



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : LON/00AG/LDC/2014/0012

Property : Flats 14 – 45 Frognal Court,
Finchley Road, London NW3 5HG

Applicant : RFYC Limited (Landlord)

Representative : Mr R. Southam FRICS FIRPM;
Director, Chainbow Limited
(Tribunal appointed manager)

Respondents : The long leaseholders of Flats 14 –
45 Frognal Court

Representative : Mrs M. Garside; Flats 15 and 20
Dr M. Anson; Flat 36

Type of Application : Section 20ZA Landlord and Tenant
Act 1985; Dispensation with
requirements of Section 20

Tribunal Members : Mr L. W. G. Robson LLB (Hons)
Mr M. A. Mathews FRICS

**Date and venue of
Hearing** : 12th February 2014
10 Alfred Place, London WC1E 7LR

Date of Decision : 24 February 2014

DECISION

Decision Summary

- (1) The Tribunal decided to make an order as requested for dispensation from the requirements of Section 20 of the Landlord and Tenant Act 1985, under Section 20ZA of the Act.
- (2) The Tribunal made the other decisions noted below.
- (3) For the avoidance of doubt, as stated in the Directions, this application and decision does not concern the issue of whether any service costs will be reasonable or payable.

Preliminary

1. The Applicant by an application dated 24th January 2014, seeks dispensation from all/some of the consultation requirements imposed by Section 20ZA of the Landlord and Tenant Act 1985 relating to urgent roof works
2. Extracts from the relevant legislation are attached as Appendix 1 below.
3. Pursuant to Directions of the Tribunal made on 28th January 2014 an early hearing date was set for 12th February 2014 with a hearing time of one hour, based on the urgency of the works and the apparent willingness of the Respondents to have the consultation requirements dispensed with. The Respondents were served with notice of the application and the Directions by the Manager. The Directions requested that any Respondent who wished to oppose the application should indicate that by letter or email with a copy to the Tribunal as soon as possible. None did so, but the Leaseholders of Flats 15, 20 and 36 appeared at the hearing stating that they were not sure whether they opposed the application or not. It became clear that in fact they opposed the application, or alternatively sought to have conditions imposed on the dispensation order.
4. The Applicant's main bundle of documents was received by the Tribunal on 31st January 2014. A brief report on tenders for the urgent roofing works dated 10th February 2014 and made by Mr B. S. Lamden, a Chartered Building Surveyor was handed to the Tribunal immediately before the hearing.

Hearing

Applicant's Case

5. The Applicant submitted that the property consisted of a number of blocks of flats. The development had a difficult history of management. The blocks had a number of serious problems. A previous Tribunal had appointed a Manager. The previous Tribunal appointed manager, Mr R. B. Maunder Taylor, had been replaced by Mr Southam about two years ago. It had taken nearly two years to finish off various pieces of work started by the previous management, and collect sufficient service charges from the residents to commence a major works programme planned to last three years. The main programme (including the roof works) had been subject to the first stage of the Section 20

consultation process, i.e. the notice of intention. As a result of the first stage notice it had become clear that the leaseholders were strongly in favour of the roof works being done urgently, outside the Section 20 process. In the bundle the Tribunal noted copies of the notices served upon leaseholders, numerous observations from leaseholders, and copies of a selection of leases. (Mrs Garside observed at the hearing that there was no such thing as a typical lease in the development, all seemed different). In the light of the observations received, Mr Southam had decided to make the this application. Some parts of the roofs were leaking, and Mr Southam directed the Tribunal particularly to the observations and copy photographs made by Mr M. Wass of Flat 28. Since 2004 numerous leaks had been patched there, but without success. In 2009 when water was leaking into almost every room in the flat, and the electricians were badly affected the Applicant's surveyor had recommended full replacement of the roof. The work had been delayed due to difficulties in collecting money to do the work. In 2010 he had complained to Camden Council which had served improvement notices. Periodic leaks had been repaired until 2013. In December 2013 leaks had started in every room. Photographs taken on 24th December 2013 in the bundle showed the state of Flat 28. Mr Wass stated that the problems had been going on for a decade and in his view the work should start as soon as possible.

