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**H M COURTS AND TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**Section 20ZA Landlord & Tenant Act 1985**

**DECISION AND REASONS**

**Case Number: CHI/00MS/LDC/2013/0011**

**Property:** Wyndham Court  
Commercial Road  
Southampton  
S015 1GS

**Applicant:** Southampton City Council

**Respondents:** The Leaseholders of Wyndham Court

**Directions:** 13th February 2013

**Date of Application:** 7th February 2013

**Hearing:** 11th March 2013

**Appearances:** For the Applicant:

**Mrs. Mary Kigonya Solicitor with Southampton City Council**

**Mrs. Christina Ward of Leasehold Services with Southampton City Council.  
Mr. George Butler Senior Electrical Engineer with Capita Symonds in partnership  
with Southampton City Council**

**For the Respondent:**

**Mr. Anthony Putnam (flat 7)**

**Mr. Peter Bampton on behalf of Ms. Julie Fortescue (flat 19) assisted by Mr. Clive  
Trowbridge**

**Mr. William Worrow (flat 11)**

**Mrs. Houlihan (flat 91)**

**Mr. Steve Apsey (Observer)**

**Decision: 12th March 2013**

**Members of the Leasehold Valuation Tribunal**  
**Mr. S. B. Griffin. LLB . (Lawyer Chairman)**  
**Mr.Roger Wilkey. FRICS. (Valuer/Surveyor Member)**  
**Mrs.Jane Herrington. (Lay Member)**

### **Application**

1. This was an Application by the Landlord in accordance with Section 20ZA of the Landlord and Tenant Act 1985 for the dispensation of certain of the consultation requirements in respect of qualifying works. The qualifying works in the application related to the upgrading of the electrical supply cables running through the Property .

### **The Law**

2. The statutory provisions relevant to this application are to be found in Section 20ZA of the Landlord and Tenant Act 1985 as amended ("the Act"). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary to assist the parties in reading this decision.
3. Section 20 of the Act provides that where there are "qualifying works", the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.

4. The definitions of the various terms used within Section 20 for example consultation reports, qualifying works etc, are set out in that Section.
5. In order for the specified consultation requirements to be required, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by regulation and at the date of the application is £250 per lessee(inc. VAT).
6. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, S12003/1987. These requirements include amongst other things a formal notice procedure, obtaining estimates and provisions whereby a lessee may make comments about the work and nominate a contractor.
7. Section 20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied.(subsection(1)).

### **The Lease**

8. The Tribunal was provided with copies of both pre -1986 and post - 1986 leases which prevail at the Property dependent on the date in which any individual apartment therein had been purchased under the Right to Buy scheme. Although the Tribunal had regard to these Leases, little turned on their

interpretation with respect to this present Application during the course of representations made prior to and during the Hearing .

9. Suffice to say that there did appear to be within the copy leases an arrangement providing for the landlord's power to levy a service charge and the leaseholder's obligation to pay for the repair/renewal of electrical cables and wires..

### **Background**

10. On 13th February 2013 the Tribunal issued directions for the conduct of the case. In view of the urgency expressed in the application, the matter was listed to be dealt with on the Fast Track.
11. Various matters including the preparation of a bundle of documents and a timetable for the presentation of representations and statements was set out in the Directions.
12. It was allowed that if any of the Respondents should attend the Hearing and if they wished to produce any documents then these should be brought with them to the hearing.

### **Inspection**

13. In the light of the nature of the Application it was deemed unnecessary to hold any inspection.

### **Hearing**

14. The hearing commenced at 10.00am.
15. The Chairman identified the details of the application and indicated the documents that were available to the Tribunal.

### **Evidence**

#### **The Applicant's Case**

16. Mrs.Kigonya, on behalf of the Applicant, spoke to the Statement of Case dated 28th February 2013 which helpfully set forth the background in this matter.

