

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL



S.20ZA Landlord & Tenant Act 1985

**DECISION**

Case Number: CHI/43UE/LDC/2008/0003

Property: Grenehurst Park, Horsham Road,  
Capel, Surrey RH5 5GA

Applicants: Grenehurst Park Residents Association Ltd

Respondents: The Lessees

Application:: 17 January 2008

Directions: 25 January 2008

Hearing: 21 February 2008

Appearances: For the landlord:  
Mr G E Kroussaniotakis accompanied by  
Mrs Kroussaniotakis, Mr Brodie, Mr Middleton, Mr Whitley

Lessees:  
Mr J Shersby, Ms G Cahalane

Decision: 31 March 2008

**Members of the Tribunal**

**Ms J A Talbot MA, Chairman**  
**Mr R A Potter FRICS**  
**Mr R T Dumont**

**Summary of decision**

**The tribunal dispenses with all of the statutory consultation requirements in relation to chimney demolition works already undertaken.**

**Case No. CHI/00ML/LDC/2007/0031**

**Property: Grenehurst Park, Dorking Road, Capel, Surrey RH5 5GA**

**Application**

1. This was an application dated 17 January pursuant to Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the tribunal to dispense with all or any of the statutory consultation requirements in relation to chimney demolition works.
2. Directions were issued on 25 January and the matter set down for an early hearing on 21 February 2008.

**Jurisdiction**

3. S.20ZA of the 1985 Act provides that the tribunal may dispense with all or any of the consultation requirements in relation to any qualifying works if satisfied that it is reasonable to do so. Those requirements are to be found in S.20 of that Act (as amended) and in the Service Charge (Consultation Requirements) (England) Regulations 2003 which supplement it.

**Inspection**

4. The members of the tribunal inspected the property before the hearing, accompanied by Mr Kroussaniotakis for Grenehurst Park Residents Company Limited (“the management company”), and lessees Mr Shersby and Ms Cahalane. The property consists of a substantial Victorian main house in a rural location near Dorking, set in extensive grounds. The house has been converted into 17 leasehold flats. In the grounds are some additional freehold houses. The property and the grounds were generally in good order and well maintained.
5. There are several tall and distinctive chimneys on the roof of the main house. The subject of the dispute is a chimney stack which has recently been demolished. The valuer member gained access to the flat roof area where the chimney was located, and saw that the subject stack had been substantially dismantled and that other stacks had received maintenance.

**Hearing**

6. A hearing took place in Horsham on 21 February 2008. It was attended by Mr G E Kroussaniotakis, a director of the applicant company, accompanied by Mrs Kroussaniotakis, Mr Whitley, Mr Brodie and Mr Middleton. Mr J Shersby and Ms G Cahalane, the two lessees who opposed the application, attended in person.
7. On the basis of its inspection, the documents produced and submissions made at the hearing the tribunal found the following facts:

