

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHV/00LC/LDC/2007/0005

Property: 8 Ordnance Terrace
Chatham
Kent
ME4 6PT

Applicant: Killean Limited
c/o Hillcrest Property Agency

Respondents: Mr. N. Collins
Ms N. Roe
Mr. S. Abdullah
Mr. and Mrs. M. Jordan

Date of Hearing: 14th March 2007

**Members of the
Tribunal:** Mr. R. Norman (Chairman)
Mr. R. Athow FRICS
Mr. T. Wakelin

Date decision issued:

RE: 8 ORDNANCE TERRACE, CHATHAM, KENT, ME4 6PT

Background

1. Killean Limited ("the Applicant") is the freeholder of 8 Ordnance Terrace ("the subject property"), a terraced house which some time ago was converted into four self contained flats. Flat A is the basement flat, Flat B is the ground floor flat, Flat C is the first floor flat and Flat D is the second floor flat.

2. Mr. N. Collins, Ms N. Roe, Mr. S. Abdullah and Mr. and Mrs, Jordan ("the Respondents") were at the time these applications were made, the lessees of Flats A, B, C, and D respectively. We were informed on the day of the hearing by Mr. Jenner of Hillcrest Property Agency, the Applicant's managing agents, that Mr. Collins had recently sold his flat and it appeared that Flat A was at the present time not occupied.

3. Two applications had been made by the Applicant. The first was under Section 27A of the Landlord and Tenant Act 1985 ("the Act") for the determination of liability to pay service charges and the second was under Section 20ZA of the Act for dispensation of consultation requirements contained in Section 20 of the Act. We determined that both applications should be heard together.

4. From the papers supplied to us by or on behalf of the parties we understood that Flats B, C and D each have a flue to take waste gases from their gas appliances to the roof chimneys via a separate flue but that Flat A being a basement did not have a flue and the developer on converting the property to flats chose to make use of the flue of Flat B to take the waste gases from Flat A. Ms Roe arranged for a service to the gas heater in her flat and the heating engineer advised her that the joint use of the flue was now illegal and disconnected the gas supply. The managing agents considered that the safest way of dealing with the problem would be for Flat A to install a new balanced flue boiler in the rear wall of the kitchen and reconnect all the pipework and that Flat B would then seal off the existing inlet to Flat B's flue and use the flue in the normal way. We were provided with a copy of an estimate for removing the gas fired back boiler, hot water cylinder and cold water storage tank, supplying and fitting a Worcester condensing boiler in the kitchen, running new gas and all necessary pipework to connect to the existing system, flushing the system with inhibitor and fully commissioning the system. The address of the property on the estimate is given as "8b" Ordnance Terrace but presumably that was a typing error and should have read "8A". As far as we could see there had been no response from the lessee of Flat A to letters written about the flue.

5. Determinations were sought from the Leasehold Valuation Tribunal so as to avoid disagreement as to who should pay for the work.

Inspection.

6. Before the hearing we inspected the exterior of the property in the presence of Mr. Jenner and the interior of Flat B in the presence of Ms Roe, her mother and Mr. Jenner. We were told that the interior of Flat B was virtually identical in layout to Flat A, but we did not have access to Flat A and we did not remove any gas fittings and therefore did not see the flues. Mr. Abdullah was in his flat but there was nothing he wished to show us in relation to these applications.

7. From our inspection it appeared to us that:

(a) The three flues were within the original chimney and there were three chimney pots on top of the stack on the roof. The chimney is on an internal wall which adjoins No. 9 Ordnance Terrace and it seemed unlikely that there would be space in the chimney for a fourth flue.

(b) It was unlikely that a balanced flue could be placed on the kitchen wall of Flat A because of the proximity of an opening window. It is understood that current gas regulations stipulate that there must be a space of at least 600 mm between a balanced flue outlet and an opening window; if not, the window must be sealed closed. The Tribunal felt that to seal that window closed would not be advisable as it was in the kitchen where regular ventilation is required.

(c) It would probably be necessary to erect an external flue from the kitchen of Flat A extending to a point above the guttering at the rear of the subject property.

(d) There would be a need to make a hole through one of the main walls of the subject property to install a flue.

The hearing

8. The hearing was attended by Mr. Jenner on behalf of the Applicant and by Ms Roe, her mother, Mr. Abdullah and his friend.

9. At the hearing the chairman stated the position as we understood it to be from the papers supplied to us and those present did not disagree with it. We heard evidence from all those who attended and thank them for their assistance. The only point which concerned them was who should pay for the work. Ms Roe's preferred option would be for the Applicant to pay, or failing that for the work to be done and charged to the service charges with all four lessees contributing. As set out in his letter of the 5th March 2007, Mr. Abdullah's preferred option would be for the Applicant to pay, or failing that for the lessees of Flats A and B to pay. Neither Ms Roe nor Mr. Abdullah put forward any argument based on the construction of the leases in favour of their preferred options.

10. Ms Roe lent to us a copy of the lease of Flat B, which we returned to her at the end of the hearing, and from that lease we could see that the leases of Flats A and B were in common form. In the absence of evidence to the contrary we assumed that this applied also to the leases of Flats C and D.

Determination

11. At the end of the hearing we considered the papers which we had received, the results of our inspection and the evidence which we had heard and informed those present of our determination which we now set out below.

12. We had to construe the contents of the leases in relation to this work and found the following:

(a) That the installation or alteration of a flue, including capping the flue from Flat A and providing a new flue for Flat A was providing mechanical ventilation to Flats A and B and therefore came within Paragraph 4 (d) of the Second Schedule to the leases which provided that the costs of providing mechanical ventilation could be carried out by the Applicant and charged to the lessees as part of the service charges. The costs would be payable by all four lessees in the proportions of service charges which they usually pay.

(b) That Clause 3 (9) (a) of the leases provided that the individual lessees should be responsible for works within their respective flats to comply with Regulations and therefore any works within each flat such as the installation of a new boiler and connecting it to a flue would be the responsibility of the individual lessee.

(c) That Section 20 of the Act applies to the works to be done by the Applicant.

(d) That the consultation provisions of Section 20 of the Act be dispensed with only in so far as the emergency capping of the flue from Flat A into the flue serving Flat B.

(e) That within 24 hours of the conclusion of this hearing Mr. Jenner inform the lessee of Flat A that because there is no flue serving Flat A the gas must not be used.

(f) That the Section 20 consultation procedure be carried out in relation to the installation of a flue to serve Flat A.

13. We should make it clear that:

(a) Our inspection of the subject property was limited by the lack of access to Flat A and to the flues.

(b) That the members of the Tribunal are not heating engineers and that although we saw an estimate for some suggested work we had no evidence from a heating engineer.

(c) It may be that heating engineers will be able to suggest alternative ways of providing a flue to Flat A but that can be dealt with as part of the Section 20 consultation procedure.



R. Norman
Chairman