

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

**Case No. CHI/29UL/LDC/2010/0031**

**REASONS**

**Application** : Section 20ZA of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

**Applicant/Landlord** : Moyle Court Management Ltd

**Respondent/Leaseholders** : the leaseholders listed in the Appendix to these reasons

**Building** : Moyle Court, Marine Parade, Hythe, Kent, CT21 6AP

**Flats** : The residential Flats in the Building

**Date of Application** : 20 September 2010

**Date of Directions** : 27 September 2010

**Date of Hearing** : 19 October 2010

**Venue of hearing** : Radnor Suite, Holiday Inn Express, Cheriton Parc, Cheriton High Street, Folkestone, Kent, CT18 8AN

**Appearances for Applicant/Landlord** : Mr R Athow FRICS MIRPM, of Philip A Chapman, and Mr C Puttick, Flat 10, Director of the Applicant/Landlord, and one of the Respondent/Leaseholders

**Members of the Leasehold Valuation Tribunal** : Mr P R Boardman JP MA LLB (Chairman), Mr K M Lyons FRICS

**Date of Tribunal's Reasons : 19 October 2010**

## **Introduction**

1. This application by the Applicant/Landlord is under section 20ZA of the 1985 Act, namely for the Tribunal to determine whether it is reasonable to dispense with the consultation requirements referred to in section 20 of the 1985 Act, and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations")
2. The grounds of the application were that :
  - a. following a full consultation procedure under section 20 of the 1985 Act, a major programme of repointing (24 sq m) and lintel replacement (15 lintels) was in the course of being carried out
  - b. during the course of those works it had been discovered that a further 30 sq m of pointing was required, and that a further 32 lintels needed to be replaced
  - c. in relation to those extra works the Applicant/Landlord was fully consulting the Respondent/Leaseholders but dispensation from the full procedure under section 20 of the 1985 Act would be desirable to avoid a 3-month delay and the removal and later re-erecting of scaffolding, at an extra cost of some £5,000 to £6,000

## **Legal background**

3. Section 20 of the 1985 Act provides as follows :

### *20 Limitation of service charges: consultation requirements*

*(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—*

*(a) complied with in relation to the works or agreement, or*

*(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.*

*(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.*

*(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.*

*(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—*

*(a) if relevant costs incurred under the agreement exceed an appropriate amount, or*

*(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.*

*(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and*

*the regulations may make provision for either or both of the following to be an appropriate amount—*

*(a) an amount prescribed by, or determined in accordance with, the regulations, and*

*(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.*

*(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.*

*(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined*

4. The material parts of the 2003 Regulations are :

*Reg. 2 (1) In these Regulations-*

*"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice*

*Reg. 6*

*For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250*

*Schedule 4 Part 2*

*Para 8*

*(1) The landlord shall give notice in writing of his intention to carry out qualifying works-*

*(a) to each tenant; and*

*(b) where a recognised tenants' association represents some or all of the tenants, to the association.*

*(2) The notice shall-*

*(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;*

*(b) state the landlord's reasons for considering it necessary to carry out the proposed works;*

*(c) invite the making, in writing, of observations in relation to the proposed works; and*

*(d) specify-* *(i) the address to which such observations may be sent;*

*(ii) that they must be delivered within the relevant period;*  
*and*

*(iii) the date on which the relevant period ends.*

*Para 11*

- (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.*
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.*
- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate-*
  - (a) from the person who received the most nominations; or*
  - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or*
  - (c) in any other case, from any nominated person.*
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate-*
  - (a) from at least one person nominated by a tenant; and*
  - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).*
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)-*
  - (a) obtain estimates for the carrying out of the proposed works;*
  - (b) supply, free of charge, a statement ("the paragraph (b) statement") setting out-*
    - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and*
    - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and*
  - (c) make all of the estimates available for inspection.*
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)-*
  - (a) specify the place and hours at which the estimates may be inspected;*
  - (b) invite the making, in writing, of observations in relation to those estimates;*
  - (c) specify-*
    - (i) the address to which such observations may be sent;*
    - (ii) that they must be delivered within the relevant period; and*
    - (iii) the date on which the relevant period ends.*

