NEWS ON THE BLOCK

A major change for qualifying works consultations

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The recent High Court case of Phillips and Goddard v Francis (2012) arguably turns the current agreed approach to Section 20ZA(2) major works on its head, with a requirement to consider qualifying works as a whole when seeking recovery of the costs through the service charge. Cass Zanelli of specialist property management law firm, Brady Solicitors, explains the potential impact of the case for property managers.

Whilst major works on an estate have always been somewhat of a hot potato for managing agents, the recent case of Phillips and Goddard v Francis (2012) is likely to impact greatly on clients and agents alike, by effectively removing the practiced 'project-by-project' approach to qualifying works and replacing it with a requirement to consider all works in total when assessing the need to consult with leaseholders.

The current position on major works is governed by the Landlord and Tenant Act 1985, in particular Section 20, and supplemented by the 2003 regulations. This legislation states that if a landlord wants to carry out qualifying works that will cost a leaseholder more than £250, then he is obliged to consult with those leaseholders. If the landlord does not consult, then the amount that he can recover from any leaseholder is limited to £250. Qualifying works are defined under the 1985 Act as "works on a building or any other premises".

This low limit has often annoyed managing agents, particularly when they are managing smaller blocks as they have, in effect, to consult for relatively low value works.

However, as set down by the courts in the case of Martin v Maryland Estates (1999) 2 EGLR 53, managing agents have been able to deal with qualifying works on a project-by-project basis, meaning that routine repairs and maintenance have, generally speaking, been treated as separate works, without triggering the consultation requirements.

This project-by-project approach has however been turned on its head by the recent court case of Phillips and Goddard v Francis (2012). In this case, the Chancellor of the High Court looked at the legislation, and in particular, considered whether qualifying works applied on the practised "project-by-project" basis, or whether all works carried out on a development should be put into the pot.

The High Court has held that the position now is different to the position under the old case. Previously, the limit was in relation to the costs of the works, whereas now it is related to the level of contribution per leaseholder. There is now also an emphasis on identifying and costing the works before they start - and involving the leaseholder in this process.

The High Court seems to be suggesting that the costs of all the qualifying works must be added together and, in any year, if the total costs of those works are to exceed £250 for any one leaseholder, then consultation must be carried out otherwise the landlord will be limited as to the costs that he can recover from those leaseholders.

Agents now need to look at their block management budgets for the year. If the repairs and maintenance amounts exceed £250 for any leaseholder, then we recommend the Section 20 consultation process be started immediately. Without consultation it is possible that the landlord will be limited as to the amount he can recover from the leaseholder – and this limit will be £250.

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