

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property**
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 20ZA OF THE LANDLORD
AND TENANT ACT 1985 (AS AMENDED)**

Case Number:	CHI/00ML/LDC/2006/0026
Property:	Clarendon House Clarendon Road Hove BN3 3WW
Applicant:	The Brighton & Hove City Council
Respondent:	The Lessees of 1-57 Clarendon House, Clarendon Road Hove, East Sussex BN3 3WW
Date of Application:	21 st November 2006
Date of Hearing:	11 th December 2006
Venue:	Clarendon House Clarendon Road Hove BN3 3WW
Appearances:	
For the Applicant:	On behalf of Brighton & Hove City Council: Hilary Edgar, Head of Housing Caroline Price, Planned Maintenance and Engineering Steve Cooper, Mechanical / Electrical Manager Peter Matthews, Surveyor Sgt Bettis, Sussex Police Force
Tribunal Members:	Mr Robert Wilson LLB Chairman Mr Andrew MacKay FRICS Valuer Ms Jan Morris Lay member
Date of Decision:	3 rd January 2007

THE TRIBUNAL'S DECISION

1. BACKGROUND

- 1.1 This is an Application made by the Applicant pursuant to section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with the consultation requirements contained in Section 20 of the Act. The lessees in the subject property are joined as Respondents to the Application.
- 1.2 The work covered by this Application is the replacement of the door entry system and main entrance doors to the property. "The Works"

2. INSPECTION

- 2.1 The Tribunal inspected the subject property on the day of the hearing. Clarendon House is a high rise block containing 57 residential flats over ten floors. It was built in 1968 and is a concrete frame construction.
- 2.2 The Tribunal was shown the existing defective door entry system and saw that the lock to the outer door has been removed providing for open access at all times.

3. LAW

- 3.1 Section 20 (1) of the Act limits the contribution that Lessees have to make towards "qualifying works" if the relevant consultation requirements have not been complied with or dispensed with by a Leasehold Valuation Tribunal. Section 20ZA (2) of the Act defines "qualifying works" as works on a building or any other premises.
- 3.2 Under section 20ZA (1) of the Act, the Tribunal is given discretion to dispense with the consultation requirements. This section provides:

Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any consultation requirements in relation to any qualifying works or qualified long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with those requirements.
- 3.3 The test is one of reasonableness. Is it reasonable in the circumstances of the case to dispense with all or any of the requirements?

4. HEARING

The hearing took place at the property on the 11th December 2006 and the Applicants case was presented by Hilary Edgar, Head of Housing. No lessee attended and none was represented at the hearing.

- 4.1 The bundle of documents available to the Tribunal included copies of the following documents:
1. A specimen of the property lease.
 2. The Application form
 3. The description of the qualifying works to be carried out.
 4. The specification of works for the provision of a new door entry system prepared by Dunlop Haywards Limited.
 5. Miscellaneous correspondence to include job sheets and letters from contractors and a report from Sgt Bettis of the Sussex Police Force.

5. THE EVIDENCE PRESENTED AT THE HEARING

- 5.1 Hilary Edgar commenced the case by saying that the leaseholders in Clarendon House were sent a notice of intention to carry out works on the 20th November 2006. This set a consultation end date of the 20th December 2006 in respect of a replacement door entry system. The Council were seeking dispensation from the full requirements of the statutory consultation procedures as set out in the Commonhold and Leasehold Reform Act 2002.
- 5.2 The Council were seeking dispensation as they considered it necessary to carry out the work quickly because of the lack of security which now existed. The existing entry door system had failed and as a consequence the lock had to be removed which now allowed for open access at all times. The caretaker had advised that there had been a number of incidents of rough sleepers gaining access and spending the night in the common parts of the building. There were a number of elderly residents in the block of flats and they had mentioned their concerns about the open access to the caretaker. Ms Edgar called Sgt Bettis of the Sussex Police Force to give evidence. Sgt Bettis confirmed that the property was considered to be in a 'burglary hot spot' and that the police had serious concerns about security at the property. On the 11th November 2006 a person had been arrested in the property following a party which had got out of hand. There had been a number of other incidents and in his view the replacement of a new system would substantially reduce the risk of public order incidents.
- 5.3 Ms Edgar then called Peter Matthews. Evidence was adduced that the door entry system at Clarendon House required wholesale

