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HM COURTS AND TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/23UB/LDC/2013/0022
In the matter of an application under Section 20ZA of the Landlord and Tenant Act 1985 (as amended)
And in the matter of Cadogan House, 50-52 All Saints Road, Cheltenham, GL52 2HA

Between:

New Era Investments Applicant

And

The Leaseholders of Cadogan House Respondents

Date of application:	10 April 2013
Date of hearing:	9 May 2013
Members of the Tribunal:	Mr. J G Orme (Lawyer chairman) Mr. P Smith FRICS (Chartered Surveyor member) Mr. M Jenkinson (Lay member)
Date of decision:	14 May 2013

Decision of the Leasehold Valuation Tribunal

1. **For the reasons set out below the Tribunal is not satisfied that it is reasonable to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (as amended) in respect of qualifying work proposed to be carried out by the Applicant to the property known as Cadogan House, 50-52 All Saints Road, Cheltenham, GL52 2HA.**

Reasons

The Application

1. Cadogan House, 50-52 All Saints Road, Cheltenham, ("the Property") is a detached building which appears to have been originally built as 2 semi-detached houses. It has been converted into 12 flats. The freehold is now

owned by the Applicant, New Era Investments. The Respondents are the leaseholders of the 12 flats in the Property.

2. On 10 April 2013, the Applicant, acting by its managing agent, Remus Management Limited ("Remus"), applied to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") for the dispensation of all of the consultation requirements set out in Section 20 of the Act and in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the Consultation Regulations") in relation to qualifying works proposed to be carried out by it to the roof of the Property. The Applicant had already carried out some works to the roof of the Property which did not require compliance with the consultation requirements but further work was required. The application stated that the Applicant sought dispensation because a leak in the roof was creating ongoing water ingress which could cause increased costs if not dealt with swiftly. It was estimated that the proposed works would cost £2,894.00, which added to the cost of £2,999.00 of the works already carried out would result in a total cost of £5,893.00.

3. On 22 April 2013 the Tribunal issued directions providing for the application to be listed for hearing and for any Respondent who wished to contest the application to appear at the hearing.

4. The application was listed for hearing on 9 May 2013. Notice of the date and place of the hearing was given to the Respondents by the Tribunal.

The Law

5. Subsection 1 of Section 20 of the Act as amended provides:

> *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.*

6. Qualifying works are defined by Section 20ZA (2) of the Act as works on a building or any other premises.

7. The effect of subsections 2 and 6 of Section 20 and the Consultation Regulations is that the consultation requirements apply where the contribution which any tenant has to pay towards the cost of qualifying works by way of service charge exceeds £250. The consultation requirements are set out in the Consultation Regulations. Those that apply in this case are those set out in Part 2 of Schedule 4 to the Consultation Regulations. They require the

landlord to enter into a 3 stage consultation process with the tenant about the need for and cost of the qualifying works. That process takes a minimum of 60 days.

8. Subsection 1 of Section 20ZA of the Act provides:

> *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.*

9. In the case of *Daejan Investments Limited v Benson [2013] UKSC 14* the Supreme Court gave guidance to leasehold valuation tribunals as to how they should exercise the discretion given to them by Section 20ZA. At paragraph 42 of the speech of Lord Neuberger, he says *"It seems clear that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. ... The following two sections, namely sections 20 and 20ZA appear to me to be intended to reinforce, and to give practical effect to, those two purposes."* Then at paragraph 44 he says *"it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements."*

The Lease

10. The Tribunal had before it a copy of the lease of Flat 1 at the Property. The parties to the lease were David Graham Anthony Ogden as lessor and Leo Bruce Simmonds as lessee. By the lease, the lessor granted to the lessee a lease of Flat 1 for a term of 999 years from 1 January 1988 at a rent of £83 per year.

11. By clause 5.3 of the lease, the lessor covenanted with the lessee to maintain the main structure of the Property including the roofs.

12. By clause 4.2 of the lease, the lessee covenanted with the lessor to contribute towards the costs of those matters set out in the fourth schedule. The matters set out in the fourth schedule include the lessor's costs of complying with his obligations under clause 5.3 of the lease.

Inspection

13. The Tribunal inspected the Property prior to the hearing on 9 May 2013 in the presence of Zoe Byass AIRPM, a senior property manager employed by Remus, Karen Chiswell-Williams MIRPM, a regional manager employed by Remus, Mr. Scott, the leaseholder of Flat 1 and Mrs. Gardiner, the leaseholder of Flat 2.

