant with the statute, albeit that it was accepted that the notice of intention was not one notice, but several letters which collectively was sufficient. Mr. Van Tonder had researched the point, but could not find case law which determined that the Regulations required that "the notice of intention" be contained within one document.

Stage 1 consultation

21. On 17th November 2008 (page 478) the Respondent's Solicitor wrote to each Lessee, making the following essential points:
- (i) the Respondent wanted to carry out maintenance and repair works to the external fabric of the building and internal common areas
 - (ii) the Respondent had already invited the Lessees to nominate their own contractors, which resulted in the nomination of Mr. Lambert (whose tender was withdrawn, for unknown reasons) and Mr. Humphreys (for decorations only),
 - (iii) summarised the competing quotes,
 - (iv) stated that no further observations had been received
 - (v) stated an intention to appoint Nicholas Bolt Limited to do the maintenance work and Mr. Humphreys to do the decorative works,
 - (vi) that the contractor's estimates could be inspected at M.D. Howlett Associates (address and 'phone number given),
 - (vii) that written observations could be made within 30 days.
22. The following day Mr. Humphreys notified the Respondent that he would have to withdraw his tender, because the public liability insurance was prohibitively expensive.

23. The four Lessees made representations (pages 483 to 487):
- (i) Mr. Humphreys was concerned that the landlord's would give little consideration of the Lessees opinions,
 - (ii) Mr. Boon was concerned with the wide variations in cost, which undermined their reliability; as the building was renovated in 1994 to do works amounting to £55,000 now was ludicrous; obtaining further quotes in the recession would be cost effective; there was a difference between gold-plating (which this was) and maintaining to a serviceable condition; the costs exceeded what he thought Mr. Mitchell had been speaking about, though no specifics had been mentioned; the necessity of cutting out bricks should be in question; he felt that there was capitalising on their obligation to maintain;
 - (iii) Mr. Amphlett and Ms. Hugh wrote, concerned about costs; they were concerned that Lambert Construction had withdrawn because of constraints imposed on them, though they were half the cost of Nicholas Bolt (a company whose repair of tiling had already failed, and it was at high cost, so causing concern over quality); they were concerned about being required to pay for scaffolding which was in place since 2nd August 2008; they wanted to find another contractor as their previous nominee was scared off, and asked the Respondent to do so; they asked about payment plans in light of the costs.

Stage 2 consultation

24. On 14th January 2009 (page 493) the Respondent's Solicitor's wrote to the Lessees, making the following essential points:
- (i) this letter followed a letter dated 17th November 2008,
 - (ii) Mr. Humphreys' had withdrawn his tenders,
 - (iii) The Respondent had received comments from various leaseholders in relation to the proposed works, mainly concerned with costs and the necessity of the works, and whether Nicholas Bolt was capable of carrying out the works to an acceptable standard,
 - (iv) These comments had been considered by Mr. Howlett, who has confirmed that all the works are necessary, that the estimate of Nicholas Bolt is reasonable, that Nicholas Bolt was capable of doing the works
 - (v) On 6th January 2009 the Respondent entered into a contract with Mr. Bolt in the sum of £34,712.56
 - (vi) On 7th January 2009 a further quote was obtained from Peter Clarke building, and despite it being received out of time, it was considered, but left out essential works, and on a like for like basis Nicholas Bolt compared favourably. The works would have started on 8th January 2009.

