

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property**
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 20ZA OF THE LANDLORD
AND TENANT ACT 1985 (AS AMENDED)**

Case Number:	CHI/45UH/LSC/2006/0074
Property:	15 and 15a Heene Court Mansions Heene Terrace Worthing West Sussex
Applicant:	Heene Court Mansions (Worthing) Limited
Respondent:	Ms O A Woolnough
Date of Application:	15 th January 2007
Date of Hearing:	5 th February 2007
Venue:	Richmond Room, Stoke Abbott Road, Worthing.
Appearances:	
For the Applicant:	Stephen Kinch Solicitor
For the Respondent	Alan Wheatley Solicitor
Tribunal Members:	Mr Robert Wilson LLB Chairman Mr Andrew Mackay FRICS Valuer Ms Jan Morris Lay Member
Date of Decision:	27 th February 2007

THE TRIBUNAL'S DECISION

1. BACKGROUND

- 1.1 This is an application made by the Applicant pursuant to section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") seeking retrospective dispensation from the consultation requirements contained in Section 20 of the Act.
- 1.2 The work covered by this application is works carried out to the mansard roof at the subject property in 2005 "The Works".
- 1.3 This Application has been made part way through an application under Section 27A of the Act between the same parties which also covers the Works and it is intended to continue hearing the Section 27A application following the determination of this Application. The two applications are therefore linked.

2. INSPECTION

- 2.1 The Tribunal had inspected the subject property on the 15th January 2007.

3. LAW

- 3.1 Section 20 of the Act limits the contribution that Lessees have to make towards "qualifying works" if the relevant consultation requirements have not been complied with or dispensed with by a Leasehold Valuation Tribunal.
- 3.2 Section 20ZA (2) of the Act defines "qualifying works" as works on a building or any other premises. Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 1987 ("the Regulations") provide that if a lessee has to contribute more than £250 towards any qualifying works then consultation in accordance with Section 20 of the Act must take place before those works commence.
- 3.3 The consultation requirements are set out in the Regulations and it is not proposed to set these out here.
- 3.4 Under section 20ZA (1) of the Act, the Tribunal is given discretion to dispense with the consultation requirements. This section provides:

Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any consultation requirements in relation to any qualifying works or qualified long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with those requirements.

- 3.5 The test is one of reasonableness. Is it reasonable in the circumstances of the case to dispense with all or any of the requirements?

4. HEARING

- 4.1 The hearing took place at the Richmond Room, Stoke Abbott Road, Worthing on 5th February 2007.

5. THE EVIDENCE PRESENTED AT THE HEARING

Applicant's evidence

- 5.1 Mr Kinch, solicitor for the Applicants stated that the work had been carried out in 2005 with the agreement of all the lessees. Although formal consultation had not been carried out to the letter, substantial compliance had been achieved. A specification of work had been drawn up, competitive tenders sought and obtained and the contract was awarded to the middle price contractor.

- 5.2 After the tender process an AGM of the management company had been called to discuss the work and the contractors. A unanimous vote was recorded to have the work carried out by the contractor. The Respondent was invited to the meeting but did not attend.

- 5.3 Mr Kinch contended that it was reasonable to dispense with the formal consultation requirements because

- i) consultation, albeit not in the correct format, had taken place
- ii) all accepted that the work needed doing
- iii) the second lowest tender was accepted
- iv) the costs were reasonable
- v) the Applicants were a tenant's management company not a building company or a commercial landlord seeking to exploit its tenants
- vi) the work was necessary
- vii) the work was not done until several months after the AGM to approve the Work
- viii) the Applicant might become insolvent if the Application were not granted

The Respondents evidence

- 5.4 Mr Wheatley accepted that his client had not been at the meeting on the 21st July 2005 but contended that his client had attended an AGM on the 19th October 2005 when the work was again discussed. His client had been denied a vote at this meeting, which had a material bearing on the outcome.
- 5.5 He denied that substantial consultation compliance had been achieved. For example his client had not seen or had the opportunity to see the estimates obtained.
- 5.6 The contention that the Applicant would become insolvent if it were not able to collect service charge from the Respondent was not a relevant consideration.
- 5.7 The lowest tender was not accepted.
- 5.8 His client had been deliberately excluded from the process.

6. CONSIDERATION

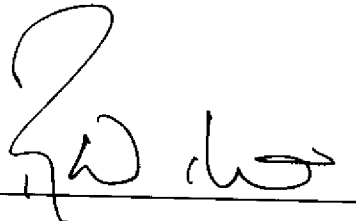
- 6.1 In the opinion of the Tribunal the Works do constitute, "qualifying" works within the meaning of the Act. As the contribution required from each of the Respondents pursuant to the service charge provisions of their leases will exceed the threshold of £250 there is an obligation by the Applicant under Regulation 6 to consult the Respondents in accordance with the procedures set out in the Regulations.
- 6.2 In our view the evidence put before us establishes :-
 - (i) The Work was necessary.
 - (ii) The Work was put out to competitive tender and a competitive quotation was accepted.
 - (iii) The decision to proceed with the Work was taken at the meeting of the 21st July 2005 notice of which had been given to the Respondent but she did not attend.
- 6.3 In the opinion of the Tribunal the current consultation legislation was enacted for a purpose, namely to grant greater involvement in the tender process to those who will ultimately be paying the bill. The consultation procedure is intended to provide leaseholders with more information than was previously the case, and a greater opportunity to make their views known. These rights should not be taken away unless there are compelling reasons to do so.
- 6.4 In this case the Tribunal can identify compelling reasons to do so. The Applicant is a company collectively owned by all the leaseholders in the building including the Respondent. There is no evidence to suggest that the Applicant has profited

from the Works at the expense of the Respondent. Although strict compliance has not been achieved, the Tribunal is of the view that the essence of the consultation legislation has been complied with in this case. The Tribunal is satisfied that the Work was put out to competitive tender and that a competitive quotation was accepted. The Respondent has benefited from the Work and it would be unjust for the Respondent not to have to contribute her due proportion of the cost. Taken as a whole the Tribunal considers that on the facts, it is reasonable that the consultation requirements in relation to the Works should be dispensed with and it so orders.

7. The Decision

- 7.1 Having considered all the evidence put forth by the Applicants the Tribunal determines that this is a case where it is reasonable to dispense with all of the consultation requirements in relation to the Works. The application is therefore granted.

CHAIRMAN

A handwritten signature in black ink, appearing to be 'R Wilson', written over a horizontal line.

Mr Robert Wilson LL.B

DATE

27TH February 2007