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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1 Further reading

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

2 Alternative Dispute Resolution

Alternative Dispute Resolution is generally encouraged by the courts and tribunals. Indeed, parties to litigation may find themselves criticised or even penalised if they decline to attempt settlement through ADR.
The five principal methods of ADR are:

- Arbitration
- Adjudication
- Conciliation
- Mediation
- Early neutral evaluation

Arbitration

The parties to a dispute can agree to refer it to an independent arbitrator and to accept the arbitrator's decision as final and binding. An arbitration is usually conducted informally without the need for a hearing. The arbitrator will often decide the issues on written representations alone.

It is not uncommon for leases to contain arbitration clauses setting out a mechanism for appointing an arbitrator to determine disputes between landlord and leaseholder and, sometimes, between leaseholders. Such clauses are less effective nowadays because the Commonhold and Leasehold Reform Act 2002 provided (put simply) that the only form of valid arbitration agreement for disputes between landlords and leaseholders is a "post-dispute arbitration agreement".

A post-dispute arbitration agreement is one which both sides agree to use when the existence of the dispute is already known.

The rules and procedures governing arbitrations are laid down by the Arbitration Act 1996 and post-dispute arbitration agreements must abide by them.

Adjudication

The parties to the dispute refer it to an independent adjudicator who is often a trained arbitrator or mediator. The adjudicator will read the relevant papers and, unlike an arbitrator, can ask the parties to clarify matters. The adjudicator's decision is issued and is not as final and binding as that of an arbitrator, but will be taken into account if the matter goes on to a court. Adjudication is less expensive, more consumer friendly than arbitration and has a high success rate in resolving disputes.

Conciliation

Conciliation tends to be lumped together with mediation but it is slightly different. Conciliation occurs when the parties are encouraged (often by a professional organisation to which one party belongs) to sit down together and try to negotiate a mutually acceptable solution. If they fail to agree, they can go on to other forms of ADR or proceed to litigate.

Mediation

Mediation is achieved when the parties agree to appoint a mediator (or when one is appointed for them by the court, for example) who will attempt to facilitate a resolution by assisting the parties to put their cases before each other and negotiate – usually with the mediator acting as go-between.
The mediator will not act as an arbitrator and decide the case, so if the parties fail to come to an agreement they may need to resort to litigation.

Early Neutral Evaluation

Early Neutral Evaluation is an assessment of the issues in dispute, designed to serve as a basis for further negotiations and to avoid the time, expense and anxiety caused by unnecessary litigation. An independent expert expresses an opinion on the merits of the issues raised by the parties. The opinion is not binding but gives an unbiased evaluation of the relative strengths of the parties' cases, and guidance as to the possible outcome if the matter proceeds to the First-tier Tribunal (Property Chamber).

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