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**HM COURTS AND TRIBUNAL SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00HN/LDC/2013/0021**

**DECISION AND REASONS**

**Application** : Section 20ZA of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

**Applicant/Landlord** : Roslin Hall Freehold Ltd

**Respondent/Leaseholders** : The long leaseholders of the Flats

**Premises** : Roslin Hall, 6 Manor Road, Bournemouth, Dorset, BH1 3ES

**Flats** : the flats in the Premises

**Date of Application** : 3 April 2013

**Date of Directions** : 10 April 2013

**Date of Hearing** : 8 May 2013

**Venue of Hearing** : Menzies East Cliff Court Hotel, East Overcliff Drive, Bournemouth, Dorset, BH1 3AN

**Appearances for Applicant/Landlord** : Mr M Preece, Horsey Lightly Fynn

**Also in Attendance** : Mr M Strong MRICS, Rebbeck Brothers, Mr J Mellery-Pratt, Rebbeck Brothers, Mr C Lewington BSc (Hons) MRICS, Bennington Green, Mr W Warnock, Horsey Lightly Fynn

**Appearances for Respondent/Leaseholders** : none

**Observers** : Mrs E Rangou and Ms S Williams

**Members of the Leasehold Valuation Tribunal** : Mr P R Boardman MA LLB (Chairman), and Mr K M Lyons FRICS

**Date of Tribunal's Reasons** : 8 May 2013

**Introduction**

1. This application by the Applicant/Landlord is under section 20ZA of the 1985 Act, namely for the Tribunal to determine whether it is reasonable to dispense with the consultation requirements referred to in section 20 of the 1985 Act, and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations")
2. The grounds of the application, as set out in a statement of case, were that :
  - a. the Applicant/Landlord was the freehold owner of the Premises, which was collectively owned by the 34 Respondent/Leaseholders
  - b. the works which were the subject of this application were detailed in the "Building Pathology Report" by Ellis Belk dated 18 February 2013, and were the responsibility of the Applicant/Landlord under the leases of the Flats as part of the Applicant/Landlord's obligation to maintain the exterior of the Premises including the main walls
  - c. the Applicant/Landlord had made the application for dispensation because, acting by its directors, it considered that the major works which were now being carried out needed to be implemented urgently and without delay once appropriate investigations into the causes of the water penetration had been carried out and a course of remedial action identified; the works were considered urgent because the water penetration was causing damage to the inside of the Flats and the Premises generally
  - d. in particular the Applicant/Landlord believed that one of the areas being damaged by the water penetration was the ceiling of the affected Flats; it was thought that the ceiling did, or was highly likely to, contain asbestos, given that the Premises were constructed in the 1970s, and therefore damage to that area needed to be remedied quickly
  - e. the Applicant/Landlord was also concerned about the health risks associated with water penetration and the formation of mould within the affected Flats
  - f. in accordance with the statutory consultation requirements the Applicant/Landlord had served on the Respondent/Leaseholders a notice of intention to carry out works dated 6 March 2013, a notice dated 27 March 2013 with a new specification of works, and a notice and statement of estimates in relation to the proposed works dated 19 April 2013
  - g. the Applicant/Landlord had received no observations from any of the Respondent/Leaseholders in response to those notices
  - h. dispensation was requested because the works which were being undertaken were appropriate and necessary to deal with the water penetration issues at the Premises and the granting of dispensation would not prejudice the Respondent/Leaseholders, none of whom had disputed the appropriateness of the works, and 23 of whom had signed forms consenting to the Applicant/Landlord's application for dispensation being dealt with as soon as possible

### **Documents attached to the Applicant/Landlord's statement of case**

3. The documents were :
  - a. the Applicant/Landlord's application to the Tribunal
  - b. a copy of the underlease dated 4 July 1991 relating to Flat 33, in which provisions

included :

- an obligation by the lessee (in clause 3(5)(a)) to keep the interior of the Flat, including internal walls, in good and substantial repair and condition
  - an obligation by the lessee (in clause 3(6)) not to alter the Flat externally
  - an obligation by the lessee (in clause 3(7)) to keep the interior of the Flat in good decorative condition
  - an obligation by the lessee (in clause 3(18)) to pay a service charge
  - an obligation by the landlord (in clause 4(A)) to keep the “foundations main walls timbers roofs main drains and sewers and the exterior of the Premises” in good and substantial repair and condition
  - a description of the Flat as including the floor and concrete floor beams between the floor of the Flat and the Flat immediately below it, but excepting “the roof over the Building” and “the main walls of the Building”
- c. e-mails and photographs from Bennington Green
  - d. the "Building Pathology Report" by Ellis Belk dated 18 February 2013
  - e. the minutes of an AGM of the Respondent/Leaseholders on 8 February 2013
  - f. a letter from Mr Strong on behalf of the Applicant/Landlord dated 1 March 2013 identifying the proposed works and their likely cost
  - g. the notice of intention to carry out qualifying works dated 6 March 2013
  - h. the notice of change of specification dated 27 March 2013 and schedule of works by Bennington Green Ltd
  - i. the notice and statement of estimates dated 19 April 2013

#### **Consents by Respondent/Leaseholders**

4. Letters addressed to the Tribunal and signed by certain Respondent/Leaseholders, stated that they consented to the Applicant/Landlord's application for dispensation of the statutory consultation requirements to be dealt with as soon as possible; the consents were from the Respondent/Leaseholders of Flats 3, 5, 7, 8, 9, 11, 12 (stating that he was amazed that it had not been deemed appropriate to dispense with the requirement for a formal hearing; it would have been ridiculous to subject the Flats to further flooding and damage to satisfy the 60 day consultation period which was never intended to prevent timely repairs), 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34
5. A further letter to the Tribunal from the Respondent/Leaseholder of Flat 16 gave consent to the works to balconies being done at the Premises

