

2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations on the grounds of urgency and danger to life, save that within one week the freeholder should – through Mr Reubin – obtain other quotations or estimates from local manufacturers of window units (such as Harwich Glass or Asset, of Colchester) in order to test the reasonableness of that obtained already from Roalco in the sum of £4 998 plus VAT : in round figures £6 000.

The premises

4. The tribunal inspected the premises before the hearing in the company of the parties or their representatives. It is a three storey block of concrete and brick construction, built perhaps in the 1950s on the main commercial road in the centre of Dovercourt. While it is identified as being numbers 173–185 High Street the ground floor comprises shops or offices and the first floor two flats (179 and 181) reached by an internal communal staircase and landing. On this communal landing is what may once have been a cleaners' toilet, the two small windows in which are seriously rotten, with at least one having the bottom part of the frame missing. The glass is loose, but this is not part of the works for which dispensation is sought. Immediately inside the entrance lobby to flat 179 water could be seen to have leaked through from above. Although not immediately above the electrical circuit board, the tribunal was informed that after heavy rain the whole of the concrete roof panel in the lobby was soaked and water did drip on to or flow down the wall behind the distribution board.
5. The two flats on the top floor (183 and 185) are reached by their own staircase, immediately adjacent to the other, and accessed from an exposed rooftop walkway along the rear of the building. This staircase is of brick and concrete construction, with what previously may have been large single-glazed infill panels of softwood construction fitted between horizontal concrete beams. The softwood was seen to be in very poor condition, with what may either have been glazed or timber modesty panels having been replaced quite crudely with plywood. The glass was wired, but with some serious cracks. The wire would hold the glass together, so if it were to slip the whole heavy sheet would fall to the ground below in one piece.
6. The two staircases are accessed by separate doors from a public pedestrian walkway by the western side of the building, providing a shortcut from Hordle Place to the High Street. If the glass were to slip or be sucked out in stormy weather from the rotten frames then not only the occupants of the flats but the public as well would be at risk of serious injury.

Relevant lease provisions

7. The tribunal was provided with a copy of the lease for flat 179, on the first floor. In its definition of the premises Schedule 1 refers to it including one half in depth of the structure between the floor and ceiling of the flat below and the ceiling and the floor of that above, and of internal party walls. Apart from the windows frames and glass serving the flat exclusively there is no mention of the demise including any part of the external walls or structure of the building.
8. By Schedule 4 the tenant covenants to pay on demand one half of the cost of cleaning decorating lighting maintaining and repairing the staircase and the open landing. What

is meant by the "open landing" is not explained. Neither is there any mention of liability for repairs to the structure or main structure of the building.

9. By Schedule 5(3)(ii) the landlord covenants to maintain repair decorate and renew (a) the main structure and in particular the roof, etc of the building, and... (c) the main entrances passages landings and staircases of the building so enjoyed or used by the tenant in common [with others]. By (iii) the landlord also covenants as far as practicable to keep the entrance hall stairway and other parts shown hatched yellow and green in good condition.

Statutory consultation provisions

10. Section 20(1) of the Landlord and Tenant Act 1985 provides that
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.
 11. The consultation requirements and the financial limits are prescribed by the Service Charges (Consultation Requirements) (England) Regulations 2003 (as amended). It is common ground that the financial limit for major works is £250 per tenant and that Part 2 of Schedule 4 applies in these circumstances.
 12. Section 20ZA of the Act provides that 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.
- #### **The hearing**
13. Mr Reubin stated that he was not the managing agent but had been called in to deal with this repair aspect. He had first been involved with the building about 5 years ago (2007) and prepared a report. He advised then that water ingress could become a serious problem because of the location of a leak above the electrical distribution board and that the timber framed structure to the stairwell to the 2nd floor was rotten in places and glass was then loose. That ended his work for the managing agents.
 14. He said that they (the managing agents) then asked him to look again in 2009, by which time the condition of the premises had worsened. Some glazing in the stairwell had started to fall out and had been replaced with temporary plywood sheeting. One of those present then told the tribunal that he and another leaseholder had had to carry out this work at their own expense. This they had mentioned to Mr Gombo of the agents but they never heard anything back.
 15. Mr Reubin continued by saying that in early September 2012 the managing agents had contacted him again and asked him to deal with this application for emergency works

under section 20ZA as he had found yet again that the building had deteriorated further. In light of the condition of the premises and the work required he recommended that a firm be engaged. The choice of Roalco was made because of their experience of block maintenance issues and the labour capable of dealing with the scope of works required.

