

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985

LON/00AG/LSC/2007/0437

Premises: Queen Court, Queen Square, London WC1N3BB

Applicant: West End and District Properties Ltd

Represented by: Mr Jason Salter

Respondent: Dr A Wiggin
Mrs M Holman

Represented by: In Person

Tribunal: Ms MWDaley (LLB Hons)
Mr D Edge FRICS
Mr A Ring

Date of Hearing: 3 & 4 March 2008

Date of Decision: 20/03/08

The Application

1. The Tribunal received an application dated 5 November 2007, on behalf of West End and District Properties Limited (Landlord) by their managing agents Monckton & Company (chartered surveyors) (on behalf of the Applicant). The issue identified at the pre-trial review, held on 7 January 2008, was whether the proposed work and costs of renewing the lift in the block was reasonable.
2. The Tribunal also made the following directions -: *“1 Any leaseholder who wishes to oppose the application must, within seven days of the receipt of these directions, indicate to the landlord, the letters copied to the tribunal.”* The Tribunal further directed *“5. On or before 22 February 2008 the landlord must serve one copy on the lessees who opposed the application and lodge four copies with the Tribunal of a bundle containing all the documents for the hearing”*.
3. Following the pre-trial review held 7 January 2008, letters were received from and on behalf of two lessees, Ms Mia Holman (on behalf of her father of flat 43) and Dr Wiggins of flat 40. They indicated that they wished to oppose the application . The Respondent subsequently indicated in their response at pages 351 and page 399, that, contrary to the impression given at the pre-trial review, they did not now accept that they had been consulted in accordance with section 20 of the Landlord and Tenant Act 1985.
4. The Applicant made a further application dated 27 January 2008, under section 20ZA of the Landlord and Tenant Act 1985, to dispense with the Section 20 consultation.

Documents Received

5. The Applicant provided the Tribunal with a hearing bundle.

The issues

6. The issues at the hearing held on 3-4 March 2008 were:-
 - (i) Whether Section 20 consultation had taken place, (and if the Tribunal determined that the Respondents had not been consulted)
 - (ii) Whether it is reasonable to dispense with the consultation requirements
 - (iii) Whether the proposed work was reasonable within the meaning of sections 18 and 19 of the Landlord and Tenant Act 1985.
 - (iv) Costs under the lease and whether a section 20C application should be granted.

The Description of the property and Inspection

7. The property comprises a 6 storey mansion block of flats built about 1930, originally comprising 42 flats, but with a recent additional penthouse floor (7th floor) added in the last year or so and providing an additional 3 flats, giving a new total of 45 flats. The block fronts Queen Square, and has a rear entrance onto Guildford Street. The common parts are mainly unmodernised and still in the 1930's vogue, although on inspection some new cabling and trunking was observed. There is only one lift, that being the original lift serving ground to 6th floors, and having twin open lattice sliding gates.

The Tribunal, besides travelling in the lift to assess its operation and speed, also inspected the lift motor room on the seventh floor. This room was difficult to access through a low door, and the motor room was dirty inside with old bits of paper on the

floor, odd pieces of cable and plastic pipes, and some loose wires. The Marryat & Scott electric control panel was very dirty internally, and the cover plate was not in place. The lift itself was a little jerky, and the Tribunal found the mesh gates stiff and not easy to operate. These could be quite difficult for an elderly or disabled person. **The Law**

8. *Section 27A Landlord and Tenant Act 1985*

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

Sections 18 and Section 19 deal with reasonableness

1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-*

(a) *only to the extent that they are reasonably incurred, and*

(b) *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*

and the amount payable shall be limited accordingly.

(2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

(3) *An agreement by the tenant of a flat (other than an arbitration agreement within the meaning of section 32 of the Arbitration Act 1950) is void in so far as it purports to provide for a determination in a particular manner, or on particular evidence, of any question—*

(a) *whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred*

(b) *whether services or works for which costs were incurred are of a reasonable standard, or*

(c) *whether an amount payable before costs are incurred is reasonable.*

S20ZA Consultation requirements: supplementary

(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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to lessees or the recognised lessees' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite lessees or the recognised lessees' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by lessees or the recognised lessees' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. [...]

The Lease

1. The Tribunal were referred to a lease dated 6th June 1980 between Groveside Properties Ltd and Robert Wallace (for flat 40 Queens Court). The Tribunal were informed that (with the exception of the pent house flats) all of the leases were in broadly similar form.
2. Where terms of the lease are referred to they are set out below

The Hearing

The History

3. The Tribunal had been provided with copies of previous LVT determinations which involved the same parties. The first determination, was dated 30 November 2005, and involved a wide range of issues. There was a further determination dated 18 April 2007, which was of closer relevance to the issues now before the Tribunal. On that occasion, the Applicant had proposed the carrying out of works to the lift and the electrics. The Tribunal found that the Applicant had carried out section 20 consultation in compliance with statutory requirements, and accepted that the electrical works were reasonable. However the Tribunal found that the proposed replacement of the lift was not reasonable, as they had not seen an independent lift engineer's report on the condition of the lift, or a comprehensive breakdown of the work and costing, and they considered that further tenders should be sought.

