



**HM COURTS & TRIBUNALS SERVICE
RESIDENTIAL PROPERTY TRIBUNAL**

Properties : 47/49/51/53/55/57/59/61/63 Park Road, Woodsetton
Dudley, West Midlands, DY1 4JN

Applicant : Coseley (Freeholders) Management Company Limited

Respondents : 47 Co-Operative Society
49 "
51 Mr V.Brown
53 Mr S.Johnson and Miss T.Fisher
55 Mr and Mrs P.Chand
57 Mrs M.Tribich
59 Mr and Mrs J.Hildreth
61 Mrs S.Themans
63 Mr Chi Ming Li

Case number : BIR/00CR/LDC/2012/0010

Date of Application : 4th October 2012

Type of Application : Application for dispensation of consultation provisions
pursuant to s.20ZA of the Landlord & Tenant Act 1985.

The Tribunal : Mr I.D. Humphries B.Sc.(Est.Man.) FRICS (Chair)
Miss N. Jackson B.A. Law (Hons.) (Lawyer)

Date of Hearing : 29th November 2012

DECISION

1 The Tribunal refuses to grant dispensation of the consultation provisions in s.20 of the Landlord and Tenant Act 1985.

REASONS

Background

- 2 The property comprises a parade of 1960s shops with flats above. The flats are accessed from steps at the back of the building which lead to a flat roofed area over the back of the shops extending for the width of the parade, with each flat having a door leading directly from the flat roof. The flat roof is surfaced with asphalt type material that has worn out and needs replacement as water is penetrating to the shops below.
- 3 The Freehold is owned by a company owned by the tenants. The Freeholder's managing agents, HLM, wish to resurface the flat roof and have applied to the Leasehold Valuation Tribunal ('LVT') to dispense with the consultation requirements that would otherwise be required by section 20 of the Landlord & Tenant Act 1985. The application was dated 4th October 2012 but further information was provided that was received by the Tribunal on 1st November 2012.
- 4 The roof problem has been ongoing for years, certainly since 2009 during which time HLM have obtained contractors estimates at various times to different specifications.

The Applicable Law

- 5 We have not been provided with copy leases of all the flats. Under normal circumstances we would have requested them but it has not been necessary as HLM advise that any major works to the flats would need to comply with s.20 of the Landlord & Tenant Act 1985 ('the Act').
- 6 The consultation requirements are set out in regulations prescribed by the Secretary of State but in essence require the landlord to provide details of the proposed works to the tenants or a recognised tenants association representing them, to obtain estimates for the work, to invite the tenants to submit the names of alternative parties to approach and give reasons for carrying out works. The procedure has to be followed for any works costing individual tenants more than £250 and are there for the tenants' protection.
- 7 Section 20ZA(1) allows an application to be made to the LVT to dispense with all or any of the requirements 'if satisfied that it is reasonable'.

The Property

- 8 The Tribunal inspected the property on 29th November 2012. It comprises a 1960s parade of shops with 9 flats above, some but not all of which are owned by the same lessees as the shops.
- 9 We inspected the walkway over the flat roof which was found to be in poor condition and noted signs of water ingress on the walls of a shop storeroom beneath at No.39 Park Road that appeared to have been caused by the leaking roof.

Hearing

- 10 A Hearing was held at the Tribunal office in Birmingham on the same day, attended by Mr Philip Bird and Mr Trefor Howell of the Managing Agents HLM. The tenants were not present.
- 11 The Applicants provided copies of the following contractors' estimates for work to be undertaken:

<u>Contractor</u>	<u>Date</u>	<u>Estimate £</u>
A1 Building Services	(undated)	19,634.14 plus VAT
Cliff Nicholls Roofing	4th September 2011	28,000.00 plus VAT
www.LaneRoofing.co.uk	24th October 2011	12,048.54 plus VAT
KES Building Services	15th June 2012	7,860.00 plus VAT

- 12 They also produced a copy letter dated 9th September 2009 referring to three earlier estimates that included VAT:

<u>Contractor</u>	<u>Date</u>	<u>Estimate £</u>
AI Building Services	(undated)	23,070.11 plus VAT
www.LaneRoofing.co.uk	(undated)	12,048.54 plus VAT
Cliff Nicholls Roofing	(undated)	28,000.00 plus VAT

The letter had been sent to all members of Coseley (Freeholders) Management Company Limited but the agents accepted at the Hearing that it had been informal correspondence that had not complied with the requirements of section 20 of the Act.

- 13 They gave oral evidence that they wished to dispense with the consultation requirements for the following reasons:

- 1 they wished to instruct building contractors;
- 2 they advised that the building insurance had been cancelled in 2011 due to lack of repair;
- 3 they advised that the public liability insurance had lapsed due to lack of repair;
- 4 the damp had caused mould to grow on the store room walls that had become a Health & Safety issue and
- 5 they wished to change the terms of the leases so that funds for the work could be obtained in advance, rather than arrear as required by the leases.

- 14 The agents said they had not complied with the consultation requirements as some of the tenants had previously objected to the cost of the proposed work.

Tribunal Decision

- 15 We are not satisfied that it would be reasonable to dispense with the consultation requirements as it could cause substantial prejudice to the tenants, particularly as on the Applicant's own evidence some were likely to object. The potential costs are substantial with contractors' estimates ranging from £7,860 plus VAT to £28,000 plus VAT and as the work has been required for at least three years it would be unreasonable to dispense with consultation at this stage and deprive the tenants of their right to comment.
- 16 Accordingly we dismiss the application.
- 17 As a separate issue, we should point out that we would be unable to alter the leases to accommodate the request to change the terms of the lease allowing payment in advance as requested by the Applicant as part of this application.
- 18 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making an appeal an application must be made in writing to this Tribunal for permission to appeal within 21 days of the date of issue of this decision which is given below, stating the grounds on which it is intended to rely.



I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date = 3 JAN 2013