(2687)

LON/00AG/LSC/2006/0097

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 27A

Applicant: London Borough of Camden

Respondent: All Leaseholders of 39 Flats at 30-40 Grafton Way

Re: 30-40 Grafton Way London WC1E 6DX

Application received 17 March 2006

Hearing date: 9 August 2006

Appearances: Mr J Vicente on behalf Applicant)

Mr H Petsas on Behalf of Respondents

Members of the Leasehold Valuation Tribunal:

Ms M Daley Chairman (LLB.Hons)
Mr D D Banfield FRICS
Mr R D Eschle JP MA BEd

LON/00AG/LSC/2006/0097

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
DECISION ON APPLICATION UNDER S.27A OF LANDLORD AND TENANT ACT 1985/1987 (as amended by C & LRA 2002)

Property:	42 flats at 30-40 Grafton Way, London, WC1E 6DX (excluding flats 122,133 &135)
Applicant/Landlord:	London Borough of Camden
Respondents/Tenant:	All leaseholders of 39 flats at 30-40 Grafton Way
Application:	To determine the validity of the Section 20 Notice and the procedure in connection with the cost incurred for major works, in respect of service charges for the year 2005-06.
Tribunal:	Ms M Daley Chairman (LLB.Hons) Mr. D D Banfield FRICS Mr. R D Eschle JP MA BEd
Date of Hearing:	9th August 2006
Appearances:	Mr. J. Vicente on behalf of the Applicant Mr. H. Petsas on behalf of the Respondent

The Application

1. The Tribunal received an application dated 17th March 2006 under Section 27a of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 to determine the validity of the Section 20 Notice and the procedure in connection with the cost incurred for major works, in respect of service charges for the year 2005-06.

2. On the 3 August 2006, the Applicant wrote to the Tribunal, and sought to extend their application by applying for retrospective dispensation for part of the consultation process, namely the requirements concerning the provision of estimates, the requirement to notify the leaseholder of the time and place where the full proposals could be inspected, and the requirement to provide a summary of the leaseholders observations and the Lessor's response.

Documents Received

2 The Tribunal had received:

- A copy of the application form
- A copy of the Lease
- Applicant's Statement of case
- Respondent's Statement of Case
- Hearing Bundle

Matters in Dispute

3. The Tribunal were originally asked to determine whether the Applicant complied with the requirements, in respect of the service of the Section 20 Notice, but further to the application made on 4 August 2006. The Tribunal have been asked to give retrospective dispensation for part of the consultation process.

The Law

4. The relevant Law is set out below:-

The Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002, Section 20 –

Where this section applies to any qualifying works or qualifying long term agreements, the relevant contributions of the tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have either -

(a) Complied with in relation to the works or agreement or

(b) Dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(c) In this section "relevant contribution" in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute(by payment of service charges) to relevant costs incurred on the carrying out the works or under the agreement 20ZA

(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 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 – Section 27A –

(i) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable.

Service Charges (Consultation) England Regulations 2003 schedule 4 1-3.

(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 work 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) state the reason why the landlord is not inviting recipients of the notice to nominate persons from whom he should try to obtain an estimate for carrying out the works is that public notice of the work is to be given;

(d) invite the making in writing of proposed works observations in relation to the proposed works.

(3) Where, within the relevant period, observations are made in relation to the proposed works by the tenant or the recognized tenants' association, the landlord shall have regard to those observations.

Description of the Property

5. The property 30-40 Grafton Way (42 flats at Grafton Way, which are subject to leases excluding Flats 122, 133 & 135), a twin residential block made up of

mixed usage dwellings (135) with office and hospital accommodation, and ancillary area/plant rooms under a flat roof.

The Lease

6. A copy of the Applicant's standard lease was enclosed in the bundle. No issues arose as to whether the work was covered by the terms of the lease.

7. **The Hearing**

The Applicant's Case

The Applicant's case was set out in the Statement of Case dated 16 May 2006 of Mr Vicente who was the Applicant's major works Manager, sent in compliance with the Directions given on 19 April 2006. In addition the Applicant had by letter sent on 3 August 2006, indicated to the Tribunal that the Applicant would be applying to the Tribunal to dispense with some of the requirements set out in Schedule 1, in respect of providing notices of estimates and a summary of the observations of tenants and details of where the estimates could be inspected. This application was confirmed by Mr Vicente at the start of the hearing. Mr Vicente, indicated that the Applicant had, complied with the remaining requirements based on the documents that were enclosed with a letter, which was sent out on 8 October 2004. The Applicant also sought to rely on steps that had been taken to prior to 8 October, to keep the residents informed of the work, which the Applicant claimed amounted to consultation. The Applicant adduced evidence from Ms Karen Honey who was project manager (during the relevant period) for the major works project at Grafton Way.