replacement. The residents had made complaints in September 2006 that the two way speech and door release was not working. Repairs were carried out which only lasted for 24 hours. Further repairs were made but the system again failed on the 2nd November 2006. Again the system was repaired but once more the repairs failed within 24 hours. On the 3rd November 2006 the manufacturer of the system reported that the mechanism was no longer repairable and would require full scale replacement.

- 5.4 A notice of intention had been sent out to all leaseholders on the 20th November 2006 in recognition of the fact that dispensation may not be granted by the Tribunal. The specification for the work had been produced by his office and the tendering process had commenced with four specialist contractors being invited to tender. It was his Departments intention to test the market by obtaining best value. If however, dispensation was not granted then it was likely that the existing notice would be withdrawn and the Council would have to start again which would mean that the works could not begin until April 2007 at the very earliest. If dispensation were granted then it was planned to have the work carried out at the beginning of February which would save at least two months.

6. CONSIDERATION

- 6.1 In the opinion of the Tribunal the Works do constitute, "qualifying" works within the meaning of the Act. As the contribution required from each of the Respondents pursuant to the service charge provisions of their leases will exceed the threshold of £250 there is an obligation by the Applicant to consult with the Respondents in accordance with the procedures set out in the Regulations.
- 6.2 In our view the evidence put before us establishes :-
- (i) The door entry system to the property requires replacement as soon as possible. The existing system is no longer repairable and requires full scale replacement. The existing wooden main entrance doors will also require replacement as they are now nearing the end of their natural life.
 - (ii) Anti-social behaviour is a very real concern in the area. The police have been called out since the system has failed and their evidence suggests that further call outs are inevitable unless and until the building is made safe with a new entry system.
 - (iii) A number of the occupants are elderly and have expressed concern about rough sleepers gaining access to the common parts and the potential for burglaries.
 - (iv) No letters of objection from leaseholders have been received and the only letters have been in support of this application.

- 6.3 In the opinion of the Tribunal the current consultation legislation was enacted for a purpose, namely to grant greater involvement in the tender process to those who will ultimately be paying the bill. The consultation procedure is intended to provide leaseholders with more information than was previously the case, and a greater opportunity to make their views known. These rights should not be taken away unless there are compelling reasons to do so.
- 6.4 In this case, the Tribunal can identify compelling reasons to do so, and bearing in mind the current security issue it is of the view that it is in the best interests of the leaseholders that the work take place as soon as possible. The Tribunal was impressed at the resources deployed by the Council firstly in trying to carry out repairs and then in proceeding with this application. The evidence from Sgt Bettis is persuasive and there is no doubt that the open access is exposing residents to security and other risks. The Tribunal was pleased to note that the Applicants have invited four specialist contractors to tender for the work and that it is their intention to test the market and obtain best value even if the consultation requirements are dispensed with.

7. The Decision

Having considered the arguments put forward by both sides and taking into account all the evidence presented, and for the reasons stated above, the Tribunal determines that this is a case where it would be reasonable to dispense with all of the consultation requirements in relation to the Works. The application is therefore granted.

CHAIRMAN.....


Mr Robert Wilson LL.B

DATE

3rd January 2007

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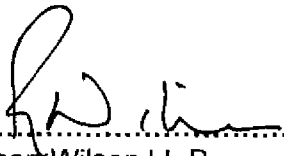
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CHAIRMAN.....
Mr Robert Wilson LL.B

DATE 3rd January 2007