The Applicant's Case

4. Mr Jason Salter of the Applicant's managing agent referred the Tribunal to the Applicant's Statement of Case. The Applicant served a section 20 notice which was sent to lessee on 13 November 2006. Two companies at that stage tendered for the work, Langham Lifts and Swallow Lifts. After the April 2007 determination, Mr Salter had commissioned MacConvilles (a firm of Building Surveyors) to obtain further quotations. MacConvilles had produced a tender report dated, 22 February 2008. This was at page 66-72 of the bundle.
5. Mr Salter had also commissioned a report from Dunbar and Boardman (Lift and Escalator Consultants) who were asked to prepare a report on the condition of the lift. This report dated 6 June 2007 was at page 192 of the bundle.
6. Mr Salter had also written to the lessees on 13 July 2007 to ask whether they were in favour of replacing the lift, This letter referred to the independent report (a copy of which had been available for inspection in the hallway of the premises), and a meeting which had taken place in November 2005 concerning the lift replacement.
7. As a result of this letter, Mr Salter had received 27 replies. He informed the Tribunal that of these replies 21 of the lessees were in favour of replacement of the lift and 6 against. Mr Salter also referred the Tribunal to the correspondence from the Queen's Court Residents Association which stated that there was general support for the replacement of the lift.
8. Mr Salter accepted that he had not asked the lessees to nominate contractors and had not sent them the response to the tender document. He also accepted that he was placing reliance on the section 20 notices that had been served in 2006.
9. He stated that if the Tribunal found that he had not complied with section 20, then the Tribunal should dispense with the consultation requirements and grant his section 20ZA application. The grounds for this were that the lift had been identified as needing urgent work, as required by Allianz

Cornhill as set out at pages 221-225a of the bundle. In particular the Tribunal were referred to a letter dated 11 February 2008, in which the insurance broker stated that work needed to be carried out to enable their surveyor to inspect the lift, and that unless the inspection was carried out, the insurers “*will be withdrawing cover for the item...*”

10. Mr Salter stated that if the dispensation was not granted, and the Applicant had to carry out fresh section 20 consultations, the process would take three months and would result in withdrawal of cover for the lift, which would then have to be de-activated, with the loss of the lift for that period.
11. In answer to a question by the Tribunal, Mr Salter stated that whilst the minimum safety works as required by the insurers amounted to £12,000, there were lessees who had indicated that they would not be prepared to pay for this, (given the age of the lift) as in their view the lift should be replaced.
12. Mr Salter stated that the case for replacement of the lift was set out in the report and in the tender responses. One of the tenders from Swallow Lift had not been prepared to tender for refurbishment of the existing lift.
13. He also cited that the lift was not ‘Disability Discrimination Act’ compliant, and could not be made compliant. He stated that this affected three of the residents who were disabled and also some of the elderly residents who could not use the lift.
14. The Tribunal were referred to the tender report at page 70, the report from Dunbar and Boardman at page 197, and the documents from Allianz Cornhill at page 212.
15. The Tribunal were provided with information on costing in the tender report, set out on page 70, of the bundle.
16. Mr Salter also referred the Tribunal to the lease, and the provisions which dealt with the Applicant’s obligations, the duty to provide the lift was set out as a service Clause 2(i) and the Seventh Schedule 5 (d), which enabled the lessor to incur expenses and be reimbursed, and the Ninth Schedule which

dealt with the lessees obligations to pay their percentage of the landlord's expenses.

Dr Wiggins' case

17. Dr Wiggins in her evidence and her cross-examination questioned Mr Salter about the information given to the independent lift consultants in their instructions, and whether this invited conclusions about the lift. She also queried his interpretation of Swallow Lifts' tender response, and also that of Axis, concerning their unwillingness to undertake refurbishment of the lift. Swallow's report stated that they were not prepared to retain the existing round lift guides. Dr Wiggins referred the Tribunal to page 93 of the Axis report, in particular the third to last paragraph, in which they cite the time constraints as preventing them from offering a refurbishment option.
18. Dr Wiggins also stated that of the tenders, three had provided costing for refurbishment. Dr Wiggins stated that there was limited mention in the report of the lift being obsolete and antiquated and criticised the impression created by Mr Salter.
19. Dr Wiggins referred the Tribunal to page 62 of the bundle at which Bob Sadler, from Langham Lifts Ltd (the lift inspectors) had stated "*I would like to inform you that I feel that the vast majority of the insurance inspectors' concerns can only be overcome by replacement of the lift control panel and the complete rewiring of the lift installation*". Dr Wiggins stated that this fell short of total replacement; however, if this limited work was undertaken, it would enable proper section 20 consultations to take place, with refurbishment as an option.
20. It was submitted that the position of the insurance company had not been tested. Dr Wiggins questioned the timing of the letter from the insurance company. She noted that it stated that consideration would be given to withdrawing cover. This did not mean that no cover would be provided.