14. The Tribunal was shown the location where repairs had been carried out to the main roof above Flat 12 and a subsidiary roof above Flat 2 in January 2013. The Tribunal made an internal inspection of Flat 12 and was shown where damage had been caused to the ceiling of the living room by the leak in the roof at the rear. The Tribunal was told that it was thought that that leak had been remedied. The Tribunal was then shown the ceiling of the bedroom where there were signs of water ingress around the chimney breast on the front slope of the roof. The Tribunal was also able to observe from a window a broken gutter at the front of the Property. The Tribunal then inspected the front slope of the roof from street level and was shown where it was thought that work was required to re-bed the flashings around the chimney on the front slope. The Tribunal was also able to observe the flat roof above the bay window of Flat 9. It was thought that water from the broken gutter was entering Flat 9 through that flat roof.

The Hearing

15. The Hearing took place at the Holiday Inn Express Town Centre, Cheltenham on 9 May 2013. The Applicant was represented by Miss Byass and Karen Chiswell-Williams. Mr. Scott and Mrs. Gardiner appeared in person.

The Evidence

16. The evidence filed by the Applicant consisted of the application form to which was attached a copy of the lease, a copy of an email providing an estimate for the repairs to the front slope of the roof and the gutter and a copy of a letter dated 29 November 2012 sent by Remus to the leaseholders. Miss Byass gave verbal evidence at the hearing.

17. The letter dated 29 November 2012 enclosed a budget for the service charge for the year ending 31 December 2013. The letter stated *"A roof survey has been carried out at the development which has highlighted areas that need attention. Although many of these items have been dealt with within the current year there is still work to be done, the increase to reserve fund will enable these additional works to be carried out."*

18. Miss Byass said that at the end of 2012 she was aware of a leak into Flat 12. She considered that it was urgent to carry out repairs in view of the wet weather. In December she had instructed Dent and Partners Ltd to carry out repairs. She instructed Dent and Partners Ltd because they had carried out work to other parts of the Property and knew the roof. She instructed Dent and Partners Ltd not to exceed a cost of £3000 so as to avoid the need for complying with the consultation requirements.

19. The work was carried out during January 2013. Scaffolding was erected at the rear of the Property. Work was carried out to the valley on the rear slope of the roof and some slates were replaced on the roof above Flat 2. The cost of that work was £2,999.

20. The leaseholder of Flat 12 reported to Dent and Partners Ltd whilst they were on site that there was another leak in the bedroom ceiling. This was on the

front slope of the roof. Dent and Partners Ltd reported that fact to Miss Byass and provided an estimate for the cost of repairs in the email dated 15 February 2013 in the sum of £1,995 plus VAT. The estimate included the cost of repairs to the gutter.

21. Miss Byass said that it was not possible to specify precisely what work was required until a closer inspection of the roof could be made. That would require scaffolding to provide access. She had therefore added a contingency of £500 to the cost estimated by Dent and Partners Ltd.

22. Miss Byass said that a surveyor had inspected the Property and had looked at the roof from ground level but he could not identify any defects. She had not asked for estimates from any other contractor. She said that Dent and Partners Ltd knew the roof whereas other contractors would not. Also, other contractors would not know what work was required without being able to obtain access to the roof. She said that Dent and Partners Ltd were based in West Midlands. Remus used some general handymen in the Cheltenham area but did not know of anyone else in Cheltenham who would be suitable for carrying out the repairs to the roof.

23. Miss Byass said that she had not taken any steps to start the consultation procedures. The application to dispense with the consultation procedures had been made on 10 April.

24. Miss Byass said that there was urgency to carry out the work so as to allow the leaseholder of Flat 12 to carry out internal decorations and to limit further damage to the Property.

25. Mr. Scott said that he was a builder who had experience of working on roofs. He thought that a total cost of £6,000 was unreasonable for the whole of the work. He said that it was not unreasonable to ask for other contractors to quote for the work even if they could only make a visual inspection from ground level. He agreed that the work needed to be done. He estimated that scaffolding would cost about £800. That meant that there was about £1,000 of labour in the estimate provided by Dent and Partners Ltd. He considered that to be excessive. He could only speculate how long the work would take but he thought that the repairs would only require one day. He thought that the estimate £2,000 plus VAT was a lot of money for minor repairs. He accepted that further work might be required once a closer inspection could be made. He thought that the time required by Dent and Partners Ltd to travel from West Midlands to Cheltenham would be reflected in the price which they had estimated.