In summary the evidence placed before the Tribunal is that the block in question was erected some forty years ago and provided with electricity mains of a standard sufficient to meet the demands to be expected at that time. It had become apparent that the mains were no longer of a specification sufficient to meet the considerably increased demands of the present day, and in an (other) block there had been a blackout in the electricity supply that was attributable to overloading of the original mains. As the electricity supply also powered the heating in the block as well as all domestic electrical appliances and lighting it was not acceptable to risk a recurrence

of such a blackout.

17. The Council had been informed by Scottish and Southern Energy in a letter dated 30th July 2012 (page 71 of the Applicant's bundle) that the work of replacing electric rising mains where there was an existing supply was work that could only be carried out by the Distribution Network Operator ("DNO") . Such work was described as "*non-contestable*" .It could not be the subject of competitive tender because only the DNO was permitted to carry out such work on its existing system .In the light of this, the Applicant felt itself unable to obtain tenders from anyone other than Scottish and Southern Energy. Consequently it considered that it could not carry out the procedures required by Section 20 of the 1985 Act because the obtaining of competitive tenders was central to those procedures .

18. Mr. Butler, on behalf of the Applicant, explained that technically some 80% of the work that was required to be done was non-contestable. The remainder related largely to the heating systems but the supply would have to be laid through the same ducts as that for the primary rising main. There would be great difficulty if more than one contractor were engaged both in terms of practical working and possibly in terms of liability for any defects where both had been at work. He was of the opinion that it would be more expensive to employ contractors other than the DNO to carry out the contestable work (ie. work which could be put out to tender) than it would be to have the DNO do the whole of the work.

**The Respondent's Case.**

19. The lessees had all been invited to make any representations that they wished in opposition to the proposals. The tenants of flats 7,11,19 and 91 took the opportunity to attend.

20. Mr. Putnam flat 7 voiced the concern of those residents who did not accept that there was any immediate pressing need for the proposed upgrade. There had been no physical manifestation of the perceived problem and they were collectively not comfortable with the idea that no other quotation for the non-contestable work could be obtained by way of comparison as to its costing.

### **Decision**

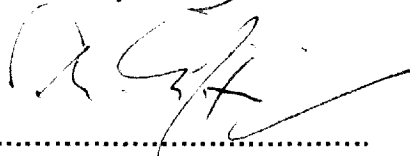
21. It was clear to the Tribunal that the Applicant did intend to involve the leaseholders in the consultation process in that it was proposed to undertake that process by way of notice of intention and invite written observations from the leaseholders but on the planned works only. They would not be invited to nominate a contractor whom they believed would be suitable to undertake the works. Furthermore estimates would be based on Scottish and Southern Electric only and observations from leaseholders would be confined to that estimate. Similarly whilst notifying works under "Qualifying Works" observing comments from leaseholders would be based on that agreement .

22. The Tribunal has taken into consideration that the leaseholders would not have the full opportunity for consultation under the Consultation Regulations.



23. The Tribunal is mindful that it should focus on the extent, if any, to which the tenants' will be prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations. That the financial consequence to the landlord of not granting a dispensation is not a relevant factor when the Tribunal is considering how to exercise its discretion under Section 20ZA, and that the nature of the landlord is also not a relevant factor.
24. The Tribunal considered that the leaseholders would be prejudiced by the Applicant's request to be dispensed from the need to obtain two estimates from two contractors on the proposed works and viewed the tenants' arguments in this respect sympathetically.
25. **In the circumstances the Tribunal declines to make the requested Order that the consultation requirements are dispensed with in this respect.**
26. It should be noted that in making its determination this Application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees. The Tribunal's determination is limited to this Application for dispensation of (part) of the consultation requirements under Section 20ZA of the 1985 Act.

Dated 12th day of March 2013.



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**Stephen B Griffin LLB**  
**Lawyer/ Chairman**

**If any party wishes to appeal this Decision to the Upper Tribunal Lands Chamber they must first seek permission to appeal from the Residential Property Tribunal and they must do so in writing to the Tribunal Offices in Chichester within 21 days of the date of this Decision. Valid grounds for seeking permission must be given.**