21. Dr Wiggins stated that the company who carried out the tendering work, MacConvilles, were an associate of the management company, and she stated that the cost incurred in relation to the consultancy should have been the subject of section 20 consultation.
22. Dr Wiggins stated that there was no information before the Tribunal to suggest that the control panel could not be reused, and it did not follow that all of the monies spent on the essential work would be irrecoverable, as the panel could possibly be used in the refurbished lift.
23. Dr Wiggins criticised the fact that the Applicant had not consulted with any heritage lift specialist. In her written statement, at page 399, Dr Wiggins stated, in the penultimate paragraph, “ *I have always stressed that it should be considered essential that the character, aesthetic charm and architectural integrity of the building be maintained.* “
24. In questioning by the Tribunal, Dr Wiggins accepted the recommendations of the independent lift consultants that the lattice doors would need to be replaced. She was however very keen that the wood surrounding the lift should be preserved.
25. The lift was, in Dr Wiggins’ view, not obsolete. Dr Wiggins informed the Tribunal that the Institute of Neurology building next door also had a cage lift. The attention of the Tribunal was drawn to photographs at pages 411-419. The Tribunal were informed that the lift doors had been adjusted, so that they did not slam shut, and in Dr Wiggins’ view, such an adjustment was possible in Queen Court.
26. Dr Wiggins referred to the reports which suggested that the lift replacement would take 16 weeks. She stated that refurbishment would take 8 weeks. In response to the Tribunal she conceded that this was the period set out in the report on the insurance work prepared by Langham Lifts, for the insurance compliance work.. She accepted that the exact time for refurbishment was not set out in the documents

27. Dr Wiggins criticised the costing, as she did not consider that it took into account the fact that if the safety work was carried out, there was a possibility that some of this work would result in a reduction in the cost of refurbishing the lift. She also contended that the length of time taken to carry out the replacement works, which she had estimated at 16 weeks, should be taken into account, as this would mean greater upheaval. Dr Wiggins pointed out that if this work was undertaken, (because of her recent leg injury) she would not be able to stay at the flat without a lift. This was not accepted by Mr Salter. He considered that there was no evidence that the safety work would be compatible with the refurbishment. He also considered that there would be inconvenience even if the lift was refurbished. He pointed out that part of the time period given was for the manufacture of parts for the new lift and that this would be off site, and this did not mean that the lift would be unavailable for that period.
28. Dr Wiggins submitted that the Lessor was under an obligation set out in the Ninth Schedule of the lease *“to use its best endeavours to maintain the Lessor’s expenses at the lowest reasonable figure consistent with the due performance and observations of its obligations.”*
29. In her view this meant that the refurbishment option, as the cheaper option, ought to be considered.
30. She raised a further issue, that as a result of the development of the penthouses, the lift had been over used by the builders and that as a result of this they ought to contribute to the cost of replacement.

Ms Holman's Case

31. The Ms Holman was invited to address the Tribunal on any additional issues that had not been raised by Dr Wiggins. In her written submission at page 351 of the report (para 10). Ms Holman stated that the lift was not DDA compliant, and that this was irrelevant as there was no requirement for lifts

in private blocks to comply. She also stated that the size of the lift was such that it could not be made DDA compliant even with a new lift.

32. She also considered that there was a large discrepancy between the costing given by Dunbar and Boardman of £80,000 (for lift refurbishment) and £110,000 (for the lift renewal), and the figures given by the contractors at page 70. Ms Holman considered that the price might increase as well as the period set out for undertaking the work.
33. Ms Holman was also concerned about the consultation process and the fact that the lessees had not been afforded a proper opportunity to nominate contractors. Ms Holman also referred to information that she had from one of the lessees that the Landlord had agreed to pay for 30% of the work.. Mr Salter stated that although he had heard this, this was not the Applicant's position, and there was no information to substantiate this.
34. Mr Salter indicated that he was prepared to extend the tendering period to enable the Respondents to nominate contractors, and that to enable this to happen he would provide the nominated contractors with copies of the specification.

