

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



**Residential
Property**
TRIBUNAL SERVICE

S.20ZA Landlord & Tenant Act 1985

DECISION & REASONS

Case Number: CHI/45UB/LDC/2010/0032

Property: 58 & 58A New Road
SHOREHAM by SEA
West Sussex
BN43 6RB

Applicant: Downside Investments (Brighton) Ltd

Represented by Parsons Son & Basley

Respondent: Ms J McCarthy & Mr M E Porteous (58A)
A L Victorio & Ms C Mattocks (58)

Date of Application: 24 September 2010

Date of This Decision: 10 December 2010

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Mr J B Tarling MCMI (Legal Member)

DECISION

1. The Tribunal determines to dispense with all of the S.20 consultation requirements in relation to the qualifying works, the subject of this application being temporary weathertight repairs to the front and rear dormer roofs.

INTRODUCTION

2. This is an application by Parsons Son & Basley on behalf of their client the freeholder of the property, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the S.20 consultation requirements in respect of qualifying works. The qualifying works in the application relate to the temporary weathertight repairs to the front and rear dormer roofs.

THE LAW

3. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
4. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.
5. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.
6. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.
7. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements)(England) Regulations 2003, SI2003/1987. These requirements include, amongst other things, a formal notice procedure, obtaining complete estimates and a provision whereby a lessee may make comments about the work and nominate a contractor to provide a quotation for the work.

8. S.20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to do so. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

THE LEASE

9. The Tribunal was provided with a copy of the lease of the upper flat known as 58 New Road, which comprises the top two floors of the building. The other flat 58A occupies the ground floor and lower ground floor.
10. Although the Tribunal had regard to the full lease, little turned on its interpretation during the course of representations made to it. There are provisions for the landlord to keep the property insured and to keep in good repair and decoration any part not demised together with the main structure, outside walls, fences, drains and roof and for half the costs to be recovered from the tenant of the upper floor flat. Although the Tribunal did not see the lease it is assumed that there are similar covenants in the lease of the lower flat.
11. There were no matters raised by the parties in respect of the interpretation of the lease.

BACKGROUND

12. On 28 September 2010 the Tribunal issued Directions for the conduct of the case. The matter was listed to be dealt with on the fast track and notice was issued that the Application would be heard on the basis only of written representations without a formal hearing. Neither party objected to this procedure.
13. A detailed statement and documents were received from the Applicant. No representations were received from either Respondent.

INSPECTION

14. The Tribunal members inspected the property in company with Ms Howard of Parsons Son & Basley (PS&B), Mr Porteous and Ms Mattocks on 8 December 2010. The Tribunal briefly inspected the interior of each flat and the exterior from street level.
15. The property comprises an inner terrace Victorian property probably built of a mixture of brick and flint with cement rendered elevations. Accommodation is arranged on four floors. The roof is of pitched design covered with concrete tiles and there are dormer projections at the front and rear each with a roof covered with mineral felt. The building is arranged as two flats each approached from a door at ground floor level.
16. There is a scaffolding tower erected on the South side. Ms Howard explained that work had only been undertaken to the South roof.
17. The Chairman explained how the consideration would be conducted based on the documents that were available to the Tribunal. No evidence was taken at the inspection.

EVIDENCE

The Applicant's Case

18. Following a regular management inspection of the property by PS&B, the freeholder planned to replace soffits and fascias on the South elevation in 2011 having renewed similar items on the North side in 2008. Following a visit on 1 September 2010 it was noticed that the soffits and fascias on the South side were in very poor order and the gutters on the North side required cleaning.
19. Contractors were instructed to attend and reported back that the felt roof covering to the South dormer had become detached and the decking had become sodden. Instructions were given for urgent weathertight repairs which were completed on 16 September 2010. A scaffold tower was erected in order to carry out this work.

20. A S.20 Notice of Intention was issued on 22 September 2010 in order to start the consultation process for the full repair work.
21. It was stressed that dispensation is required only for the emergency works for which an invoice from Southern Asphalt Ltd in the sum of £1,175 is submitted.

The Respondents' Case

22. No representations or objections were made by the Respondents despite the Tribunal's Directions which provided for them to make written submissions if they wished to.

CONSIDERATION

23. There is no dispute between the parties that roof repairs were required to prevent water ingress. Any delay may have allowed the extent of the damage to spread and more extensive works may have been needed. There is no dispute that watertight emergency repairs to the dormer roof have been completed. The remaining work will be the subject of full consultation.
24. It would be unreasonable to enforce the strict terms of S.20 consultation for the emergency works and, on the basis of the evidence before it, the Tribunal is satisfied that it is reasonable to dispense with the requirements.
25. Merely for the sake of clarification the Tribunal reminds the parties that either the landlord or the tenant may make an application to the Tribunal under section 27A, or other sections, of the Act for a determination as to the payability and reasonableness of charges either before or after any works. The decision given in this document does not prevent any future application to the Tribunal.

Dated 10 December 2010

[signed Brandon H R Simms]

Brandon H R Simms FRICS MCI Arb
Chairman