S.20 consultation – how to do it correctly so you can recover the costs of repairs and improvements from leaseholders and tenants

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Prejudice:

Daejan Investments Ltd V Benson [2013] UKSC 14 The Supreme Court's President, Lord Neuberger reinterpreted the traditional view of S20 consultation by introducing the element of prejudice against leaseholders.

If the landlord has failed to undertake S20 correctly the recoverable limit does not revert to £250, as stipulated by the Commonhold and Leasehold Reform Act 2002 but is now dependent on how the leaseholders may have been adversely affected by the failure to consult correctly.

Fragmentation:

Martin v Maryland Estates Ltd [1999] 2 EGLR 53 This case set the pre-Phillips v Goddard arrangements that contracts should not be broken down into 'sets' for the purpose of avoiding S20 consultation.

Works on a building:

Paddington Walk Management Ltd v Peabody Trust (2009) - Works on a building comprise matters that one would naturally regard as being "building works"

Time in the post:

***Trafford housing Trust Ltd v Rubinstein & ors* [2013] UKUT 0581 (LC) -** Held that the time the notice spends in the postal system must be taken into account.

Muscovite v 75 Worple Road RTM Co Ltd (2010) UKUT 393(LC) - Held (for the purposes of RTM claim) that the time the notice spends in the postal system must be taken into account.

Superior landlord:

Leaseholders of Foundling Court and O'Donnell Court v London borough of Camden, Allied London (Brunswick) Limited and others [2016] UKUT 0366 (LC) - it is for the party which is originating the works to consult with the party who is ultimately responsible for payment of the service charge.

Demanding payment:

Rita Akorita v Marina Heights (St Leonards) Ltd (2011) LRX 134 2009 - Timing / lease terms. Conditions precedent. No service charges payable because demands had not complied with lease terms

London Borough of Southwark v Dirk Andrea Woelke [2013] UKUT 0349 (LC)

And:

Barrington v. Sloane Properties **LRX/31/2006 - Timing, lease terms, Section 20B**

LB Islington v. Abdel-Malek **LRX/90/2006 - At least 2 prices, Section 20B**

Miss A Craighead & others v LB Islington **The Spa Green Estate- Repairs v Improvements, Historic Neglect, Decent Homes not Government Funding**

A2 Housing Group v Spencer Taylor **LRX/36/2006 - Landlord in control – size & nature of contract / service provision**

Westminster CC v Fleury LRX 103/2008 **- Global contract v individual contracts**

Other resources:

Leasehold Advisory Service (LEASE) - www.lease-advice.org

Law and Lease - www.lawandlease.co.uk a barristers quirky blog of high profile cases

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