The Cost of the hearing

35. Mr Salter indicated that the Applicant would be seeking to recover the cost associated with the hearing by way of a service charge. He was asked to provide details of the provision in the lease that enabled him to make such a charge.
36. Mr Salter placed reliance on clause 4(1) of the lease which stated "*employ at the Lessor's discretion the Managing Agent to manage the Property and discharge all proper fees salaries and expenses payable to such agents or such other person who may be managing the property including the cost of computing and collecting the Lessor's expenses.*"

37. Mr Salter submitted that the cost could be reimbursed by the lessees as a Lessors expense.

38. Both Lessees considered that the lease did not support the landlord in making a charge in this way. The Lessees placed reliance on findings of the previous Tribunals concerning the cost. They also made an application in respect of any cost that the Tribunal may find due under section 20C.

The Decision of the Tribunal

39. The Tribunal have reached the following determinations on the issues-:

Whether Section 20 consultation had taken place,

The Tribunal has determined that the Applicant has only partially complied with Section 20 consultation requirements.

40. The Tribunal in reaching this decision have considered the consultation requirements set out in The Service Charges (Consultation) England Regulations 2003. Paragraph 8 of part 2 of schedule 4 of those regulations states with regard to notice of intent

(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) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify- (i) the address to which such observations may be sent; (ii) that they must be delivered within the relevant period; and (iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

41. The Tribunal in considering all of the evidence have determined that the Applicant, in relying on the notice of intention issued on 9 March 2006, has only partially complied with the statutory requirements. The Applicant had not, on the admission of its agent, Mr Salter, (prior to the hearing) invited the lessees to nominate a contractor to tender for the work when following the decision of the previous tribunal it sought further tenders. This Tribunal's view is that it should have done so. However at the hearing the Applicant's representative undertook to consider any contractors which Ms Holman and Dr Wiggins put forward as being able to carry out the work.. The Tribunal consider that this undertaking will assist the Applicant in complying with the consultation requirements.

42. The Tribunal also noted that the Applicant needed to take further steps to completely comply with the consultation regulations. These steps are set out in paragraph 11 of part 2 to schedule 4 of the regulations. The Applicant, in order to comply with the regulations, needs to afford the lessees with an opportunity to make observations on the tender documents and respond to these observations as set out in the regulations above.

43. Paragraphs 44 and 45 set out the action required by the Applicant which in the Tribunal's view would fully satisfy the statutory consultation requirements. Given the undertaking made by Mr Salter at the hearing, it appears to the Tribunal that the Applicant could comply with the remaining consultation requirements under section 20 within a reasonable time and without necessarily delaying the progress of the works

44. The Tribunal finds that it is not reasonable to dispense with the remaining consultation requirements, and determine that it is not appropriate to grant the Section 20ZA application.

Whether the proposed work was reasonable within the meaning of section 18 and 19 of the Landlord and Tenant Act?

45. The Tribunal have determined that the estimated cost of replacing the lift is reasonable within the meaning of sections 18 and 19 of the Landlord and Tenant Act 1985 and that the applicant may under the terms of the lease (subject to the reasonableness of the actual amount) recover the cost as a service charge.

46. The Tribunal finds that the proposal to replace the lift is reasonable, for the following reasons:- (i) The Lift is provided by the Applicant under the Lease as a service. Under the terms of the lease, the Applicant is able to carry out repairs and effect improvements to the lift as a reserved part of the property.

(ii) From its inspection of the property, the Tribunal found that the Lift was at least 40 to 50 years old and that the lattice doors could cause an injury to a user, and made the lift difficult to access.

(iii) The Tribunal agreed with the conclusion set out in the Tender report prepared by MacConvilles at page 72 which stated “..[As regards the refurbishment option, we consider that this course of action would prove a false economy given that the lift generally is of obsolete design and is approaching the limit of its safe and reliable working life...”

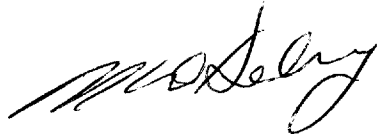
(iv) The Tribunal further considered the obligations in the lease set out in the Ninth Schedule clause 2. To maintain the Lessor’s expenses at the lowest reasonable figure would ultimately not be met, if the Applicant carried out refurbishment on a lift that at some stage needed to be replaced.

47. The Tribunal note that the lift is of similar construction to many still in use. However given the obligations on the Applicant, the Tribunal finds that the Applicant may reasonably decide, in weighing up further cost of replacement and the considerable cost of refurbishment, that the time has sensibly come to replace the Lift. The Tribunal considers that minimum works to the existing lift to satisfy insurance requirements would not be cost effective.

Cost under the lease and whether a section 20C application should be granted.

48. The Tribunal finds (as previous Tribunals have also found) that nothing in the lease provides for the cost of the Tribunal hearing to be charged to the Lessees as a service charge and accordingly that a section 20C application does not arise.

Signed

A handwritten signature in black ink, appearing to read 'M. Selby'.

Dated

21/4/08