26. Mrs. Gardiner said that she had met the Applicant's surveyor, Mr. Paul Keegan, at the Property on 20 February 2013. He was mainly concerned with inspecting Flat 2 where there was a problem with damp penetration but he also looked at the main roof at the same time. She produced a copy of an email sent by Mr. Keegan to Miss Byass on 21 February 2013. The email recorded that he could not see any obvious defect with the lead flashings

around the chimney. He recommended that a contractor be employed to refit the joint in the gutter and he thought that the penetrating damp in Flat 9 would stop once the gutter had been fixed. Mrs. Gardiner said that she had spoken to Mr. Keegan on 8 May and told him of the estimate provided by Dent and Partners Ltd. Mr. Keegan had commented that he thought that it was quite high. Mrs. Gardiner thought that the cost was excessive and that it would be more appropriate if Mr. Keegan's opinion had been taken into account. He could obtain further estimates and supervise the works.

Conclusions

27. The starting point is that if the Applicant wishes to carry out further works to the Property, it must comply with the consultation requirements unless the Tribunal dispenses with some or all of them. If it does not do so, it may not be able to recover the full cost from the leaseholders. The question which the Tribunal must determine is whether it is satisfied that it is reasonable to dispense with the consultation requirements in whole or in part. The Tribunal is mindful of the guidance provided by the Supreme Court.

28. The letter dated 29 November 2012 records that a roof survey had been carried out which highlighted areas that require attention. The Applicant has known of the requirement for work to be carried out to the roof since at least that date. However, the Applicant has produced no evidence to suggest that it has a plan or a specification for the work which is required. The evidence of Miss Byass is that she was aware of a leak in the rear roof above Flat 12 in December 2012. She considered that it required urgent attention and she instructed Dent and Partners Ltd to carry out remedial work subject to the cost not exceeding the limit of £3,000 at which it would be necessary to comply with the consultation requirements. That work has been done.

29. As a result of that work, it was drawn to the attention of Miss Byass that further work is required to the roof above Flat 12, this time on the front slope of the roof. Miss Byass obtained an estimate for that work from Dent and Partners Ltd but she has not obtained estimates from any other contractors. Instead, she has applied to this Tribunal to dispense with the need to comply with the consultation requirements.

30. Miss Byass says that the work should be carried out urgently so as to allow the leaseholder of Flat 12 to carry out internal decorations and to prevent further damage to the Property. Although the need for internal decorations was evident to the Tribunal from its inspection, the Applicant has produced no evidence as to the further damage which may be caused to the Property if the work is delayed to allow for consultation. Given that Mr. Keegan inspected the Property on 20 February, it would have been a simple matter to ask Mr. Keegan to provide a report as to the likelihood of further damage and the timescale for that damage.

31. Notwithstanding the suggestion that there is a degree of urgency, it appears that Remus did nothing from 15 February 2013 when Miss Byass received the estimate from Dent and Partners Ltd until 10 April 2013 when the application

work to be carried out with no need for dispensation.

32. Mr. Scott has given clear evidence that he considers that the estimate provided by Dent and Partners Ltd is excessive. If that estimate is excessive and if the Tribunal were to dispense with the consultation requirements so as to allow the work to proceed without any other estimates being obtained, the prejudice to the leaseholders is that they may have to pay more for the work than if other estimates are obtained.

33. The Tribunal does not accept that there is any good reason why the Applicant has not obtained alternative estimates from other contractors. The Tribunal does not accept that the urgency to effect repairs is such that the Applicant could not have obtained other estimates.

34. At paragraph 67 of his speech in *Daejan,* Lord Neuberger said that it is for the tenants to identify some relevant prejudice. Having done so, the burden of proof that there is no prejudice lies with the landlord. In the light of the evidence of Mr. Scott and Mrs. Gardiner, the Tribunal is satisfied that the Respondents have identified some relevant prejudice if the Tribunal were to grant dispensation. The Applicant has not rebutted that argument. It has not put forward any other good reason why dispensation should be granted. The Tribunal refuses to grant such dispensation.

J G Orme
Chairman
Dated 14 May 2013.