

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**Southern Rent Assessment Panel
Leasehold Valuation Tribunal**

Section 20ZA, Landlord and Tenant Act 1985

Case Number: CHI/45UE/LDC/2009/0019
Property: 28 Barrington Road, Crawley RH10 6DB
Applicant: Crawley Borough Council
Respondents: Mr. A.W.Monaghan and Ms.J.Smith

Appearances

For the Applicant: Mr.M.Kendall, principal property lawyer of the Applicant's
Legal and Democratic Services Division.

Witness for the Applicant: Mr Smith, of the Applicant's Surveying Division

For the Respondents: The Respondents did not appear.

Date of inspection: 30th July 2009

Date of Hearing: 30th July 2009

Date of Decision: (Delivered orally at the hearing on 30th July 2009 and recorded
18th August 2009)

Members of the Tribunal

C.H.Harrison Chairman
R.Potter FRICS

Background and Law

1. The Applicant, Crawley Borough Council, is the landlord of 26 and 28 Barrington Road, Crawley. Numbers 26 and 28 are ground and first floor flats respectively comprised in a post war two storey building on a large estate of similar properties.
2. Number 26, which is let to a Council tenant, shares a common roof with number 28 which also adjoins 24 Barrington Road.
3. Number 28 is let on a lease, for a term of 125 years from 1995, dated 31st January 1995 made between (1) the Applicant and (2) the Respondents.
4. The Applicant is obliged, by paragraph 1 of the eighth schedule to the lease:

to keep in good and substantial repair and condition (and whenever necessary rebuild and reinstate and renew and replace all worn or damaged parts) ... the main structure of the Property [meaning numbers 26 and 28] including all foundations thereof all exterior and all party walls and structures and including all roofs and chimneys and every part of the Property above the level of the top floor ceilings.

5. The Respondents are obliged, by clause 3 of the lease, to pay one half of the landlord's expenditure on, among other costs, complying with the obligation referred to in paragraph 4 above. That proportional payment by the Respondents is a service charge for the purposes of sections 18 to 30 of the Landlord and Tenant Act 1985.
6. The effect of section 20 of the 1985 Act in the context of this case is that the Respondents' service charge contribution, towards the cost of any work to the property which exceeds £500, is limited to £250 unless certain consultation requirements have been either complied with by the Applicant or dispensed with by (or on appeal from) a leasehold valuation tribunal.
7. Section 20ZA of the 1985 Act enables a leasehold valuation tribunal to dispense with the need to comply with all or any of the section 20 consultation requirements, but only if it is satisfied that it is reasonable to dispense with them. A common reason which often justifies dispensation is that there is no time for the consultation procedures, which generally take between two and three months, because the work needs to be done urgently.
8. On 16th July 2009, the Applicant applied to the tribunal for its determination to dispense with the need to comply with the section 20 consultation requirements in respect of intended work which involves renewal of tiles, roofing felt, timber roofing battens, valley gutters and necessary flashings. The application stated that rainwater penetration has occurred and that the work needs to be completed as soon as possible. The application also pointed out that the Respondents would be required to pay half the cost of the work. The application also stated that the work had not been started.

Inspection

9. The tribunal inspected the property during the morning of 30th July 2009 when the weather was dry. The inspection was made in the presence of Mr Kendall, principal property lawyer of the Applicant's Legal and Democratic Services Division, and Mr Smith, of the Applicant's Surveying Division. The Respondents were not present.

Scaffolding had been erected around nos. 26 and 28 and contractors were engaged on renewing the entire roof covering. The tribunal inspected the work in progress and, from the scaffolding, the condition of the roof covering on the adjoining property number 24 Barrington Road. Both the battens and the interlocking concrete roof tiles were in good condition for their age with no suggestion that imminent renewal was necessary. In the absence of the Respondents, it was not possible for the tribunal to enter the interior of the property.