- (a) Grenehurst Park is managed by the management company, known in the lease as “the Manager”, which also owns the freehold, in accordance with the lease terms. There are 5 directors of the management company, 2 of whom are lessees, Mr Kroussaniotakis, Mr Middleton, and 3 of whom are freeholders, Mr Rogers, Mr Somerville and Mr Whitley. All residents are members of the management company and elect the board of directors.
- (b) The lessees under the terms of the lease are required to contribute a percentage proportion by way of service charges as set out in the Fourth Schedule Part II. The management company is obliged to maintain and repair the property in accordance with the Fourth Schedule Part I. Unusually the freehold owners of the houses are also required to contribute towards the maintenance costs of shared facilities.
- (c) In 2003 the board of the management company set up an informal House Maintenance Committee (“the house committee”) to look after matters relating to the main house. The 2 lessee directors of the management company are members along with 3 other lessees, currently Mr Brodie, Mrs Spencer and Mr Thackeray.
- (d) The order of events was as set out in the statement of Mr Kroussaniotakis at pages 1-3 of the applicant’s bundle of documents. In summary, on Thursday 15 January 2008, some heating engineers on site noticed that the chimney serving the flue to the swimming pool boiler was moving in gusts of high wind. That same day Mr Moyle, of Brian Gale Associates, a local chartered surveyor regularly consulted by the management company, inspected the chimney at ground and roof level. He saw the chimney moving and noted a horizontal crack above the flashing. He was accompanied by Mr Kroussaniotakis, Mr Brodie and Mr Middleton
- (e) Mr Moyle’s professional advice was that the chimney had become “live”, structurally unsafe, at risk of collapse, and should be dismantled urgently. Acting on this advice on the same day Mr Kroussaniotakis informed the insurers and instructed Rhino Scaffolding.
- (f) A letter dated 15 January signed by Mr Brodie, Mr Kroussaniotakis and Mr Middleton was given to all lessees informing them of the situation. It referred to a possible S.20ZA application and asked the lessees in view of the urgency to waive the necessity of applying. The majority of lessees agreed to waive the consultation requirement but Mr Shersby and Ms Canahar objected in detailed emails. A meeting between Mr Kroussaniotakis and Mr Shersby failed to resolve the dispute and he refused to sign a waiver.
- (g) On 16 January scaffolding was erected and builder Mr Cresswell of Cresswell Construction Ltd inspected the chimney and agreed that it needed to be dismantled. On 17 January Mr Moyle produced a schedule of work for the demolition, including the retention of materials for possible reconstruction. Mr Kroussaniotakis submitted the S.20ZA application. On 18 January further information was circulated to lessees including safety warnings to the lessees of flats immediately beneath the chimney area.

- (h) Following a request from a lessee, Mr Edwards, that alternative methods of reinforcing the chimney should be explored, Mr Moyle attended again on 21 January. Mr Edwards did not however dispute that the chimney was unstable and the matter urgent. Mr Moyle concluded that there were no viable alternatives and that the chimney was in a dangerous condition. On 22 January Mr Lendon, structural engineer from Mole Valley District Council, visited the site and concurred with Mr Moyle's opinion. He later confirmed in writing: "there are horizontal cracks at DPC level ... I agree with your conclusion that the stack should be demolished as soon as possible".
- (i) Cresswell Construction commenced work to dismantle the chimney on 22 January and completed it on 25 January. The work was supervised by Mr Moyle who also produced a written report giving his opinion on the state of the chimney and setting out possible future options: to rebuild the stack, to cap the stack with brickwork, or to remove it below roof level and tile over. As yet no decisions have been made. This was not before the tribunal as the application concerned the emergency demolition of the stack only.
- (j) The cost of the demolition work as at 11 February 2008 was: Surveyor's fees £1,470.16; Cresswell Construction £2,996.25; Rhino Scaffolding (estimate) £940; total £5,406.41 to which was added LVT application and hearing fees of £500.

#### **The case for the landlord**

- 8. Mr Kroussaniotakis, presenting the case for the management company, stressed that the directors' prime reason for deciding to demolish the chimney stack was to ensure the safety of the residents, especially those occupying flats directly beneath. This was in response to clear professional advice that the chimney was unsafe and likely to collapse in a high wind. He submitted that the decision was supported by the majority of residents who had been kept fully informed.
- 9. Mr Kroussaniotakis further contended that he, the other directors and members of the committee had acted swiftly in seeking professional advice from a chartered surveyor who was familiar with the property and whose opinion they trusted. They had correctly relied on that professional advice which was supported both by the building contractor and the council's structural engineer.
- 10. Given the urgency of the situation it would not be possible to follow the statutory consultation procedure in relation to the demolition, so the management company made the S.20ZA at the earliest opportunity. 14 letters from lessees were produced confirming that they consented to the application. Mr Kroussaniotakis stressed that the application did not apply to any future work to the chimney and no decision had yet been reached on the options suggested by Mr Moyle.

#### **The case for the objecting tenants**

- 11. Mr Shersby was not convinced that the chimney was structurally unsafe, though on questioning from the tribunal he admitted this opinion was largely based on a

conversation with the scaffolder, as he had not had enough time to get his own independent advice. He contended that the chimney did not need to be taken down so quickly and that alternative short term methods of securing the stack could and should have been explored, such as bracing the chimney by scaffolding. In particular he believed a specialist surveyor should have been instructed for a second opinion.

