9621

		**FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**
Case Reference	:	**LON/OOBK/LDC/2013/0128**
Property	:	**Flats at 9 - 10 Northwick Terrace, London NW8 8JE**
Applicant	:	**Lyngate Properties Limited**
Representative	:	**Trinity Estates (managing agents)**
Respondents	:	**Eight leaseholders at the subject premises**
Representative	:	**None**
Type of Application	:	**Application for an order dispensing with the statutory consultation requirements made under section 20ZA Landlord and Tenant Act 1985**
Tribunal Members	:	**Professor James Driscoll, solicitor, (Tribunal Judge) and Mr Chris Gowman BSc MCIEH (Tribunal Member)**
Date and venue of Hearing	:	**On the 14 January 2014 the Tribunal considered the application on the basis of the papers filed neither party having sought an oral hearing**
Date of Decision	:	**14 January 2014**

The decisions summarised

1. Using our powers in section 20ZA of the Act we have decided that the statutory consultation requirements in section 20 of the Act (and in the regulations made under that provision) should not be dispensed with in this case. We are not satisfied that it is reasonable to do so in the circumstances outlined by the landlord's managing agents who made the application.

Background

2. The applicant is the owner of the freehold of the premises which is a converted block of eight flats all of which are held on long leases. Some of the flats have one bedroom and the others have two bedrooms. The landlords have appointed Trinity Estates as their managing agents.

3. The managing agents became aware of water ingress from a terrace that was flowing into Flat 2. As a result the owner of the flat could not use one of the rooms. In an unsigned and undated statement of case the managing agents state that they were made aware of the problem in August 2013. They approached two contractors and obtained quotations for the necessary works. One was obtained from RAB Building Services Limited in the sum of £1,590 and the quotation is dated 9 August 2013. The other was from Libra Support Management Limited. That quotation is dated 10 October 2013. It does not contain a total but we calculate that the total costs are £4,555. Both quotations are exclusive of VAT.

The application

4. In an application to the tribunal dated 19 November 2013 the managing agents applied for an order dispensing with the full consultation requirements on the grounds of the urgency of the works. Directions were given on 28 November 2013. Neither party having sought a hearing we considered the application on the basis of the bundle of documents prepared by the managing agents on 14 January 2014. We have not had notice of any objections to the application from the leaseholders. We are informed by the managing agents (in their statement of case) that they chose the more expensive option and that the works have been completed. They give no explanation as to why they chose the more expensive option and they have not told us when the works were carried out (though we note that this must have been on a date after 10 October 2013 when that contractor was appointed).

Our decision

5. We agree that the works were urgently required and that this became apparent in August 2013. This would explain why the managing agents obtained the first quotation that month. We note that if they had accepted that (the lower) quotation the costs to the eight leaseholders almost certainly would not have exceeded the £250 per leaseholder threshold that triggers the statutory consultation requirements in section 20 of the Act.

We do not understand why the managing agents did not instruct RAB Building Services Limited to carry out the works given their urgency.

6. Nor is there any explanation given by the managing agents why they then waited until October 2013 to obtain a second quotation. We are also very surprised that they give no explanation for choosing Libra Support Management Limited who tendered at a figure some three times higher than the first quotation. The managing agents have not disclosed when that company carried out the works.

7. No explanation is given as to why the managing agents waited until 19 November 2013 (nearly four months after they became aware of the urgency of the works) before applying to this tribunal for a dispensation order.

8. We are aware of the principles set out in the decision of the Supreme Court in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14 on the correct approach to dispensing with the consultation requirements and that this tribunal should consider the degree of prejudice suffered by the leaseholders. However, we are concerned to note from the information supplied by the managing agents that whilst they treated the water leakage as requiring urgent works, they delayed applying to the tribunal for several months. As there is no statement explaining why the more expensive option was chosen it seems to the tribunal that the leaseholders have suffered prejudice by these delays for which we are unable to find any kind of explanation from the managing agents. They have also suffered financial prejudice as the more expensive option was chosen.

9. To summarise the application for an order under section 20ZA is refused and as a result recovery of the costs of the works is limited to £250 per leaseholder. A copy of this decision will be sent to the managing agents and to each of the leaseholders.

Professor James Driscoll
Solicitor and Tribunal Judge

Appendix of the relevant legislation

Landlord and Tenant Act 1985

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.