16. Following Roalco's inspection they were able to give a price for replacement of windows and doors to the stairwell to the 2nd floor, but only a price for labour for roof works as the precise nature of the problem has yet to be found. This was confirmed by an e-mail exchange provided to the tribunal and to those present. The cost of the glazed panels is in round figures £6 000 including labour. For the works to the roof labour is £25/hr x 2 men to lift the concrete slabs in the corner, where the leak seems to be occurring. Mr Reubin's own preference would be that all the slabs were lifted as it is not possible to see the problem underneath with them present, laid on sand on top of a bituminous layer. (The tribunal noted, however, that the slabs did provide a hardwearing, non-slip surface for pedestrian traffic with minimal on-going maintenance. Given the history of this building how could leaseholders have confidence that a bituminous surface would be regularly maintained?)
17. There was then a general discussion between the various parties and the tribunal about the cost of replacing the glazing to the stairwell. It was suggested that going direct to a glass manufacturer is cheaper than going to a builder which will then sub-contract the work anyway. There was concern that there was only one option on the table. It might be cheaper to use glass companies nearby, eg. Harwich Glass, A&B Glass (Sudbury) or Asset (Colchester). Mr Reubin agreed to obtain quotes by the end of the week. Roalco would be unlikely to be able to get the glass in within 4 weeks, so no time would really be lost. As there was some anxiety that the leases for the top floor flats (which had not been seen) might require them alone to share the cost of repairs to their stairwell between the two of them the issue needed proper scrutiny.
18. In response to concern that once this application had been dealt with Mr Reubin's role would be over and nothing further might be done he assured the tribunal that he would be involved in doing the work. He also agreed that he needed to check all the leases to see how precisely the cost of structural work was to be shared out, and indeed if this might include the ground floor retail units.
19. All agreed, however, that more urgent than the glazing is investigative work to trace the leak endangering the electrics. Roalco were prepared to do that work even if not awarded the contract for replacing the glazing, and they could proceed immediately.

Discussion

20. The tribunal was concerned to hear how, despite two previous reports from Mr Reubin and being informed by leaseholders that they had effected repairs to the glazing on the stairs themselves (for which they not been reimbursed), the landlord's managing agents had to date failed to maintain the property as required by the lease. It was comforted to learn that Mr Reubin would continue to be involved with (and one hopes responsible for) the implementation of the works which are the subject-matter of this application.
21. Both items are now urgent, due to the danger presented to leaseholders and members

of the public, but insofar as the glazing is concerned this is a present urgency brought about by years of management neglect. Notwithstanding the need to use a cherry picker or tower scaffold to carry out routine works at height, one wonders what the cost to the leaseholders might have been had the landlord complied fully with its covenants in the past. The tribunal therefore is prepared – on safety grounds – to dispense with all the statutory consultation requirements save that Mr Reubin must quickly obtain other competitive quotations for this aspect of the work. That may assist the leaseholders to form a view whether the cost is reasonable. Mr Reubin agreed to obtain such quotes immediately.

22. The ingress of water is not something for which one can necessarily blame anyone. The source of leaks can be notoriously difficult to trace, so at present Mr Reubin has been able to obtain only a labour cost for lifting concrete slabs in the relevant corner of the flat roof/walkway. He thought that this task, plus clearing what is underneath, would take two men only around an hour and a half, so the remainder of the cost depends on what is required to stop the leak. As water is entering the flat next to the distribution board the tribunal recognises the urgency of dealing with it. It authorises Mr Reubin to proceed without delay by engaging Roalco at the rates quoted.
23. Subject to the above qualification about the glazing the application is therefore granted.

Dated 12th November 2012

Graham K Sinclair – Chairman
for the Leasehold Valuation Tribunal