12. Mr Shersby invited the tribunal to attach little weight to Mr Lendon's opinion as the Council was bound to err on the side of caution in health and safety matters and therefore bound to agree with Mr Moyle. However, Mr Shersby accepted that he was not in a position to gainsay the expert evidence.
13. Mr Shersby generally lacked confidence in the directors and was not happy that Mr Moyle's advice had been relied upon, especially as 3 other chimneys had previously been removed in 2001 without statutory consultation. He further contended that he had not been consulted even though the directors knew that he took a keen interest in property and would wish to be involved.
14. Mr Shersby believed that the correct internal company procedures had not been followed by the directors, and that major decisions were being made by the committee, which was not a properly constituted body. He also argued that it was legally incorrect for the directors to ask lessees to waive their statutory right to consultation.
15. Ms Cahalane generally supported Mr Shersby's arguments. She was concerned about the house committee which had no terms of reference. She did not however contend however that the full S.20 consultation should have taken place. She admitted that she had no specialist knowledge on structural building matters. She believed there was a lack of clear information or discussion, and that as a matter of principle and transparency the management company should have obtained further advice from a specialist surveyor before demolishing the chimney.

### **Decision**

16. The tribunal agreed that the cost of demolition cost when applied to the service charge proportions payable by the lessees exceeded the statutory threshold of £250 per tenant, above which statutory consultation under S.20 of the 1985 Act is required. The tribunal had to consider all the circumstances of the case when deciding whether it was reasonable to dispense with the consultation requirement. The tribunal accepted Mr Shersby's argument that it was not possible for the lessees to contract out of S.20, but gave weight to the fact that the majority of lessees supported the management company's application.
17. The tribunal accepted on the evidence before it and on the facts as found that the chimney stack was moving, was structurally unsafe and potentially liable to collapse in a high wind. There was therefore a clear risk to the health and safety of the residents and the structure of the building and this meant that some urgent action had to be taken.

18. In the tribunal's opinion the management company was entitled to rely on the expert advice it received from Mr Moyle, supported by the Council's structural engineer, and indeed were obliged to have regard to it, given the serious consequences that could have followed if they had not done so. The directors acted expeditiously and took appropriate steps to seek expert advice, notify the insurers and keep the lessees informed within a brief time period.
19. It appeared to the tribunal that essentially the objections raised by Mr Shersby and Ms Cahalane centred on the management company's decision making process and the fact that in their view alternative methods of bracing or repair to the chimney should have been considered. However, the obligation to comply with the repairing covenants under the lease lies with the management company, and it is a matter for the company to decide on the best way to achieve this; for the reasons explained above that decision was to dismantle the stack as soon as possible. The tribunal did not interfere with that decision.
20. The tribunal was not able to consider whether the management company acted in accordance with its constitution as this is a matter of company law. Neither was it required, under S.20ZA, to consider whether the management company acted reasonably (which was formerly the test under S.20(9) of the 1985 Act when the power to dispense with consultation lay with the County Court), but had to consider reasonableness in all the circumstances.
21. That said, the tribunal would observe that it did not seem unreasonable for the management company to set up an informal committee to deal with the affairs of the main house. It took into account that, from a practical point of view, as events unfolded, at every stage at least one director of the management company was involved in seeking advice and making decisions, all those involved as lessees had an interest in the outcome and the cost, and other residents were kept informed.
22. Overall the tribunal concluded that given the urgency of the situation, the structural instability of the chimney and the risk of injury, it would have taken too long to comply with the consultation requirements under S.20, which comprise a two stage procedure taking at least 60 days. Therefore in all the circumstances it was reasonable to dispense with the statutory consultation requirements.

### **Determination**

#### **Section 20ZA**

**For each and every reason give above the tribunal agrees to dispense with all of the consultation requirements in relation to the qualifying works.**

**Dated 31 March 2008**

**Ms J A Talbot  
Chairman**

