

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

In the matter of section 20 and section 20ZA of the Landlord & Tenant Act 1985 (as amended) ("the Act")

Case Number: CHI/00MS/LDC/2007/0014

Re: 104-106 and 209-212 Latimer Street, and 101-103 and 207 and 208
Queens Terrace Southampton

Between:

Ashcorn Estates Limited

Applicant

and

The Solent Property Management Co. Ltd., Mr T D Roden, Miss R A Fox, Mr I Rummey, Mr B A J Hill, Mr & Mrs S A Bolderstone, Mr M S Taylor, Mr D Smart & Miss C S Barry, Mr A E J Halls and Miss L J Weston and Mr J M Arney

Respondents

Decision with Reasons

Hearing 27th April 2007

Decision issued: 9th May 2007

Tribunal:

Mr R P Long (Chairman)
Mr P D Turner Powell FRICS
Mrs M Phillips

Application

1. On 10th April 2007 the Applicant, through its agents Messrs DMA Chartered Surveyors, 2007, made application to the Tribunal for dispensation from the requirements of section 20 of the Landlord & Tenant Act 1985 (as amended) (“the Act”) in connection with works of repair to the roof of the building fronting Queens Terrace, Latimer Street and Oxford Street Southampton (“the premises”) that includes the subject flats. The purpose of such a dispensation is solely to remove the requirement to go through the consultation and notification procedures for which section 20 of the Act provides, and thus the limitation on recoverable service charges to a maximum of £250, that failure to comply with those requirements would otherwise incur.

Summary of Decision

2. The Tribunal has decided for the reasons set out below to grant to the landlord dispensation from the need to follow the requirements of section 20 of the Act in respect of the work now intended to be done. The dispensation is more fully described at paragraph 18 below, whose wording represents the full decision of the Tribunal, and prevails in the event of any ambiguity.

Directions

3. Provisional directions were given on 11th April 2007 that indicated that the Tribunal had determined that it would dispense with the usual 21 days notice of hearing in view of the urgency of the proposed work to the roof at the premises, and provided that a hearing should be held in the week beginning 23rd April 2007. Short notice of the hearing was accordingly given. In the meantime the Applicants were to provide a bundle of documents for the hearing, and any of the Respondents who wished to contest the application were required to produce copies of any documents or witness statements that they wished to introduce on the occasion of the hearing.

Inspection

4. The Tribunal inspected the premises on 27th April 2007 in the presence of Mr C Beamish MBA FRICS MIRPM of Messrs DMA Chartered Surveyors. The members saw a large, apparently three-storey, building that may date to the Regency period, and which has shorter frontages to Oxford Street and Queens Terrace, and a long frontage to Latimer Street. They were unable to inspect the internal parts of the building or to see the roof. The building is largely rendered, but is probably of brick construction. The ground floor of the building is entirely taken up by use as a restaurant.

Hearing

5. Mr Beamish attended the hearing on behalf of the Applicant, and of the lessees Mr Bolderstone, the lessee of flat 212, Mr Rummey the lessee of flat 211 and Miss Fox the lessee of flat 209 attended, together with Mrs Rummey.

6. The Tribunal explained the purpose of the proceedings for the benefit of the lessees who were present in order that they might be aware of the fairly limited nature of the present application and its purpose. It pointed out that although the lessees of the restaurant had also been named as respondents in the application its jurisdiction extended only to service charges payable in respect of dwellings by reason of the definition contained in section 18 of the Act so that nothing in these proceedings affected the situation with regard to the restaurant.
7. Mr Beamish produced copies of a detailed and helpful folder of papers (“the folder”) relating to the application. Apart from copies of the leases of Mr & Mrs Bolderstone’s flat (as a specimen of the leases of the flats as a whole) and of the restaurant, it contained primarily copies of correspondence and notices that had in the past been sent to the lessees, together with a summary of the alterations to the work that had previously been envisaged as set out in paragraph 10 below and a summary of the cost originally envisaged for each flat and that now envisaged. The lessees present were as a result familiar with most of the content of the folder but a copy was made available for them to see before the hearing at the same time as the Tribunal were reading their copies.
8. The history of the matter as Mr Beamish explained it is that work was required to prevent water penetration to some of the flats. The works envisaged were of such a nature that the cost of them was recoverable by the landlord as a result of the combined effect of Clause 4(2) and of the Schedule to the lease. A notice of intention was served upon the lessees pursuant to section 20 of the Act on 3rd July 2006. A copy of it appears under Tab 7 of the folder. It was accompanied by an extract from the report of Mr Philip Sealey setting out his recommendations for the work that in his opinion needed to be done. (Tab 8). Estimates for work were then sought from Totton Roofing and A O’Shea and were sent with a notice accompanying them and a statement of estimates on 13th November 2006 (Tabs 11 and 12).
9. In the events that happened Mr O’Shea’s estimate was selected. It appears under Tab 13 of the folder. It included the provision of eight metres of render on the parapet wall to Latimer Street and was in the sum of £7160. The price included scaffolding and no VAT was payable. As a result of a further visit to the site on or about 14th March by Mr Sealey in company with Mr O’Shea and Mr Beamish it was decided that further work may be required. Mr O’Shea started work on or about 11th March 2007. By 19th March he had decided, for personal reasons that were not disclosed to the Tribunal, that he was unable to continue with the work.
10. Arrangements were made with Messrs P A Gordon to carry out the work. They provided an estimate, a copy of which appears under Tab 26, on 23rd March. There were changes to the work to be undertaken that are detailed under Tab 1 of the folder. The rendering and decoration to the parapet wall mentioned above was to be omitted to await a more comprehensive programme of work to the rendering, and repairs to a dormer window on the top floor of flat 211 was also to be omitted. However, existing lead flashing and

felt covering was to be taken up, the existing decking to a flat roof was to be taken up and disposed of if found to be rotten with a provisional sum of £200 for the provision of new timbers at that point if needed, new softwood firings were to be provided to provide adequate falls to the flat roof together with marine ply decking, a row of slates was to be taken up to allow for detailing of new lead flashing, and the flat roof was to be recovered with suitable material.

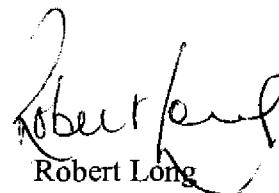
11. The original cost of £8150 (which included a contingency sum of £1000) now rose to £10970 including the £200 contingency sum for the timbers. The Tribunal understood that that sum included the amount (if any) that had been paid to Mr O'Shea for any work he had done. However, it did not include the cost of supervision of the works by a building surveyor or any additional management costs of Mr Beamish's firm. For the reasons given at paragraph 19 below, however, the question of cost is not an issue before the Tribunal in this application.
12. Mr Beamish had summarised the additional cost of work to each flat at page 2 under Tab 1 of the folder. The variances ranged from £70 for to £165 (excluding those for the restaurant). Again they excluded both from the original price and the new price any costs of management or supervision.
13. Mr Beamish said that the work now envisaged needed to be carried out urgently whilst good weather may be expected to prevail and if it were necessary to go through the section 20 procedure afresh a period of two or three months might be lost in which time the roof may deteriorate and prices may vary. The present application was thought to be necessary because the nature of the work the subject of the earlier procedure had somewhat changed and because of the need to try to deal with the proposed work expeditiously.
14. Mr Bolderstone said that he and his wife, and their tenant had been pressing for these works to be done for some time. They were anxious for the work to go ahead as soon as possible because their property was affected. They were satisfied that they had been adequately consulted in the matter.
15. Mr Rummey endorsed Mr Bolderstone's comments. He was however concerned that the rendering work had been dropped from the present programme of work, and about the fact that the dormer window in his flat needed repair that he felt might better be done whilst the scaffolding was in place. The Tribunal pointed out that it was in a position only to adjudicate upon the work that was specified in the application and that included neither of those elements, although it may be that he could usefully discuss them with Mr Beamish at the end of the hearing.
16. Miss Fox said that she wanted the work done as soon as possible but she was concerned about the cost. She felt that the delay was such, when coupled with the quality of the work done to date, that she should have to pay no more than she had already been asked to contribute on the basis of Mr O'Shea's estimate. Now that the work had been left longer the conservation officer was insisting on a better standard. The rendering was not now being done and the lessees were arguably getting less for their money. She understood that the present

application was merely to decide whether there should be a dispensation from the requirements of section 20, and did want the work done as soon as possible. The Tribunal pointed out to her that any decision it might make on the present application would not in any event preclude an application about the matters that concerned her under section 27A of the Act. It explained that it was not empowered to make a decision about those matters as part of the application presently before it.

17. Mr Arney, the lessee of flat 208 Queens Terrace, was unable to attend the hearing, but delivered to the Tribunal a letter strongly supporting the application.

Decision

18. The Tribunal was satisfied that this is an appropriate case in which it is reasonable for it to grant the dispensation sought by the landlord from the requirement to go through the procedures required by section 20 once more in respect of the work now to be done by Messrs P A Gordon described under Tab 26 of the folder. It was satisfied that the lessees present clearly understood what is proposed, and that all of them, together with Mr Arney, were anxious that the proposed work be done as soon as possible. None of the other lessees than those who have been mentioned appeared or communicated in any way with the Tribunal. The directions that were issued made it plain that if any wished to oppose the application they should come to the hearing for the purpose. The Tribunal concluded that their silence indicated, if not concurrence in the application, then at least a lack of objection to it. The circumstances are such that the work requires to be carried out whilst good weather is likely to prevail, and that some or all of the potential problems Mr Beamish mentioned might very well arise in the event of delay.
19. The dispensation granted relates solely to the requirement that would otherwise exist to carry out the consultation procedures required by the provisions of section 20 of the Act. That is all that the present application seeks. As previously indicated, the Tribunal's decision does not prevent the making in due course of an application under section 27A of the Act to deal with the resultant service charges, the costs (whether of the work or otherwise) involved in them or the standards of work if any lessee so wishes. In particular it does not in any way anticipate the outcome of any such application if it were made, nor does it imply any opinion on the part of the Tribunal about the reasonableness or otherwise of the cost of the work referred to at the hearing, or of any service charges that may be claimed.


Robert Long
Chairman

4th May 2007