



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/OOBG/LDC/2014/0057**

Property : **69 Johnson Street, London E1 OAQ**

Applicant : **Sunnette Zone**

Representative : **Ringley Legal**

Respondents : **Lessees of 69 Johnson Street (as per schedule attached to the revised application)**

Representative : **None notified**

Type of Application : **For dispensation of all or any of the consultation requirements**

Tribunal : **Judge Goulden**

Date and venue of Hearing : **Thursday 29 May 2014 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **30 May 2014**

DECISION

Decision of the Tribunal

The Tribunal determines that those parts of the consultation requirements provided for by Section 20 of the 1985 Act which have not been complied with are to be dispensed with.

The application

1. The Applicant seeks a determination pursuant to S20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the dispensation of all or any of the consultation requirements provided for by Section 20 of the Act. The (revised) application was dated 9 April 2014 and was received on 24 April 2014, the first application having been made on an incorrect form.
2. Directions of the Tribunal were issued on 25 April 2014.
3. The case was listed for a paper determination. No request had been made by any of the parties for an oral hearing.

The hearing

4. The matter was determined by way of a paper hearing which took place on Thursday 29 May 2014.

The background

5. 69 Johnson Street London E1 OQA (“the property”) which is the subject of this application is described in the application as a block of 13 purpose built flats built circa 2000. Four of those flats were stated to be owned by the Applicant and the remaining flats were stated to be in owner occupation. The Applicant’s legal representatives, in a letter to the Tribunal of 7 May 2014 stated that the correct post code for the property was E1 OQA and “*the wrong post code was inserted in covering letter due to a typing error*”. Incorrect post codes continued to be sent in subsequent letters and also in the bundles (which were not, as Directed by the Tribunal, paginated).
6. A copy of the lease of Flat 11 at the property, dated 9 July 2007 and made between M H Alasfar (1) and M Singh (2) is in the case file.
7. The lease requires the landlord to provide services and each tenant to contribute towards the costs by way of a variable service charge. With no evidence to the contrary, it is assumed that all residential leases are in essentially the same form.

8. The issue relates to external repairs and redecoration and roof repairs.
9. A formal Notice of Intention under the Act had been sent to the lessees on 9 May 2013 (expiring on 17 June 2013). A further Notice, together with estimates, had been sent to the lessees on 3 April 2014 (expiring 17 June 2014). An invoice, numbered 0095 and dated 14 March 2014, from Zimmerzone Construction Ltd. in respect of the erection of scaffolding and tin roof in the sum of £29,565.66 (being £25,342 plus VAT of £4,223.66) was provided.
10. Neither side requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The issues

11. The issue is as set out in paragraph 8 above.

The Applicant's submissions

12. In written submissions received on behalf of the Applicant, it was stated, inter alia, "*In May 2013 the Applicant.....advised the leaseholders that under the terms of the Seventh Schedule of all the leases works of external repair and decoration and roof repairs were necessary. These works included repairs to the roof which was in a poor condition. The Applicant instructed Ringleys to prepare and serve notices under S20 of the Landlord and Tenant Act 1985...the consultation period ended on 17 June 2013. No observations or nominations were received. Ringleys prepared a specification for the works which was put out to tender.*
13. In the same written submissions it was further stated "*in February 2013 Ringley were notified by the tenant of Flat 9 that water was coming through the ceiling of flat 13 from Flat 13 (sic). This problem persisted but there was (sic) insufficient funds to carry out the necessary repairs. By January 2014 the problem, had got very bad and Ringley advised the freeholder that urgent repairs to stop the ingress of water were need (sic) and could not wait for the Section 20 consultation period. The Applicant accepted this advice and instructed Zimmerzone construction to carry out the necessary repairs As the repair work was part of the specification for which Zimmerzone had tendered, it was agreed that should Zimmerzone Construction be awarded the tender the cost of the emergency works would be deducted from the cost of the whole tender works". ". Copies of the three tenders were stated to have been provided, but it was also stated in written submissions that the tender for Zimmerzone had been reduced to £395,500 (from £101,206.00), which clearly could not be correct.*

14. A copy of the invoice, also from Zimmerzone (referred to in paragraph 9 above) in the total sum of £29,565.66 was provided. It was stated that the emergency works had already been completed.
15. The Tribunal has also been provided with, inter alia, various emails correspondence, notifying of leaks in roof, and tenders from Zimmerzone Construction, NCA Builders and GPF Lewis.

The Respondents' submissions

16. No formal written representations were received from or on behalf of any of the Respondents in accordance with the Tribunal's Direction 9.

The Tribunal's Determination

17. S20 of the Act provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.
18. Dispensation is dealt with by S 20ZA of the Act which 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”

19. The consultation requirements for qualifying works are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

- (a) to each tenant; and**
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.**

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**

- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;**
- (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**
- (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period;**

and

- (iii) the period on which the relevant period ends.**

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

- (a) the place and hours so specified must be reasonable; and**
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

- 20. The scheme of the provisions is designed to protect the interests of the lessees, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
- 21. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately foot the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
- 22. The Respondents have not challenged the consultation process. No formal written submissions have been received from or on behalf of any of the Respondents.

23. The Tribunal is critical of aspects of the Applicant's case and the preparation thereof.
24. No information had been supplied as to why, having served the first Notice as long ago as May 2013, the second Notice was not served until April 2014. It was also not explained as to why, and how, Zimmerzone had been persuaded to reduce the tender sum to, apparently, £95,500 to become the lowest tenderer (although paragraph 10 of submissions erroneously referred to this sum as £395,500). In submissions, it was stated that an email dated 9 December 2013 "confirming the reduced price" was included within the bundle. It was not. Further only two properly priced specifications had been provided. The one, presumably from NCA Building Contractors appeared to have been revised (in handwriting) to £98,054.14. The tender from Zimmerzone Construction was initially for £101,206. The frontsheet to the specifications provided were all stated to have been prepared "on behalf of Zimmerzone Ltd – July 2013". Were the Applicant and Zimmerzone connected? The Tribunal was not told. The Tribunal finds all this most unsatisfactory, and should have been explained.
25. However, there appears to be no dispute that there were ongoing problems due to damp penetration. (although it was not made clear from and to which flat – see paragraph 13 above). It is noted that the cost of the emergency works will be deducted from Zimmerzone's invoice.
26. The Tribunal is satisfied that, in the particular circumstances of this case the Respondents are not unduly prejudiced. It must be strictly noted that the price for the works is now said to be £95,500 of which £29,565.66 is to be deducted.
27. The Tribunal determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with.
28. **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 consultation requirements under S20ZA of the Act.**