25. The Respondent's position was that the letter dated 17th November 2008 (page 478) was the notice of intention referred to in paragraphs 8(1) and 8(2) of Part 2 of Schedule 4 of the Regulations, and whilst not all of the information required by 8(2)(a)-(d) was in the same document, this was not essential where the information had been communicated to the Lessees. He pointed out that it could not be that case that the Regulations had to be read literally as otherwise the notice to the "tenant" would not allow service on multiple tenants. The Respondent's case was that there needed to be substantive compliance.
26. The Respondent called Mr. Mitchell to give oral evidence, in light of the Applicants' assertion that the Respondent had appointed Nicholas Bolt in July 2008 - prior to the consultation - and that there was no evidence that the contract had been terminated; the same contractor was re-appointed in January 2009; the Applicants considered that the whole consultation process was undermined, and was a charade.
27. Mr. Mitchell said that the first contract with Mr. Bolt had been terminated by mutual consent in light of the Lessees observations and Mr. Bolt was perfectly content with this so that neither had obligations to one another. Mr. Bolt was known to Mr. Howlett, which Mr. Mitchell did not regard as a problem. In cross-examination by Mr. Amphlett, Mr. Mitchell said that he could not be specific about when the contract with Mr. Bolt was terminated. He had not cancelled the scaffolding contract, as it was necessary to obtain a detailed specification of works to the exterior of the building; they used scaffolding, as a cherry picker could not be used in this location. In answer to questions asked by the Tribunal Mr. Mitchell said that Mr. Bolt had done work for the Respondent two years before; they had good relations with contractors and try to avoid litigation; it was a small contract for Mr. Bolt, who is reliable and sensible.
28. Mr. Van Tonder submitted that the finding sought - that Mr. Mitchell had not terminated the contract with Nicholas Bolt - would be surprising in light of the acceptance of the tender of Mr. Humphreys by the Respondent, and did not proceed for reasons unconnected with the Respondent. Though the process started badly, once told about section 20 Mr. Mitchell went about correcting it, and conducted a transparent and open process to the extent of instructing Howletts. The Respondent did consider the tender of Lambert's though out of time. Though the Applicants referred to lack of regard for representations, Mr. Van Tonder went through each one, pointing out that the Landlord cannot award a contract to a contractor who had withdrawn; that the lease provided when service charges were payable and so the payment plan suggestion was not something to which the Respondent needed to have regard; that Mr. Boon could not expect the Respondent to assess what he was really saying.

29. The Respondent's position was that the Applicants' accepted that the works needed doing, and have tried to bring a challenge under the Regulations which did not succeed, had now changed tack as an attempt not to pay.

The Applicant's Case

30. The Applicant's case was that the consultation with a small "c", was wholly defective:
- (i) the first correspondence received (p393) did not comply with the requirements of the notice of intention, as it did not say why the works were necessary, neither did their later correspondence (p402)
 - (ii) the Respondent should have known that they could not propose a time line of 4-6 weeks, which made no concession to the statutory process;
 - (iii) the scaffolding went up after the award of the first contract, and was not part and parcel of an inspection process (as now argued) but part of the works, and it was still possible to cancel the scaffolding as by 28th July the Respondent was aware of the section 20 requirements,
 - (iv) the request for sight of the quotes (page 420) is not addressed in the reply (page 422),
 - (v) the Respondent's irritation about the Lessees requiring the statutory process is apparent from page 424 , that it will "delay completion of the works".
31. Further, that the Respondent's case that the statutory consultation procedure was followed from 17th November 2008 (page 478 onwards) was wrong, for the following reasons:
- (i) the stage 1 notice (page 478) should be a single piece of correspondence, and does not cover all the points i.e. says that inspection can take place, but does not specify a time for inspection; nor does it specify the end date by which observations must be made; nor does it give an address for service,
 - (ii) the stage 2 notice (page 493) does not adequately deal with the tenant's observations about a payment plan or why scaffolding was up for 4 months; the notice did not provide for times of inspection of estimates, and it was not reasonable to make the place for inspection in Reading when most Lessees lived in Abingdon; Mr. Boon was not served with a copy of the second stage letter, and raised this several times in correspondence.
32. In summary, the Applicants' case was that the Respondent had committed to a particular contractor (Nicholas Bolt) prior to going through the process, and had entered into a contract; thus undermining

the integrity of the process. Further, the scaffolding had already gone up so that the works could start, and not (as now argued) that it was a separate inspection process. Whilst the Applicants' were not denying that there was a lot of correspondence, it was in the wrong order, and that the fact of committing to a particular contractor undermined the process.