The Applicant's evidence was that in serving the Notice of Intention, the Applicant had set the consultation process in motion. In particular, reliance was placed on the service on 18 March 2004, of Section 20 Notices, on every leaseholder who lived at or had a leasehold interest at 30-40 Grafton Way. The requirement under Section 20 to serve a notice on a recognised tenants association was not relevant as at the time the tenants association had yet to be recognised.

The Applicant also placed reliance on the content of the notice which was stated to describe in general terms, the works proposed to be carried out and the place and time at which a full description of the works could be inspected. It was however accepted on behalf of the Applicant that there was a clerical error in the notice, which meant that, the date stated in the notice stated to be the 31 March 2004, was different from that stated in the covering letter, which gave the date for the meeting as the 24th March 2004. In her evidence Ms Honey, stated that the error in printing occurred on the notice, the correct date was actually the 24 March 2004. In order to counter this error, Ms Honey stated that posters setting out the time and date for the meeting were placed in the entrance of the building and in the lift of the building and that flyers were distributed at least 24 hours before the meeting. Ms Honey also stated that where the Applicants were advised of non residential leaseholders addresses they were sent copies of the flyer. Ms Honey stated that, the meeting took place on 24th March and was held in the entrance of the building. Four tables were set up which amongst other matters included, the feasibility study and designs samples., The bundle supplied to the Tribunal included photographs which were

taken at the meeting. Ms Honey's evidence was that the meeting had been well attended, and that members of the project group were on hand until at least 7.45pm to answer questions and deal with queries concerning the major works. The Applicant's submissions and evidence was that no real prejudice was caused by the difference in date given in the notice, and the date when the meeting was held, as the covering letter which was sent with the notice contained the correct date which was the 24 March, the fact that residents had been advised of the correct date via the distributed flyers, and the meeting was in any event, held at Grafton Way.

It was accepted that one leaseholder, Mrs. Dudley, travelled to London especially to attend the meeting on 31st March, and was put out to find that the meeting had already taken place, and as a result put in a complaint. This resulted in her meeting separately with Ms Honey, where she was given copies of the feasibility report which detailed the major work proposed and the rationale behind it. In her evidence Ms Honey also stated that although a copy of the letter was not in the bundle, to her best recollection, a letter had been sent to all the leaseholders who may not have been aware of the date of the meeting, affording them the opportunity to avail themselves of a separate meeting if they required it, no other leaseholder complained or arranged a further meeting. On the Applicants' behalf Mr. Vicente also submitted that there was no legal requirement to hold a meeting, and that as the Applicant had gone further than was required by the legislation, the error in the date given in the notice was not enough to invalidate the consultation process.

Both Ms Honey and Mr. Vicente, set out the detailed arrangement's which the Applicant had made to keep the occupiers of Grafton Way informed of the plans for major works and the progress of the works that were carried out. Evidence was given by Ms Honey of a website for the residents, regular news letters which kept residents informed of the progress of work and the feedback which had been received from residents, in response to a survey which was incorporated into the newsletter. This survey showed that a majority of those who had filled in the questionnaire were in favour of the proposed works. The residents were also given the opportunity to participate directly by becoming floor representatives, or by forming a steering group, however this did not happen as there were no volunteers to carry out this role. Karen Honey also cited two issues relating to carpeting and lighting where the feedback was incorporated into the feasibility report. Karen Honey stated that although there were some objections to the plan to turn part of the entrance into a meeting room, this only represented a small element of the cost, and as a change in the plans would not result in a significant saving, the decision was made to go ahead with this item of work.