#### **Legal background**

6. Section 20 of the 1985 Act provides as follows :

*20 Limitation of service charges: consultation requirements*

*(1) Where this section applies to any qualifying works or qualifying long term agreement, the*

*relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—*

*(a) complied with in relation to the works or agreement, or*

*(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.*

*(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.*

*(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.*

*(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—*

*(a) if relevant costs incurred under the agreement exceed an appropriate amount, or*

*(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.*

*(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—*

*(a) an amount prescribed by, or determined in accordance with, the regulations, and*

*(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.*

*(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.*

*(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined*

7. The material parts of the 2003 Regulations for the purposes of this application are :

*Reg. 2 (1) In these Regulations-*

*"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice*

*Reg. 6*

*For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250*

*Schedule 4 Part 2*

Para 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.*

Para 11

- (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.
- (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.

#### Para 13

- (1).....where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering in to 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
  - (b) where he received observations to which.....he was required to have regard, summarise the observations and set out his response to them

#### Inspection

8. The Tribunal inspected the Premises on the morning of the hearing on 8 May 2013. Also in attendance were Mr Strong, Mr Mellery-Pratt, Mr Lewington, Mr W Warnock, and Mr K Hardie, of Hardie Roofing & Building Ltd
9. The Premises comprised a block of 34 Flats on 9 floors. The Tribunal inspected the interior of Flats 29, where there was evidence of damp damage on the ceiling by the coving, and three patches in line in the middle of the ceiling, Flat 30, where there was extensive evidence of damp all over the ceiling, and evidence of a main leak point, and Flat 31, where there was evidence of damp in the kitchen by the window pelmet, particularly on the right-hand end, and in the lounge by the ceiling coving and in the bay
10. On the floor above, the Tribunal inspected the terrace of the penthouse Flat 33 on one side of the Building, which was separated from the terrace of Flat 34 by a low wall. The parties told the Tribunal that the remedial works which were the subject of the application before the Tribunal had nearly been completed, but showed the Tribunal the areas of the terraces referred to in the papers before the Tribunal. The parties said that the terraces on the other side of the Building were identical, and that there was no need for the Tribunal to inspect them as well

## **The hearing**

### **The leases**

11. The parties informed the Tribunal at the hearing that the leases of the Flats were in materially the same terms as the lease of Flat 33, and the Tribunal has proceeded accordingly

### **Mr Preece's submissions**

12. Mr Preece submitted that :

- a. the remedial works which were the subject of the application before the Tribunal were works for which the cost could in principle be included in the service charge provisions in the lease, because, although the responsibility for repairs and maintenance of the terraces was not specifically set out in the lease, and the terraces were included in the demise of each of the penthouse Flats, it was clear that it was the Applicant/Landlord's responsibility under clause 4(A) because the terraces formed part of the exterior of the Building and were the "roofs" of the Flats beneath, and the Respondent/Leaseholders were responsible only for the interior of each Flat under clauses 3(5)(a), 3(6), and 3(7)
- b. the works were urgent, because continued water penetration would have caused further damage to the Flats involved, because asbestos was present, and because the mould in Flat 30 could have caused respiratory problems for the young family living there
- c. the Applicant/Landlord had consulted the Respondent/Leaseholders about the works openly and transparently, by notification at the AGM on 8 February 2013, by the letter dated 1 March 2013, and by the letters dated 6 March 2013, 27 March 2013, and 19 April 2013, and their respective enclosures
- d. no observations had been received from any of the Respondent/Leaseholders
- e. many of the Respondent/Leaseholders had consented to application to the Tribunal being dealt with as soon as possible
- f. the Applicant/Landlord had accordingly applied to the Tribunal for dispensation and had started to carry out the works
- g. the order should be made in the form drafted by Mr Preece

### **13. The Tribunal's findings**


14. The Tribunal indicated at the hearing, in relation to the works referred to in the application, the following findings :
  - a. the proposed works were works for which the responsibility was the Applicant/Landlord's under the lease, and for which the cost could in principle be included in the service charge provisions in the lease
  - a. the works were urgent
  - b. the Applicant/Landlord had notified the Respondent/Leaseholders of the nature and

likely cost of the works, and had given the Respondent/Leaseholders the opportunity to make observations

- c. none of the Respondent/Leaseholders had objected to the works, or their cost
- d. on the contrary, many of the Respondent/Leaseholders had consented to application to the Tribunal being dealt with as soon as possible
- e. there was no evidence that any of the Respondent/Leaseholders would be prejudiced by an order as sought
- f. in all the circumstances the Tribunal was satisfied that it was reasonable, in relation to the consultation requirements referred to in section 20 of the 1985 Act and set out in the 2003 Regulations, to make an order in the following terms :
  - the qualifying works referred to in the Applicant/Landlord's notice dated 6 March 2013 under section 20 of the 1985 Act and supplemented by the letter dated 27 March 2013 and the notice dated 19 April 2013 fall within the responsibility of the Applicant/Landlord under each lease, and the costs of those works are accordingly recoverable, in principle, through the service charge provisions of each lease
  - the statutory consultation period in respect of those qualifying works shall expire on the granting of this order, and the Tribunal dispenses with any requirement to consult the Respondent/Leaseholders further in relation to those qualifying works, which have been substantially completed by the date of this order

15. The Tribunal orders accordingly

Dated 8 May 2013



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor