

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

REF: CASE NO: CHI/00HH/LDC/2008/0025

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

APPLICANT: Carrick Johnson Management Services Ltd

On Behalf Of

LANDLORD: Babbacombe Cliff Management Company Ltd

RE: **BABBACOMBE CLIFF
BEACH ROAD
BABBACOMBE
TORQUAY, DEVON
TQ1 3LX**

**DATE OF
APPLICATION:** 16 September 2008

**DATE OF
HEARING:** 24 September 2008

**APPEARANCES
FOR THE
APPLICANT:** Mr C Johnson
Ms J Shepherd

**ALSO IN
ATTENDANCE:** Mr & Mrs I Theaker (Apartments 5,7 & 9 Babbacombe Cliff)
Mrs M Wulcko (Apartment 1 Babbacombe Cliff)
Mr & Mrs B Naylor (The Wyndermere, 11 Babbacombe Cliff)

**MEMBERS OF THE
LEASEHOLD
VALUATION
TRIBUNAL:** Mr T E Dickinson BSc FRICS IRRV (Chairman)
Mrs F J Silverman LLM
Mr P G Groves

**DATE OF TRIBUNAL'S
DECISION:** 26 September 2008

VENUE: Livermead Cliff Hotel
Seafront
Torquay

1.0 The Background:

- 1.1 Following recent rock falls onto part of the roof and garden of the property insurers were notified on 10th September 2008 and protective scaffolding was erected in the rear courtyard area on 13th September 2008.
- 1.2 All Leaseholders were written to on 12th September 2008 advising them generally of the situation and on an estimate of costs with initial estimates for works suggested to be around £20,000. A meeting was also arranged for all Leaseholders and the Managing Agent on 20th September 2008.

2.0 The Inspection:

- 2.1 The property may be approached from Babbacombe Downs Road via Beach Road through electronically operated entrance gates. The property was found to comprise a detached Victorian building converted into nine apartments, with three recently constructed town houses located to the western side of the original building.
- 2.2 Scaffolding was found to have been erected in the courtyard area immediately to the rear southern side of the original building following recent rock falls. On inspection, the Tribunal Members noted that approximately twelve slates had caused damage to the single storey roof at the back of Flat 3, although the Velux window to that roof had not been damaged. Debris remained on the roof surface, together with other debris found in the courtyard at its westernmost end.
- 2.3 On the rear south side of the property, steps lead up just inside the south boundary, with evidence of old cracking to the surfaces. Loose material was found on the bank to the south side of the pathway and above the protected courtyard area.
- 2.4 At the top of the steps leading up from the west side of the building, the Tribunal Members noted a potentially dangerous and leaning short section of limestone walling, which had been repaired insitu.

3.0 The Hearing:

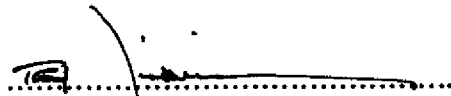
- 3.1 The Chairman introduced the Tribunal Members, took a note of attendees and briefly referred to the law relating to this particular application.
- 3.2 As a preliminary, the Chair asked Mr Johnson to assist the Tribunal with a number of jurisdictional matters, including the following:

- a. Could he satisfy the Tribunal that the cliff face forms part of the Estate, as described in the Leases?
 - b. Could the Managing Agents point to clauses in the Leases referring to the Landlord's responsibility for maintenance of the cliff face?
 - c. Could the Managing Agents point out clauses in the Leases requiring the Tenants to pay for the proposed expenditure?
 - d. In accordance with the provisions of the Leases, who was responsible for payment and in what proportions?
- 3.3 After an adjournment lasting over one hour, Mr Johnson was able to reassure the Tribunal that the cliff face did indeed form part of the Building or Estate, as defined on Page 3 of the Lease to Alfred Lord Douglas Apartment 8, which referred to the whole of the land in Title No: DN101457, being the land and property edged red on the copy of the Filed Plan. This land was also confirmed as being very similar to the extent of land shown cross hatched on the A3 sized plan referred to as Plan No. 2 and described in the definitions as "the common landscaped areas".
- 3.4 With regard to the Landlord's responsibility for the maintenance of the cliff, Mr Johnson referred to Page 7 of the Lease relating to Apartment 8. Paragraph 3(b), states that the Landlord has agreed with the Management Company to convey on the completion of the sale of the last of the apartments the freehold interest of the Landlord in the building to the Management Company, subject to the said Leases. Mr Johnson confirmed that the freehold was conveyed to the Management Company on 17th September 2007. Mr Johnson also referred the Members of the Tribunal to Page 27 of the Lease relating to Flat 8 and in particular Clauses 6.2 and 6.3 and also Page 26 of the Lease at Clause 5.5, although this was found to relate to existing and future rates, taxes, expenses and outgoings.
- 3.5 With regard to the clause in the Lease requiring the Tenant to pay for that expenditure, Mr Johnson referred to the definition of the Service Charge on Page 5, together with Clause 3.1.2.1 on Page 10 and Clause 4.5.5 on Page 21.
- 3.6 With regard to responsibility for payment, Mr Johnson pointed to Clause 3.1.5 requiring the Leaseholder to pay to the Landlord on demand a one-ninth part of any sum expended by the Landlord, being expenditure for which the Management Company is liable under Clause 6.

- 3.7 When questioned by the Tribunal, Mr Johnson stated that Schedule Four of the Lease relates to the common parts of the flats and indeed the Fourth Schedule is not mentioned in the town house Leases, because it is applicable to the apartments only. Mr Johnson did state that there were slight discrepancies in the form of wording of the Leases. It was evident that the Lease to the town house known as "Saville" was in a slightly different format.
- 3.8 Mr Theaker, the developer of the site and present owner of Apartments 5,7 and 9 Babbacombe Cliff, provided some further information regarding the background. To the best of his knowledge, the Leases for the nine apartments were all drawn up on an identical basis. The three town houses were developed following completion of the conversion of the building into apartments and the Leases to those properties should essentially have been identical.
- 3.9 Mr Theaker explained that a meeting of the Leaseholders had been held on Saturday 20th September 2008 and that the cliff falls were subject to a current insurance claim. The Leaseholders were unanimous in wishing the work to go ahead as soon as practically possible. Mr Johnson had dictated the Minutes of the meeting but they were not yet available.
- 3.10 Based on the evidence submitted by Mr Johnson in the abovementioned references, the Tribunal were not convinced that the Lease documentation contains any provisions imposing liability on the Management Company to carry out the works.
- 4.0 **Decision of the Tribunal:**
- 4.1 The Tribunal are satisfied that the cliff face falls within the Landlord's/Management Company's title and also falls within the "common landscaped areas", meaning the areas of land shown cross hatched black on Plan No. 2 annexed to the Lease of Apartment 8.
- 4.2. The Managing Agents have not been able to shown to the Tribunal a clause in the Lease or any of its Schedules which imposes a liability on the Management Company to carry out the works for which they seek permission.
- 4.3 There is a clause requiring the Tenants to pay a Service Charge, but this only operates in relation to the services that the Landlords are obligated to provide under their reciprocal obligation.
- 4.4 The Tribunal considers that the Leases are defective in some respect and it follows that it does not have jurisdiction to deal with the application.

4.5 The Tribunal have been informed that the Leaseholders are unanimous in wishing this work to go ahead expeditiously and are all willing to pay and therefore it is suggested that this agreement be formally documented.

Signed:

A handwritten signature in black ink, appearing to read 'T E Dickinson', is written over a horizontal dotted line. The signature is somewhat stylized and includes a large, sweeping flourish that extends upwards and to the left.

T E Dickinson BSc FRICS IRRV (Chair)

**A Member of the Leasehold Valuation Tribunal
appointed by the Lord Chancellor**

Dated: 26 September 2008