

LEASEHOLD VALUATION TRIBUNAL
FOR THE LONDON RENT ASSESSMENT PANEL

LON/00AE/LDC/2010/0012

Landlord & Tenant 1985 (as amended) s.20 ZA

Property: 50 Cavendish Road

Applicants: Mintcity Limited (Freeholder)

Represented by: Premier Management Partners (Managing Agents)

**Respondents: Mr P. J. Russell and Mrs S. J. Russell (Ground Floor)
Mr David Jones (1st Floor Flat, 2nd Floor Flat, and 3rd Floor or
Attic Flat)**

Determination: 8th March 2010

Members of the Tribunal:

Mr L. W. G. Robson LLB(Hons) (Chairman)

Mrs E. Flint DMS FRICS

Preliminary

1. This case relates to an application received on 3rd February 2010 for dispensation with all or any of the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 (the Act).
2. Pre-Trial Directions were given on 4th February 2010 placing the case on the paper track, i.e. for decision on the documents without a hearing. Pursuant to those Directions copies of the Application were sent to the Respondents by the Tribunal on 11th February 2010. A bundle of documents was supplied by the Applicant shortly prior to the Determination. None of the Respondents replied to the application.
3. The Tribunal noted from the letter dated 1st February 2010 sent by the Agents to the lessees that the matters requiring a dispensation were the urgent nature of the following matters:
 1. Floor joists undersized, with no noggins at any interval points, making them susceptible to torsional buckling
 2. Primary timber beam running parallel to the staircase, supporting the floor and studwork above is undersized, resulting in visible creep and deflection
 3. Flat roof joists over dormer undersized and require strengthening.
 4. Some load bearing stud walls, rafters etc. require strengthening
 5. Remedial works necessary to areas which are in poor condition.

4. The Tribunal also noted the following documents;
- * Report of OSO Designs (engineers and technical designers) dated 14th December 2009
 - * Builders Estimates dated 29th January 2010, and 30th January 2010
 - * Notice to lessees attached to the letter dated 1st February 2010.
 - * Lease dated 19th December 1963 relating to ground floor flat
 - * Deed of Variation dated 3rd June 1991 – ground floor flat
 - * Statement of Louise Berwin AIRPM dated 19th February 2010

Evidence

5. The Applicant's statement and evidence disclosed that:
- a) The property is a three storey Victorian house converted into 4 Flats on 3 floors and attic floor.
 - b) There were some unusual features to the application; the location of the works required was not clarified in the notice to the lessees, but apparently relate mainly to the attic floor, and included some new work. Also the problems identified appear to have been discovered while stripping out the loft/attic area, suggesting that renovation of the area was currently in progress (see OSO Designs Report and the Estimate dated 30th January 2010). The lessee of the upper floors has the same postal address and email address as the Applicant. Ms Berwin's statement referred to the contractor's team moving into a lower ground floor flat, although the description of the property suggests no such flat exists.

Determination


6. The Tribunal met on 8th March 2010. As no party had applied for a hearing, the matter was dealt with in accordance with the Directions on the papers alone.
7. The relevant part of Section 20 ZA of the Landlord & Tenant Act 1985 provides:
- (1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*
8. The Tribunal firstly considered the terms of the Lease. The copy of the lease dated 19th December 1963 provided was very indistinct but made no provision for a lessee's contribution to repair of the structure and exterior of the property. The ground floor flat was demised by reference to a plan. The plan showed the boundary of the demise as including the structural walls bounding the property at ground floor level. The Deed of Variation dated 3rd June 1991 contained a number of other provisions, but the relevant part of clause 4.1

contained a material variation of the lessee's obligations to contribute to the upkeep of the building as follows:

4.1 The Landlord and the Tenant agree that the Lease is varied by the deletion of the existing covenants 3(4) and the deletion of an obligation to provide heating contained in clause 3(3) and that the payment of service rent shall henceforth read and take effect as follows:

“And also to pay a fair proportion of the Lessor's costs of painting and decorating, repairing the exterior of the Building and of the decoration cleansing, repairing and lighting of the entrance hall”

9. The Tribunal considered the lease as a whole but could find no evidence to support a more general construction of the word “exterior” than its normal natural meaning. That meaning would exclude structural items. Also the general rule of construction in leases is that where there is no clear language, the meaning of a provision will be construed against the grantor. Further the demise of the structural parts of the ground floor to the lessee suggested that similar demises were likely relating to the upper flats. No evidence had been produced on that matter. The usual wording of such a covenant would have been “structure and exterior” and the omission of “structure” on two occasions when the lease was in negotiation suggested that it was deliberate. The Tribunal decided that the word “exterior” in the context did not include the structure. The works proposed were structural but not external, thus the works were not “qualifying works” for the purpose of Section 20 ZA, as they did not form part of the lessee's obligation to contribute.
10. The Tribunal also noted that insufficient detail relating to the urgency of the situation was given in the Application and Ms Berwin's submissions. There was no evidence of imminent collapse or the need to ensure safety. Section 20 ZA was intended to be used sparingly and in clear cases, otherwise the protection given to lessees by Section 20 would be nugatory. Again the Tribunal decided that the conditions required for a successful application to the Tribunal did not exist.
11. The Tribunal accordingly refused the application for dispensation.
12. **For clarity, this decision does not prevent any party from making an application to the Tribunal later relating to the reasonableness or cost of the works under Section 27A**

Signed:  Lancelot W.G. Robson LLB(Hons)
Chairman

Dated: 8th March 2010