6. In reply to a question from Dr Anson as to why he had not chosen use his power to borrow money to do the work, Mr Southam stated that while he had not attempted to borrow on this property, he knew from previous experience that no bank would lend on the security of the property and the ability to recover the cost through the service charge. He disagreed with Dr Anson's suggestion that grant assistance might be available. Also, in his view, if any work was done with grant assistance, the application and inspection process would significantly extend the time taken to do the work.
7. Mr Lamden's report dated 10th February 2014 was referred to, and Mr Lamden gave oral evidence at the hearing. He noted that a previous contractor had attempted a roof repair on one of the blocks, but this had been unsuccessful, in that it had not been fixed sufficiently well, due to the nature of the existing structure. It had had to be replaced. Mr Lamden's preferred method was to use a fully adhered (i.e. completely stuck layer to layer) system. While there were many such products on the market, he had used two such systems, Sealoflex, and Kemperol. In this case he was recommending Kemperol, which came with a 15 year guarantee. It was slightly cheaper than Sealoflex. He had used the system successfully on three roofs in the last 18 months. Only contractors approved by the manufacturer could be used. Three contractors on the manufacturer's list had been approached, as well as Alpine Roofing Limited, a company suggested by leaseholders. In the event, Alpine Roofing had not tendered. Tenders received on 4th February 2014 were:
 - a) Causton Specialist Roofing Ltd - £76,175.07 plus VAT for all three roofs.
 - b) Concept Roofing and Cladding Ltd - £95,313.03 plus VAT.
 - c) Cobsen-Davies Roofing (London) Ltd - £86,655 plus VAT.

Mr Lamden recommended the tender of Causton. The tender did not now need further analysis before acceptance. Without creating further holes in all

three roofs (which he was reluctant to do) he did not know if there was any insulation layer under the existing roofs. To increase the insulation to modern regulation standards of 120 mm, he estimated a further £4,445.48 plus VAT per roof should be added. He suggested a contingency figure of £15,000 be added to the tender price to deal with any insulation issues discovered when work started. When challenged by Dr Anson that the work had originally been estimated at £20,000 in the past, he stated that price was per roof, thus the original estimate was £60,000. He had not done a detailed survey of the building when he had been appointed after the initial survey, as this would be further extra cost for leaseholders. He had made that clear at the time. Also the standards for insulation had increased. Dr Anson also queried whether the insulation work was on the Council schedule. Mr Lamden stated that he had considered the Council orders, but when he had asked the Council, he discovered that they had done no tests, but were assuming there was insulation. Mr Lamden confirmed that based on prior experience he was satisfied with the tender prices. Also in his experience, the competing system was likely to be about 15% more expensive.

Respondents' case

8. Dr Anson queried why it had taken so long to commence the works. Chainbow had been in place for two years. The work should have been started earlier, then no Section 20ZA application would have been necessary. They had not seen the roof specification until 5th February 2014 (this was disputed by Mr Southam) and they had only seen the tender report on the morning of the hearing. He thought the tender should have been made following the Council order. Asked what he would do if the Tribunal refused the application, he stated that he would get alternative quotes, alternative ideas and possibly his own expert to help him. He wanted to investigate the possibility of getting grants to do the work. He also considered that the Tribunal should take into account recent case law that the tenant's ability to pay should be taken into account. Neither he nor Mrs Garside had confidence in Chainbow's ability to complete the project successfully.

Decision

9. The Tribunal noted that essentially its function under Section 20ZA was to decide if the work was urgent, or if otherwise it was reasonable to grant dispensation from the full consultation requirements of Section 20. The Tribunal also noted that part of the Section 20 procedure had been completed, and it was as a result of all the leaseholders' observations in reply to the notice of intention that this application was being made. The problems and distress illustrated by Mr Wass' email were obvious. Something has to be done, and quickly. Even Mrs Garside and Dr Anson had previously been in favour of expediting the roof work. The other major works were still subject to the full Section 20 procedures. Mr Lamden came across as a credible and informed witness. The tenders had been obtained on the open market from contractors independent of the Applicant and its agents. The Tribunal understood the Respondent's concerns, but these were mainly about costs and possible alternative methods of doing the work. Their desire for full consultation was also mentioned. Costs are not a matter for this application. A section 27A application after the final account for the work is rendered, is the most

appropriate way of dealing with this matter if the parties cannot agree. As to methodology, this is primarily a matter for decision by the Manager, not the leaseholders (subject always to the sanction of Section 27A if the work is unreasonably done, ineffective, or the cost is unreasonable). As to consultation, the Tribunal concluded that there was almost inevitably going to be tension between acting swiftly, and consulting in a way which satisfied everyone. The Manager appeared to have a reasonable system for consultation, was taking notice of observations received and treating the matter seriously. The Tribunal, having considered all the evidence and submissions, decided that a convincing case for granting dispensation had been made out.

Chairman: L. W. G. Robson LLB (Hons)

Signed: Lancelot Robson
Tribunal Judge

Dated: 24 February 2014

Appendix 1

Landlord & Tenant Act 1985

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 qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
