

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Subject Property:	The Lodge, The Plain, Epping, Essex CM16 6TP
Applicant (Landlord):	The Plain (Epping) Management Company Ltd, 5 The Lodge, The Plain, Epping, Essex CM16 6TP (Application submitted by Mr S Wilson, Director)
Respondent:	Mr D Kelly (Tenant of Flats 1 and 4) Unit 2, Hastingwood Business Park, Harlow, Essex CM17 9GDMH
Case Number:	CAM/22UH/LDC/2005/00043
Application:	An application to the Tribunal under Section 20Z(A) of the Landlord and Tenant Act 1985 (the 1985 Act) to determine whether it is reasonable to dispense with the consultation requirements of Section 20 of the 1985 Act
Tribunal:	Mr JR Morris (Chairman) Mr F James FRICS Mr R Martin
Appearances:	Mr S Wilson Director of the Management Company and Tenant of Flat 5 Mr G Darrah Director of the Management Company and Tenant of Flat 3 Mrs Fahy Director of the Management Company and Tenant of Flat 8 Mr Wells Tenant of Flat 6

Summary of Decision

1. The Tribunal has determined that a dispensation be granted from the consultation requirements of section 20 of the 1985 Act in respect of the works to renew the roof.

The Application

2. This is an application received 15th September 2005 to the Tribunal under Section 20Z(A) of the Landlord and Tenant Act 1985 (the 1985 Act) to determine whether it is reasonable to dispense with the consultation requirements of Section 20 of the 1985 Act
3. The Applicant is the Landlord and management company of the Subject Property wholly owned by the Tenants. By clause 2 of the Articles of Association each Tenant holds a share for each flat of which he or she is a tenant and each share confers one vote. The Applicant wishes to replace the roof of the Subject Property.

4. Application was originally set down for a determination without an oral Hearing under Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 and Directions were issued on the 23rd September 2005. The Respondent, who is a Tenant of flats 1 and 4, by letter dated 28th September 2005 requested a Hearing, which was held on the 18th November 2005. The Respondent failed to comply with the Directions and did not appear at the Hearing.

Documents

- 5.
- A copy of the Memorandum and Articles of the Applicant
 - A copy of the Lease to Flat 5
 - A copy of the Lease of the amenity rights to Flat 5
 - Estimates from:
 - Flat Roof Solutions - £21,326.25 including VAT
 - Five Oaks Building and Roofing Contractors - £29,828 plus VAT
 - RP Mc Williams & Co Ltd – £18,682.50 including VAT
 - Jennings Roofing - £14,925 plus VAT
 - Mackie Roofing Ltd – £14,512 plus VAT
 - An extract from the minutes of an extraordinary meeting of the Applicant dated 18th July 2005 when the estimates were discussed.
 - A copy of a letter dated 26^h July to all leaseholders informing them of the decisions reached at the meeting of the 18th July 2005 and requesting comments.
 - Observations from the respondent regarding the works
 - A statement of the Applicant's Case dated 1st October 2005

The Law

6. The provisions for Application to the Tribunal are under section 20Z(A) of the 1985 Act as amended by the Commonhold and Leasehold Reform Act 2002. The provisions for consultation are under section 20 of the 1985 Act and The Service Charges (Consultation Requirements) (England) Regulations 2003.

The Subject Property

7. The Subject Property is a three-storey block of flats built circa 1975. The elevations are of brick and hung tile under a flat roof.

Inspection

8. An inspection of the interior of flat 8, which is on the top floor of the Subject Property, was made after the Hearing. The Tribunal noted that there had been substantial ingress of water in the living room and bedroom causing damage to decorations and the ceiling requiring urgent attention.

The Lease

9. The Tribunal found that clause 5 of the Lease of the amenity rights to Flat 5 imposes an obligation on the Applicant to repair and maintain the attic and outer roof and a

liability on the tenants to pay a service rent to cover the costs of the Applicant in fulfilling that obligation.