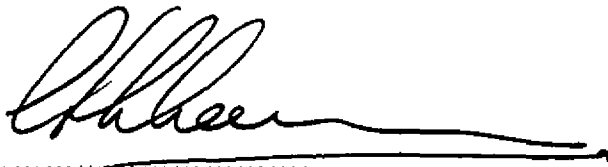
Evidence

10. Mr Smith gave evidence on the Applicant's behalf. He stated that the Applicant first became aware of the water penetration on 19th June. The Respondents had impressed the urgency of work on the Applicant and Mr Smith explained that the Respondents had to use a bucket to prevent internal damage. Mr Smith stated that the valley gutters were considered to be the cause of the problem and that severe problems are being experienced with the roofs on the Applicant's estate in the area.
11. Quotations were sought from the Mears Group, which is the Applicant's partnering contractor and is used for general maintenance and from Feastmain & Co, roofing contractors. Mr Smith was unable to produce the quotation from Feastmain. The Mears quotation, dated 9th July, did not refer to replacement of lead flashings, whereas Mr Smith had told the tribunal that he considered the flashings had become 'shot'. Mr Smith was unable to tell the tribunal whether the roof works would include replacing the lead flashings. The Mears quotation was in the alternative of £5,773.19 or £6,292.55 (each excluding VAT). The higher figure applied to the use 'the redland specmaster system' which was explained to the tribunal as involving a particular type of tile which is preferred by the Applicant. Mr Smith told the tribunal that the Feastmain quotation had referred to Marley and not Redland tiles.
12. The tribunal observed that there was no evidence that the renewal of the whole roof was necessary to cure the water penetration. In its opinion if, as Mr Smith had stated, the valley gutters were the cause, those could have been replaced.
13. There was no evidence about when, if at all, the Mears or the Feastmain quotation had been copied to the Respondents. Nor could the Applicant evidence any communication in writing with the Respondents. However, after an adjournment of the hearing, the Applicant produced a copy of the Applicant's letter to the Respondents dated 14th July. That letter:
 - a) stated the water penetration is due to defective roof tiling (notwithstanding Mr Smith's observation to the tribunal that the valley gutters were considered to be the cause);
 - b) did not enclose a copy of either quotation;
 - c) stated the projected cost of £6,292.55 plus VAT included the cost of renewing necessary flashings, without drawing the Respondents' attention to the lower amount quoted by the same contractor in the same quotation and notwithstanding that the quotation did not refer to flashings at all; and
 - d) stated that the Applicant was seeking dispensation from the section 20 consultation requirements due to the urgency of the matter.

The Tribunal's determination

14. What the tribunal has to determine is whether it is reasonable to dispense with the consultation requirements, and the reasonableness of dispensation is to be judged in the light of the purpose for which the consultation requirements were imposed. The material consideration is most likely to be the degree of prejudice that would be suffered by the Respondents in respect of their ability to respond to the consultation. That is because the primary purpose of the statutory consultation is to give some measure of protection tenants.
15. The tribunal finds that there is considerable scope of prejudice to the Respondents in this case. Notwithstanding that some repair work was clearly necessary and urgent, the Respondents were not given a copy of either quotation. The Respondents were not given any opportunity of seeking advice either on the cause of the problem or on the need for or scope or cost of the work. Nor was it brought to their attention that the Applicant had been quoted differing amounts for the use of different tiles. The Applicant had merely accepted the more expensive quotation because, on the evidence, it related to a tile which the Applicant generally preferred, even though, as the Applicant must have known, the Respondents would potentially be prejudiced by having to pay fifty per cent of the extra cost involved. Furthermore, there was no evidence before the tribunal that the roof as a whole needed repair.
16. In those circumstances (and as the tribunal stated at the end of the hearing), the tribunal determines that it would not be reasonable to dispense with the section 20 consultation requirements in respect of the works referred to in this decision. Consequently, the Respondents' service charge contribution to the cost of the work is limited to £250.

Dated 18th August 2009



.....
C.H.Harrison Chairman