Once the Applicant had made a decision to accept a tender, the Applicant intended to send a further notice to the leaseholders, and it is now accepted on the Applicant's behalf that because of errors which occurred this was not fully complied with. At the hearing a copy of a letter dated 8th October 2004, which was certified by an employee of the Applicant (who had received the letter whilst acting on behalf of one the Applicants leaseholders). A copy of the letter was given to the Tribunal at the hearing; the letter which was headed "30/40 Grafton Way – Raising the Standard Works Contract", was intended to be informative, and give an overview of the requirements and law concerning the Section 20 Notice, under the sub-heading, "what are the works?", the letter sets out a summary of work to be carried out at

Grafton Way, which amongst other repairs included estate lighting, and the provision of dog parks and a new play area. It was accepted on behalf of the Applicant that this description was set out in error, as it did not describe the major works to be undertaken at Grafton Way. No actual notice was included, although there was a schedule attached to the letter which set out the Block Works, and a brief line summary of the work. Enclosed with the letter was also a Notice of Estimate summarising the cost payable by each Leaseholder.

Mr Vicente in his submission accepted that a mistake had been made in not including the notice (which until recently the Applicant had been unaware), he stated that the error was administrative and by way of explanation he stated that several thousand notices a year were sent out by the Applicant and it was inevitable that something like the notice could be missed.

On behalf of the Applicant he submitted that the residents were generally well informed about the work. He also stated that of the five estimates, the Applicant chose Mansell who submitted the lowest tender. The leaseholders did not make any nominations and that no real prejudice, was caused by the estimates not being included as the Applicant had accepted the lowest tender. He also informed the Tribunal, that although there was no summary of observations, observation forms were enclosed with the letter dated 8th October 2004, and in some cases these were returned, and that the Applicant had had regard to the observations. No actual copies of the completed observation were included in the bundle.

It is also accepted by the Applicant that Leaseholders were not informed of a place and time where the estimates could be viewed, although on the Applicants' behalf he placed reliance on the itemised breakdown of the specification, which he considered was sufficient to allow the leaseholder to be informed of costs for specific items of work.

He also made the observation that no leaseholder had complained or informed the Applicant that they had not received the Section 20 Notice until the Respondent's letter of 11th July 2006 which was sent to the Tribunal, and copied to the Applicant.

Mr Vicente summarised the Applicant's case in his letter of 3 August 2006, in which he stated that despite the omissions the Applicant considered that the leaseholders had adequate details of the cost and type of works through the Notice of Intention and the summary breakdown, and that this enabled them to make valid observations and informed decisions concerning the works.

In so far as the Applicant had an obligation to consult, the Applicants' case is that this was discharged by the Applicant. In asserting this, reliance is placed on the newsletters which were produced, one of which summarized the work which residents had requested and those items that were being carried out. Mr Vicente also refers to a site visit which took place at the request of Mr. Petsas on behalf of the Leaseholders.

8. The Respondent's Case

The Respondents' case was presented by Mr. Petsas who had been nominated to speak on behalf of the leaseholders group; he placed reliance on a number of the

issues that were set out in his written representation, and his subsequent correspondence with the Tribunal.

The Respondent's representative took issue with the fact that the notice of intention was not served on the leaseholder's group, and considered that the Applicant had discretion to recognize the Leaseholders group for the purpose of the consultation. In any event, the Applicant's considered that the consultation had been inadequate, Mr. Petsas, pointed out that the discrepancy between the date given in the notice and the letter, and the fact that 11 of the leaseholder's who do not live at Grafton Way would not have known the correct date. He also disputed that they were subsequently advised of the discrepancy and given the opportunity to meet with Ms Honey. He cited the example of Mrs Dudley, referred to by Ms Honey in her evidence. Mr Petsas also disputed that the meeting on 24th March, finished at 8pm and he did not agree that it was well attended as he stated that most of the attendees had in fact being passing through as they entered and left the building, he also recalled the meeting finishing by 7pm. Although Mr. Petsas accepted that he had attended the meeting.

Mr. Petsas disputed the validity of the questionnaire results which claimed that a majority were in favour of the major works, as he claimed that it failed to recognise the views of the 21 leaseholder's who had signed the observations opposing many aspects of the scheme.

Mr. Petsas disputes that the Applicant's consulted with the Leaseholders. Of the letter sent on 8th October 2004. Mr. Petsas informed the Tribunal that the work set out in the letter were wrongly described, and which has been accepted by Mr. Vicente. As referred to above, Mr. Petsas also argued that the Applicant had failed to comply with the requirements to consult after the service of the Section 20 Notice, as no Section 20 Notice was served, which in Mr. Petsa's view, deprived the Respondents of the opportunity to be consulted as required by law, although he conceded that, without actually having had the information he could not state what impact this would have had on the proposed scheme. Mr. Petsas stated that there were other letters that he considered to be relevant to the issues which were not included in the bundle. In particular he referred to two letters sent on behalf of the respondents which he produced copies of which were admitted in evidence by the Tribunal. The first letter, dated 13th May 2004, queried the necessity of turning part of the entrance into a meeting room, as the building already had a meeting room, and the Leaseholder's who had formed a group considered this item of work to be unnecessary.

