

8691



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/00AG/LDC/2013/0008 |
| Premises: | Roscommon House, 2 Lyndhurst Gardens, London NW3 5NP |
| Applicant: | Roscommon House Limited |
| Representative: | Martin Russell Jones, Chartered Surveyors |
| Respondent(s): | The Lessees of Flats 1 to 10, Roscommon House, 2 Lyndhurst Gardens, NW3 5NP |
| Representative: | None |
| Date of hearing: | 11 February 2013 |
| Appearance for Applicant: | N/A (paper determination) |
| Appearance for Respondent: | N/A |
| Leasehold Valuation Tribunal: | Martin Rodger QC, Lorraine Hart, Raymond Humphrys FRICS |
| Date of decision: | 11 February 2013 |

Decisions of the Tribunal

- (1) The Tribunal dispenses with the consultation requirements provided for by section 20, Landlord and Tenant Act 1985, in respect of the replacement of the domestic hot water cylinder and associated and additional work at Roscommon House described in an estimate by Thermal Systems Ltd, dated 26 November 2012.
- (2) The Tribunal's decision does not affect the right of any lessee to challenge a service charge subsequently levied in respect of the work on any grounds other than compliance with the statutory consultation requirements.

The application

1. By an application dated 9 January 2013 the Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") dispensing with the consultation requirements provided for by section 20 of the 1985 Act, in respect of qualifying work at Roscommon House.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. The Application is made in respect of qualifying works which are described in the following terms:

"The DHW cylinder that was installed in 2010 is leaking and requires replacement as it is a health and safety concern. It is intended that the works are carried out once dispensation received."

4. The application is supported by an estimate by Thermal Systems Ltd, dated 26 November 2012, for work to supply and install a new hot water cylinder, and associated work, at a cost of £5,991.00 exclusive of VAT. Work to remove and re-pipe the heating system chemical dosing pot is also quoted for at a cost of £538.00 plus VAT, it being said that the replacement of the cylinder would be an ideal time to undertake this additional work.
5. The Application also records that works were discussed and agreed at an AGM attended by 8 out of 10 lessees. Whether the work discussed included the additional work connected with the chemical dosing pot is not made clear.

The contractual background

6. Roscommon House is a purpose built block of 10 flats constructed in the 1970s.
7. The Tribunal has been provided with a copy of a lease of one of the flats, Flat 3, dated 12 April 1979, by which that flat was demised for a term of 99 years. The lease terms include the payment by the lessee of a proportion of the annual cost of providing certain services to the building, including the repair by the lessor of the gas, water, electrical and heating installations used in common by the lessees of flats in the building.
8. The lease records an intention that all of the flats in the building should be demised on similar terms. The Tribunal assumes that the 10 Respondents identified in the Application are each lessees of a single flat in the building on substantially the same terms as those of the lease provided to us.

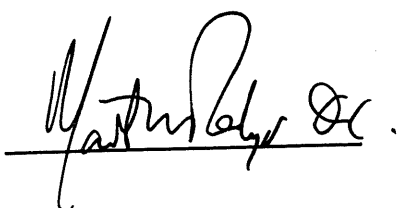
Directions

9. On 10 January 2013 the Tribunal gave directions requiring the Applicant to provide a copy of the application and supporting documents, and the Tribunal's directions, to each lessee, and to confirm that it had done so. The Applicant's Chartered Surveyors confirmed that this direction had been complied with in their letter to the Tribunal dated 17 January 2013.
10. The Tribunal's direction invited each Respondent to make a response to the application in a form which was provided, stating whether they agreed to, or opposed, the granting of the dispensation sought by the Applicant. Responses to that invitation have been received from 3 Respondents, being the lessees of flats 4, 6 and 8 in the building. Each of those responses supported the application for a dispensation.

Discussion

11. The Tribunal approaches the application on the basis that all lessees have been given the opportunity to state whether they support or oppose the application, and that none has chosen to express any opposition.
12. The Tribunal is surprised by certain aspects of the application. In particular if, as the application records, the hot water cylinder was installed as recently as 2010, the need for its replacement so soon as 2012 (when the estimate was procured) suggests either defective manufacture of the original cylinder or defective installation. The Tribunal notes also that only one estimate has been supplied, and that no copy of minutes of the AGM mentioned in the application has been provided (these would have made clear whether support for carrying out the work was unanimous).

13. These features of the application may be capable of explanation. At this stage the Tribunal does no more than point out that any decision it makes to dispense with the consultation requirements of the 1985 Act does not affect the entitlement of any lessee subsequently to raise other issues, including whether the cost of the proposed work was reasonably incurred. The Tribunal has no information from which it could determine whether the wholesale replacement of the cylinder is necessary, or whether lesser work might be possible; nor does the Tribunal know whether part of the cost might be recovered under any guarantee of the original installation.
14. The object of the consultation provisions of the 1985 Act is to allow lessees the opportunity to be informed of and express their views on the need for and timing of proposed work, its cost and the person by whom it should be undertaken.
15. In this case the Tribunal is informed, and no lessee has disputed, that all lessees in the building have been made aware of the proposal to carry out the work, and that the proposal was agreed at a meeting attended by 8 out of 10 lessees. It is therefore assumed that at least 5 lessees are positively in favour of the work proceeding. The absence of any hostile response to the Tribunal's invitation to Respondents to state their views also suggests that there is general support for the proposal or, at least, that none is sufficiently concerned to express active opposition.
16. On the assumption that the cylinder is leaking, and that its replacement is the appropriate means of repair, it would plainly be beneficial for the work to be carried out promptly, to avoid any risk of damage to the fabric of the building. The work has already been outstanding for at least 2 months. Given the consultation which has already been undertaken at the AGM and as part of the Tribunal process, and the approval the proposal appears to command, the Tribunal does not consider there is any reason to require a further delay for the more formal consultation required by the 1985 Act to be completed.
17. The Tribunal therefore grants dispensation from the requirements of consultation imposed by section 20 of the 1985 Act on the grounds that it is reasonable to do so.
18. The dispensation extends to all of the work comprised in the estimate dated 26 November 2012, and therefore includes dispensation in relation to the additional work to remove and re-pipe the heating system chemical dosing pot. No specific reference is made to this aspect of the work in the application. Nonetheless, it is assumed that this work has been discussed in the same way as the replacement of the cylinder. If it is concluded that this work is desirable at this time the Tribunal does not consider that further consultation relating exclusively to it is necessary.

Chairman: 

Martin Rodger QC

Date: 11 February 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
- (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
- (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
- and the amount payable shall be limited accordingly.
- (3) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 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.

Section 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.[...]

[FN1] ss.20-20ZA substituted for s.20 subject to savings specified in SI 2004/669 art.2(d)(i)-(vi) by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 151

S20ZA 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.
- (4) (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.[...] [FN1]