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LON/00BG/LIC/2004/0034

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE
LANDLORD AND TENANT ACT 1985, AS AMENDED

1 GLADSTONE HOUSE, E14 + Other properties on Lansbury Estate

Applicant: Lizzie Romilly and other leaseholders

Respondents: Poplar HARCA

Application: 18 June 2004

Inspection: N/A

Preliminary Hearing : 12 November 2004

Appearances:

Professor Ian Loveland	- Counsel) For the Applicant
Thomas Peterson	- Trainee Barrister	
Lizzie Romilly	- Applicant	
Carol Couling	- Applicant	
Khaleda Nizamuddin	- Applicant	
Katherine Maclejewski	- Applicant	
Alan Brookes	- Applicant	

Emma Godfrey	- Counsel) For the Respondents
Sharon Collins	- Tower Hamlet Legal Services	
Joan Murphy	- Neighborhood Director	
Christian Clarke	- Neighborhood Services Manager	
Rob Hannabus	- Head of Regeneration	

Members of the Tribunal:

Mrs BM Hindley	LLB
Mr MA Matthews	DMS FRICS MIMgt

Decision Date: 23 November 2004

1. This was a preliminary hearing to determine the validity of Section 20 notices served by the respondents in connection with major works on the Lansbury West Estate.
2. It was accepted by the parties that the notices which covered a number of blocks in three areas of the Estate, were not all sent out together, nor were their contents identical, but it was agreed that they shared common elements.
3. It was also accepted by the parties that the relevant law was to be found in Section 20 (4) of the Landlord and Tenant act 1985 as set out below:-
 - (a) At least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.
 - (b) A notice accompanied by a copy of the estimates shall be given to each of those tenants concerned or shall be displayed in one or more places where it is likely to come to the notice of all those tenants.
 - (c) The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and the address in the United kingdom of the person to whom the observations may be sent and the date by which they are to be received.
 - (d) The date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b).
 - (e) The landlord shall have regard to any observations received in pursuance of the notice; and unless the works are urgently required they shall not be begun earlier than the date specified in the notice.
4. At an earlier preliminary hearing on 12 August 2004 the Tribunal had identified from Ms Romilly, one of the applicants and the spokesperson for the applicants, a number of assertions impacting on the validity of the Section 20 notices and, with Directions, had sought written submissions under precise headings from both parties. These had been supplied.
5. However, at the hearing on 22 October 2004, counsel for the applicants chose to rely only on the matters set out below.

NO GENUINE CONSULTATION HAD TAKEN PLACE

6. Professor Loveland produced a flow chart which he accepted had been drawn up by Mr Hannabuss for the purposes of the Tribunal hearing and not for any other reason. The chart showed a 14 step procedure commencing with the idea of a partnership arrangement and ending with the completion of the contract. It contained no mention of any Section 20 procedures.
7. Professor Loveland commented that because the respondents claimed to have received few comments on the proposed works they might have been expected to produce individual replies rather than the mechanised pro forma charade which, he said, was a proper description of their responses

8. Ms Godfrey countered that, in fact, the comments received had not only been few in number but had also been very vague and non specific.
9. The Tribunal did not accept that because the produced flow chart did not cover the Section 20 procedures this proved, definitively, that the consultation requirements had been disregarded. They also accepted that the few comments received had been vague and unspecific. They were surprised that the respondents were unable to quantify the number of responses they had received, but they also noted that the applicants did not produce further evidence on this issue.
10. Under the Act the respondents are required to 'have regard to any observations received in pursuance of the notice' and this, the respondents said, they had done. No evidence having been produced to suggest that this was not so, and some, albeit limited evidence having been produced in support, the Tribunal finds no substance in the assertion that there was no genuine consultation.

THE NOTICES DID NOT PROPERLY DESCRIBE THE WORKS

11. Professor Loveland said that it was difficult to distinguish an estimate from a quotation. Quoting from 'Goods and Services – The New Law' by Geoffrey F. Woodroffe he said that 'where only an estimate is given, at least this will have the effect of setting broad limits for the bill which is ultimately delivered'. On this basis he alleged that the figures provided in the Section 20 notices were not estimates because it was difficult to reconcile the description of the works in the Section 20 notices (e.g. concrete repair, roof repairs, brickwork repairs) with the tender figures or those sought, under the various headings, in the final invoices.
12. Mr O. Brien made a similar comparison with another section 20 notice and final invoice and concluded that there was insufficient correspondence between the two to conclude that the works had been described as required by the Section 20 legislation.
13. Ms Godfrey commented they had been describing what would be expected from an estimate based on a traditional tendering process whereas a partnering arrangement had been adopted. Moreover, much additional information, apart from the bare description of the works in the Section 20 notices had been available to the applicants.
14. The Tribunal was not persuaded from the evidence that the works had not been described as required by Section 20 (4) (c).