**Documents**

5. The documents before the Tribunal are :
  - a. the application
  - b. the Applicant/Landlord's bundle pages 1 to 134
  - c. minutes of AGM 18 September 2010
  - d. interim account dated 9 September 2010 from Shepway Building Contractors
  - e. draft final account dated 4 October 2010 from Shepway Building Contractors
  - f. a drawing entitled "North Elevation A1 and A2 – updated 18 October 2010" ("the A1 and A2 north elevation drawing")
  
6. Reference in these reasons to page numbers are to pages in the Applicant/Landlord's bundle

### **Inspection**

7. The Tribunal inspected the exterior of the Building on the morning of the hearing on 19 October 2010. Also in attendance were Mr Athow, Mr P Bingley of Philip A Chapman, and Mr Puttick
  
8. The Building was a development of 24 Flats, in two blocks, each comprising 12 Flats. Each block had two sections comprising 6 Flats each, with the western section slightly proud of the eastern section, and with a separate front door for each section. The southern block was next to the sea front, and its sections were known as "A1" (on the eastern end of the block) and "A2" (on the western end). The northern elevation of that block is shown on the A1 and A2 north elevation drawing. The northern block was behind the southern block, looking from the sea, and its sections were known as "B1" and "B2". According to the Applicant/Landlord's helpful description in the statement of case (page 1) the Building was built about 22 years ago, and is of timber framed construction clad in brick elevations under a concrete tiled roof
  
9. There was scaffolding on the north elevation of A1 and A2. The Tribunal inspected one of the windows of Flat 5, and lintels and reveal trims which had been removed from A1 and A2
  
10. There are helpful photographs at pages 120 to 134

### **The Leases**

13. According to the Applicant/Landlord's statement of case (page 1) all the Flats are held on leases in similar terms to the lease of Flat 7 (pages 30 to 56)
  
14. For the purposes of these proceedings the material parts of the lease of Flat 7 are as follows :

#### *Clause 5(B)(page 38)*

*The Company hereby covenants with the Tenant subject to.....payment being made by the Tenant of the.....Service Charge.....*

- (1) to maintain and keep in good and substantial repair and condition*
- (a) the main structure of the Building.....*

***First Schedule – The Demised premises (page 45)***

*The Flat.....including :-*

*(a) The.....window frames.....(other than the external surfaces of such.....window frames) and the glass fitted in such window frames*

**Statement of case (pages 1 to 4)**

17. The Applicant/Landlord stated that all the Respondent/Leaseholders were shareholders in the Applicant/Landlord. The Applicant/Landlord was consulting fully with the Respondent/Leaseholders, but wished to ensure that all parties were protected against future claims of non-compliance with the statutory consultation procedures
18. The Applicant/Landlord set out in detail the effect of weathering on the lintels and pointing, the programming and consultation which had taken place (pages 57 to 99), the awarding of the contract to Shepway Building Contractors, the starting of the works, and the subsequent discovery of the further works needed
19. A quote from Shepway Building Contractors dated 25 August 2010 for the further works totalled £12,541 plus VAT (pages 108 to 109)
20. Respondent/Leaseholders of 15 Flats had attended the AGM on 17 September 2010 at which the directors' decision to make this application for dispensation was unanimously agreed
21. Respondent/Leaseholders of all 24 Flats had now signed letters of consent to the application (pages 6 to 29)

**The hearing**

22. Mr Athow referred to clause 5(B) of the lease and the first schedule, and said that the lintels, reveal trims and pointing were all parts of the Building for which the Applicant/Landlord was liable, subject to payment of the service charge, under clause 5(B) of the leases. They were part of the structure of the Building, and not part of the window frames for which the Respondent/Leaseholders were responsible
23. The original works, for which full consultation under the procedure set out in section 20 of the 1985 Act had been carried out, related to A1 and A2, and were referred to in the following documents :
  - a. the Shepway Building Contractors quote dated 23 August 2009 (page 81), under the following details (excluding VAT) :

A1 North	5,172.00
----------	----------

A2 North 4,705.00

- b. the cost analysis spreadsheet 2.3 (page 69), sent with the letter to the Respondent/Leaseholders dated 3 March 2010 (pages 64 and 65), under the following details (including VAT) :

3 A1 North 6,077.10

4 A2 North 5,528.38

- c. interim account dated 9 September 2010 from Shepway Building Contractors, under the following details:

Block A1 North 5,172.00 plus VAT 17.5% 6,077.10

Block A2 North 4,705.00 plus VAT 17.5% 5,528.38

24. Those original works could be seen to be necessary from ground level inspection, and from the interior of the Flats. However, when those works were started in August 2010, and scaffolding was erected, the necessity for the further works became apparent. The photographs at pages 120 to 134, which were shown at a presentation to the Respondent/Leaseholders at the AGM on 18 September 2010, showed examples of those further problems
25. The further works, which also related to A1 and A2, were summarised in the initial quote from Shepway Building Contractors dated 25 August 2010 (page 108) for £12,541.00, excluding VAT, the letter from Shepway Building Contractors dated 15 September 2010 (page 112) referring to extra further works which had by then become apparent, and the draft final account from Shepway Building Contractors dated 4 October 2010 for £15,857.80, including yet further extra works which had by then become apparent, and including VAT
26. The Respondent/Leaseholders, including those with leases of Flats in B1 and B2, had all agreed to this application to dispense with the full consultation procedure under section 20 of the 1985 Act in relation to those further works because :
- a. they had all been fully informally consulted about the further works
  - b. the full section 20 consultation procedure would have taken at least 2 to 3 months
  - c. in the meantime the original works would have been completed
  - d. the scaffolding for the original works would have been needed for the further works, and would therefore have to be left in situ during the full consultation procedure, or dismantled and re-erected, at significant extra cost in either event
  - e. there would have been difficulty obtaining quotes from other contractors for comparison purposes under the section 20 procedure, as other contractors would realise that in practice they would be unlikely to have their quotes accepted in the light of the original works already having been completed by Shepway Building Contractors
  - f. it was desirable to finish the extra works before the usual November storms, whereas the full section 20 consultation procedure would not have been completed by then
  - g. this would lead to a probable deferment of the further works until the spring of 2011, by which time the rate of VAT would have increased, and so increasing the cost of the further works

## **The Tribunal's findings**

27. Having considered all the evidence in the round, the Tribunal finds, in relation to the further works referred to in the application, that

- a. the further works were works for which the Applicant/Landlord was liable under the Applicant/Landlord's repairing covenant in the leases
- b. the Respondent/Leaseholders have been consulted about the further works, both in writing and at the AGM on 18 September 2010
- c. the building contractors were already on site undertaking the original works when the necessity for the further works were discovered
- d. the full consultation procedure under section 20 of the 1985 Act would delay the further works and cause extra expense in dismantling and then re-erecting scaffolding, and, if, as seems likely, the further works were then deferred to the spring of 2011 to avoid adverse winter weather, in incurring a higher rate of VAT
- e. all the Respondent/Leaseholders, including those with leases of Flats in B1 and B2, have indicated their consent to this application
- f. the Applicant/Landlord have acted reasonably in all the circumstances
- g. it is reasonable to dispense with the consultation requirements referred to in section 20 of the 1985 Act so far as the further works are concerned

28. The Tribunal accordingly dispenses with the consultation requirements referred to in section 20 of the 1985 Act, so far as the further works are concerned

Dated 20 October 2010



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor



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

**Case No. CHI/29UL/LDC/2010/0031**

**Moyle Court**

**Appendix**

**List of Respondent/Leaseholders**

## LIST OF RESPONDENTS – MOYLE COURT

Flat 1	Mr C T & Mrs S E Gurr
Flat 2	Mrs J Smith
Flat 3	Mr R & Mrs S Pitt
Flat 4	Mrs E Taylor
Flat 5	Mr G F & Mrs J A Dye
Flat 6	Mr A N & Mrs D M Godden
Flat 7	Mr N G & Mrs E M Gardner
Flat 8	Mr I D & Mrs I Nutt
Flat 9	Mr P Smith & Ms B McCauley
Flat 10	Mr C & Mrs J Puttick
Flat 11	Mr J Hughes & Ms E A Davis
Flat 12	Messrs T, P A, J A & T H Connelly
Flat 13	Mr B W Forrest
Flat 14	Mr & Mrs L F Pinner
Flat 15	Miss M E Gallagher
Flat 16	Mrs M Bailey
Flat 17	Mrs G Ottwell
Flat 18	Mrs M P Clarkson
Flat 19	Mr N P Hodson & Miss E A Hickton
Flat 20	Mr M J Middlebrook
Flat 21	Mrs J M Brown
Flat 22	Mr I & Mrs V A Brooker
Flat 23	Mr G S & Mrs D D Lawton
Flat 24	Mr & Mrs I Gardiner