33. At the end of the hearing the Tribunal reserved its decision.

The Regulations

34. The works are governed by Part 2, Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003, are set out in Appendix A.

Findings

35. The Tribunal has carefully considered all of the evidence adduced and submissions made, and for the following reasons finds that the Respondent failed to comply with the statutory consultation procedure.
36. The process started off badly, the Respondent having failed to have any regard for the section 20 consultation procedure whatsoever; by entering into a contract with Nicholas Bolt and by having scaffolding erected for the purpose of facilitating the works under Mr. Bolt's contract. On receipt of the letter dated 28th July 2008 from Mr. Carter (page 423) referring to the right to nominate a contractor under section 20 the Respondent's intended course was brought to a halt.
37. The Respondent then engaged Solicitors, who attempted to comply with the consultation procedure by service of letters dated 17th November 2008 (stage 1) and 14th January 2009 (stage 2). However, the Regulations were not complied with in their entirety:

Stage 1

- (i) Regulation 8(2)(b) requires that the notice shall state the landlord's reasons for considering it necessary to carry out the proposed works; yet the letter does not do so,
- (ii) Regulation 8(2)(d) requires that the notice state the address to which the lessee can make written representations, and the date on which the period for submissions ends; yet the letter does not do so.

Stage 2

- (iii) Regulation 10 requires that the landlord have "regard" for any observations made by the lessees; whilst the letter of 14th January 2009 (page 493) summarises some of the lessees

observations, the fact that the letter dated 17th November 2008 states that it will award the contract to Nicholas Bolt undermines the Respondent's assertion that it has had any regard for the observations subsequently made.

38. Mr. Van Tonder submitted that the Regulations do not require that the notice of intention contain all of the information in one notice, and can incorporate information in other documents. The Tribunal rejects this argument for the following reasons: the Regulations refer to it as "the notice"; the Regulations prescribe strict time limits; the Regulations provide for specific information to be contained within the notice; the Regulations provide a scheme where one thing flows from another. Where information is "peppered" throughout correspondence, as in this case, not only does it require deciphering, it makes it almost impossible to establish when times limits run.
39. The purpose of the consultation requirements is to ensure openness and transparency. The Applicant asserts that this had not happened and that the process was fatally flawed chiefly because the first contract between Nicholas Bolt and the Respondent was not terminated. The Tribunal finds it more likely than not that the first contract was terminated. However, it is hardly surprising that the Applicant would be sceptical of the Respondent's action as at stage 1 letter (page 479) the Respondent's Solicitor stated that "it is our client's intention to award the contract to carry out the maintenance works to Nicholas Bolt and the decoration works to Gary Humphreys". As Mr. Van Tonder said that this was the stage 1 notice, it undermines the Respondent's invitation to provide observations, to nominate contractors, and the Tribunal finds that it cannot conclude that the Respondent truly had regard to the Applicants' observations.
40. The Applicants' also advanced an argument that Mr. Boon had been kept out of the picture by the failure of receipt of some of the letters. The Respondent countered this by referring to some correspondence which undermined the assertion. The Tribunal did not hear oral evidence from Mr. Boon. However, in light of the above findings as to the defects in procedure, the Tribunal's decision on this point is unnecessary.

Conclusion

41. The Tribunal finds that the Respondent failed to comply with the statutory consultation procedure in respect of major works to the premises, and accordingly, the Lessees' contribution to the costs are limited by statute to £250 per lessee.

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Joanne Oxlade

Chairman

5th April 2013

Appendix A

PART 2 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH PUBLIC NOTICE IS NOT REQUIRED

Notice of intention

- 8.— (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

- 9.— (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

9. 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

10.— (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 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

12. 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

13.—(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.