THE DIFFERENCES BETWEEN THE CONTRACT SUM AND THE FINAL INVOICES WERE TOO GREAT FOR THE 'ESTIMATES' TO BE PROPERLY REGARDED AS ESTIMATES

15. Building on his earlier evidence Mr O. Brien said that a difference of 10% between an estimate and a final invoice was acceptable, a 20% difference was questionable and a 30% difference was unreasonable. He pointed to the sums

of £20,076. 77p. shown in Ms Romilly's Section 20 notice as her estimated recharge, £15,873. 25p. on her interim invoice, dated 2 September 2003, and £12,829. 43p. finally invoiced on 20 January 2004.

16. Mr O'Brien made the same point in connection with another leaseholder where in the Section 20 notice the estimated recharge had been £11,773. 50p whilst the final invoice, dated 16 June 2003 had requested £5,786. 90p. He said that such discrepancies were so substantial as to destroy the integrity of the Section 20 notices.
17. Professor Loveland added that the respondents had admitted, in a letter dated 22 February 2000, responding to a leaseholder's comments after service of a Section 20 notice, that 'The work and costs detailed on the Section notice should be read as being indicative only' and that 'since the issue of your notice the scheme has been revised and the extent of the works reduced'.
18. Ms Godfrey commented that an estimate was only an estimate and was not required to be precise and that, in any event, the discrepancies highlighted did not invalidate the Section 20 notices. She referred the Tribunal to an undated letter to Ms Romilly (which Ms Romilly had marked as having been received on 24 February 2004) from Yvonne Wood, the Senior Finance/Leasehold Officer which stated 'At least two estimates were obtained for the contract both from organisations wholly unconnected with the HARCA.....and the notices make clear that estimates for the proposed elements of the work were competitively tendered'.
19. The Tribunal accepted that the differences between the figures given to leaseholders, as demonstrated above, although ultimately in their favour since the final figures were less, were too great for the Tribunal to accept that an 'estimate' had been obtained and given to leaseholders for works actually effected. Had the final costs been substantially higher rather than lower the Tribunal considered that the failing would have been patently obvious and they concluded that the principle remained true where the works were substantially lower.
20. Moreover, the estimates given in the Section 20 notices were precise figures, even to the extent of odd pence. For them to be so far out from the final costs casts further doubt, in the Tribunal's opinion, on their integrity.

PARTNERING ARRANGEMENTS ARE NOT WITHIN EITHER THE SPIRIT OR THE INTENTION OF SECTION 20

21. Professor Loveland said that the essence of partnering was that a landlord made an 'agreement' to deal with one contractor and, therefore, two estimates had not been obtained. One contractor had provided two estimates using different sets of sub contractors for each estimate. The contract was, therefore, a negotiated not a tendered contract.

22. Mr Hannabuss, the author of the flow chart mentioned above, attempted to explain the partnering process. He said that the respondents had interviewed potential partners and chosen some who had each then been allocated different areas. Of those chosen United House had been allocated to Lansbury West. Working closely with the respondents and using figures obtained, inter alia, from other earlier, competitively tendered, contracts, United House had produced figures which were then bench marked and, with these in mind, they had sought estimates from various sub contractors.
23. Mr Hannabuss said that a Section 20 notice only provided a broad estimate for the works since it was served before a detailed survey was commissioned. He asserted that partnering allowed working to be on an open book basis and transferred risk from client to contractor, whereas traditional contracts produced over runs in terms of time and cost. He said that subcontractor prices in the Section 20 notices were based on only a provisional assessment of the quantities involved.
24. The Tribunal is of the opinion that only one estimate has been obtained and that from United House. Moreover, United House cannot be considered to be 'wholly unconnected' with the landlord since they had been interviewed and chosen from others to work in partnership with the landlord, and this had been done in order, ultimately, to produce estimates. Accordingly, the Tribunal accepts that a partnering arrangement does not accord with the requirements of Section 20 (4) (a).

WORKS COMMENCED BEFORE THE END OF THE CONSULTATION PERIOD

25. This was asserted by Professor Loveland to be the case and not denied by Ms Godfrey, at least in connection with the scaffolding, the cost of which was ultimately included in the final invoices to leaseholders.
26. Since it was agreed between the parties that the works on the various blocks on the Estate had started at different times and no schedule of Section 20 notices and relevant commencements had been prepared by the respondents, the Tribunal makes no determination on this issue. Having found other aspects of the Section 20 notices not to conform with the Section 20 requirements, the Tribunal is satisfied that it would not be helpful to spend further time on this issue presently.

CONCLUSION

27. As a result of this determination the respondents are limited to the recovery of service charge costs as set out in the Service Charge (Estimates and Consultation) Order 1988.
28. If the respondents wish to recover in excess of these costs they must seek dispensation from the Court in accordance with Section 20 (9) of the Act – the Tribunal not having jurisdiction to consider such a request, the relevant notices and works having been served and completed before 31 October 2003.