Mr. Petsas placed reliance on two letter sent by the Applicant, dated 4th June 2004, and 6th August 2004, which the Applicant said fell outside the initial 30 day observation period. Both letters were sent in response to queries concerning the major works project, in their letters sent on behalf of the Applicant in reply the Applicants' the respondents were informed that the second stage of the consultation would include a further meeting, and the opportunity to query the charges and request specific information on the recharged work. He referred in particular to the letter dated 4 June 2004, sent in response to the respondent's letter dated 13 May 2004, the letter was written by Justine Donnelly, Capital Service Charge Officer, in her letter she stated –

"All works rechargeable to leaseholders will be identified when the Notice of Estimates are issued at stage two of the consultation process. The Notice of Estimate will be issued and there will be another meeting and 30 day observation period, which will give the leaseholders the opportunity to query any of the charges and request explanations with regard to the rechargeable work."

9. Determination of the Application

The Tribunal considered the two issues, firstly, whether the Applicant complied with the requirements, in respect of the service of the Section 20 Notice? And secondly, whether to grant retrospective dispensation of the consultation requirements?

Insofar as the first application is concerned, the Applicants in their submissions accepted that they had not complied with the requirements in respect of serving the notice, as no notice was served and information such as the estimates which had been received from the contractors were not attached, neither was a summary of observations, and no date and time were specified where the estimates could be viewed.

Although the Applicants considered that there were omissions, they did not consider them to be fatal in that the Applicants considered that they had given the Respondents sufficient information and opportunities to consult with them, and this was the basis on which they invited the Tribunal to make an order dispensing with the requirements to consult under Section 20ZA of the Landlord and Tenant Act 1985.

However, for the reasons set out below the Tribunal have declined to dispense with this requirement.

In considering whether it was reasonable to dispense with the requirement to consult as set out Section 20ZA of the Landlord and Tenant Act 1985, the Tribunal considered the reasons given as to why the Applicant failed to comply with this requirement. The Tribunal, considered that the Applicant failed to comply as a result of errors which arose when the letter dated 8th October was sent out, which resulted in no actual notice being included (although a number of important attachments which provided the respondent relevant information were included). However the letter dated 8th October 2004 was itself defective, in that the items of major work described in the letter were incorrect, and did not in fact relate to the subject premises. The Tribunal considered that this would have been misleading. These errors together with the errors in respect of the date of the consultation meeting to inspect the specification for the works would have made meaningful consultation difficult. This combined with the later errors, meant that the Applicant, was in effect requiring the Respondents to piece together a number of different documents, in order to arrive at the proper conclusion, before they could make meaningful observations.

Section 20ZA (5) sets out the relevant provisions, including the duty on the Applicant to have regard to the observations of the tenants in relation to proposed works and estimates. As the Respondents did not have all of the relevant information, the

Respondents would have been hampered in their attempts to make proper observations.

Also significantly, when the Respondents raised issues about, items of work, they were advised in letters, dated 4th June 2004, and 6th August 2004 sent by the Applicant, that there would be further opportunities to make representations concerning these works after the Section 20 Notice was served as a further meeting would be held. Given this the Respondent's were, in the view of the Tribunal, entitled to place some reliance on this assurance, and to await this further opportunity to consult with the Applicants on items of work which the respondents considered unnecessary.

In failing to comply with the requirements, or carry out the further consultation which was implied in the two letters referred to, the Applicants deprived the Respondent's of the further opportunity to be consulted. As the Applicants' failure to serve the notice arose as a result of errors which were avoidable, the Tribunal does not consider it reasonable to dispense with the requirement to consult, and accordingly refuses the Applicant's request set out in their letter dated 3rd August 2006. As the Applicant's failed to serve the Section 20 Notice, the Tribunal determines that the Applicant failed to comply with the requirements under the Commonhold and Leasehold Reform Act 2002.

The application is therefore refused.

CHAIRMAN .....Monica A Delany.....

DATE .....20th September 2006.....

(MD/jg)