Applicants' Case

10. Mr Darrah said that the roof had been failing since he purchased his flat 10 years ago and repair had been needed every one or two years. Each time work was carried out the contractors said that the roof had reached the end of its life and should be renewed however the Applicant did not have sufficient resources to have the work done. Over the last 10 years the Tenants, as shareholders in the Applicant, had set surplus sums aside to do the work and currently the fund held by the company is £13,000.
11. Mr Wilson said that about three years ago the Applicant had employed a surveyor, Mr Stephen Kidley who had confirmed that the roof required renewal. Although it was known that the work had to be done nevertheless as the fund grew so did the cost. However at the Annual General Meeting in May 2005 it was decided that estimates should be sought with a view to the work being carried out in the next twelve months. On the 30th June 2005 the roof started to leak in Mrs Fahy flat. Five estimates were obtained and an extraordinary general meeting of the Respondent was called on the 18th July 2005 to consider the quotations obtained (Extract of minutes was provided). Mr Darrah, Mr Wilson, Mrs Fahy, Mr Wells and Mr and Mrs Ford (Flat 9) attended and agreed that the estimate submitted by Makie Roofing Limited should be accepted and that the work should commence as soon as possible, preferably August as the ingress in Mrs Fahy's flat was getting worse. Mr Wilson sent letters (copies were provided) to all the Tenants informing them of the decision together with a summary of the estimates and a copy of the estimate from Makie Roofing Limited. The letter also invited comments to be sent to Mr Wilson from those not at the meeting and said that all the estimates could be seen on contacting Mr Wilson. It further asked the Tenants to sign a statement that was provided to agree to the Makie Roofing estimate and to waive the statutory consultation period in order that work could commence as soon as possible.
12. Three of those who attended the meeting returned the signed statement agreeing to the work being carried out as soon as possible by Makie and waiving the statutory consultation. Mr Muir is the Tenant of Flat 2 and although he is not one of the tenants who participate in the freehold of the block nevertheless he is a member of the Appellant having a share in the company. He lives abroad but has an agent, Nicholson's, in the UK to whom all correspondence has been sent and who have stated that he has been informed of all actions that have been taken.
13. The Respondent wrote a letter dated 15th September 2005 stating that the work could be done much cheaper than the estimate of Makie Roofing Limited and that on inspection he considered that the condition of the roof was not as bad as stated in the estimate. The Respondent submitted two quotations one of which was for repair and overhauling for £10,500 and the other for an asphalt roof with solar paint laid over the existing roof for £13,000 from Asphalt Roofing, which was a company that the Respondent said he dealt with regularly.
14. Mr Wilson commented that the quotations only gave a 10-year guarantee when it was understood that the Makie Roofing work was guaranteed for 40 years. He also stated

that all previous contractors and the surveyor had advised that the roof should be renewed. It had also been advised that the existing roof should be removed rather than have a new roof place laid on top of the existing roof. This was recommended because it was not known how stable the existing structure was following the water ingress over the years. Taking these matters into account there was little difference in cost between the work that Makie Roofing was going to carry out and the work proposed in the estimates submitted by the Respondent.

Respondent's Case

15. No evidence was adduced.

The Decision

16. The Tribunal found that a form of consultation had taken place with the Tenants as shareholders of the Applicant. This did not comply with the consultation requirements of s20 of the 1985 Act but included all its stages. Tenants were informed of the intention to renew the roof. Five estimates were obtained and Tenants were given an opportunity to be involved in the selection of, and making observations about, the estimates and work to be undertaken. The statutory consultation should have taken place with the Tenants as Tenants of the Applicant under the Lease following this process. However events have overtaken the Applicant in that the work has become urgent since the decision to obtain estimates was taken at the Annual General Meeting in May 2005.
17. The Tribunal found that the Applicant had complied with the spirit of s20 of the 1985 Act in seeking to keep the Tenants informed, obtaining estimates and in the selection of a contractor. Other than the observations by the Respondent, the tribunal had not received any objections to the carrying out of the proposed works as soon as possible. The Tribunal accepted the Applicant's response put forward at the Hearing to the Respondent's observations. The Tribunal found that the Tenants had not been disadvantaged in the process that had been followed and that the work was now a matter of urgency and should be undertaken without further delay.
18. The Tribunal therefore determined that a dispensation be granted from the consultation requirements of section 20 of the 1985 Act in respect of the proposed works to renew the roof.
19. The Tribunal communicated its decision to those attending the Hearing as set out in paragraph 1 of these reasons after the Hearing and Inspection to enable matters to proceed as soon as possible and informed them that these Reasons would follow.
20. This determination does not constitute a decision upon the reasonableness or otherwise of the cost or the standard of any proposed works, or upon any of the matters referred to in section 27A of the 1985 Act.

JR Morris (Chairman)

Date: 21st November 2005