

8278



**HM Courts
& Tribunals
Service**

LEASEHOLD VALUATION TRIBUNAL

Section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act")

Case Number:	CHI/00ML/LDC/2012/0032
Property:	Cornwall Court, Wilbury Avenue, Hove BN3 6GJ
Date of Application:	15 August 2012
Applicant:	Sarum Properties Limited
Respondents:	Leaseholders of Cornwall Court
Appearances for Applicants:	Mr Mark Carter of Priors, Applicant's Managing Agents Mr Paul Phillips, witness
Appearances for Respondent:	Mr Ronald Impett and Mrs Susan Impett (Flat 2) Ms Hilary Mulholland (Flat 23)
Date of hearing:	8 October 2012
Tribunal:	Ms E Morrison LLB JD (Lawyer Chairman) Mr J S McAllister FRICS (Valuer Member) Ms J K Morris (Lay Member)
Date of the Tribunal's Decision:	19 October 2012

The Application

1. The Applicant freeholder (through its managing agents) applied to the Tribunal under section 20ZA of the Act for a determination to dispense with all consultation requirements in relation to past and proposed works on the parapet wall and underlying lintels at Cornwall Court.

Summary of Decision

2. With regard to the parapet wall and lintel repairs already carried out, the Applicant is granted dispensation from all consultation requirements.
3. With regard to the parapet wall and lintel repairs not yet carried out, the Applicant is granted dispensation with regard to paragraphs 8-10 and 11(1) – (4) of Schedule 4 Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003.

The Lease

4. The Tribunal had before it a copy of a sample lease (for Flat 6) in the block. It was dated 20 August 1962 and was for a term of 99 years from 25 March 1962 with a ground rent of £20 per annum. Clause 4 sets out the Lessee's covenants to repair the interior of the flat and to pay a service charge to the Lessor. On account payments of £20 towards recurring service charge expenditure are payable on each 25 March and 29 September, with any balance due at the end of each service charge year (25 March). Under clause 4 (C) the Lessee covenants to pay other sums demanded in respect of the service charge within 21 days. Clause 6 includes the Lessor's covenant to "keep the main structural parts of the said Block (not comprised in the demised premises or any of the flats in the said Block) including the roof main walls and timbers and external parts thereof ... in good and tenable repair and condition throughout the term hereby granted".

The Inspection

5. The Tribunal inspected the exterior of the block, from ground level only, on the morning of the hearing. Mr Carter and Mr Phillips were in attendance. Cornwall Court is a detached purpose-built 4 storey block of 24 flats, traditionally constructed of brick elevations under a bituminous felt covered flat roof. The windows are either of timber or uPVC and there are balconies to some flats. The block is about 50 years old. It has a garden area to the front and western side, with a drive on the eastern side leading to single storey garages and a parking area etc. at the rear.
6. The new parapet wall at the top of the south (rear) elevation, including a section of west-facing return on the south-west corner, was seen from ground level, and this elevation had also been recently decorated. On the elevations that had not been repaired, slight leaning of the parapet walls and missing mortar was seen in places.

Representation and Evidence at the Hearing

7. The Applicant's case was presented by Mark Carter of Priors, the managing agents. The chartered building surveyor engaged by Priors, Mr Paul Phillips, also gave evidence. Both had filed witness statements as part of the Applicant's statement of case. Mr and Mrs Impett (Flat 2) and Ms Mulholland (Flat 23) attended as Respondents and addressed the Tribunal. Mr Carter also handed in an email he had received from Ms Helen Davitt (Flat 10) and this was considered. No other leaseholders attended or made written representations.

The Law and Jurisdiction

8. Section 20 of the 1985 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. The definitions of the various terms used within s 20 e.g. consultation reports, qualifying works etc., are set out in that section. In order for the specified consultation requirements to be required, the relevant costs of the qualifying works have to exceed an appropriate amount, which is £250 per lessee.
9. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations"). The specific requirements for qualifying works which do not require public notice and are not carried out under an existing long term agreement are set out at Part 2 of Schedule 4 of the Regulations in paragraphs 8- 13.
10. What may conveniently be described as the First Stage requires (in summary) the landlord to give notice to the tenants (and any recognised tenants' association) of his intention to carry out the works, explaining why they are necessary, and giving the tenants 30 days to make observations, to which the landlord must have regard, and to propose contractors from whom the landlord should try to obtain an estimate (paragraphs 8- 10, 11(1) – (4)).
11. What may conveniently be described as the Second Stage requires (in summary) the landlord to notify the tenants of details of the estimates obtained and to make them available for inspection. At least one estimate must be from a person unconnected with the landlord. Tenants then have 30 days to make observations on the estimates, to which the landlord must have regard (paragraphs 11(5) – (11) and 12).
12. What may conveniently be described as the Third Stage requires (in summary) the landlord, within 21 days of entering into a contract for the works, to notify the tenants of his reasons for awarding the contract. This is not required if the contractor was nominated by a tenant or submitted the lowest estimate (paragraph 13).
13. Under section 20ZA of the Act a Leasehold Valuation Tribunal may determine that all or any of the consultation requirements may be dispensed with if satisfied that it is reasonable to do so.

The Applicant's Case

14. Mr Carter set out the background to the application. In June 2010 Mr Phillips carried out a survey to prepare a Specification for external redecoration and repairs. The proposed works did not include any work to the parapet wall. The tenants were sent the first stage notice under section 20 and one contractor was nominated. Estimates from contractors were obtained (although the tenant-nominated contractor chose not to tender). A second stage section 20 notice was issued to the tenants on 16 January 2012. The landlord proposed to enter into a contract with the contractor who had provided the lowest estimate. With fees and VAT the total estimated expenditure was £38447.40, all of which could be met from the reserve fund. Some tenants made observations which were considered and responded to.
15. On 25 June 2012, before any contract had been entered into, Priors received a telephone call from a resident at Cornwall Court that bricks had fallen from the parapet wall at the south-west corner of the block. The area was sealed off, and scaffold erected to that area giving Mr Phillips access to inspect. Mr Phillips found that the parapet wall to the rear elevation was leaning significantly and there was real concern that further brickwork and cement mortar would come away. Dean Developers were instructed to carry out emergency repairs to the entire rear elevation parapet. They were not contractors who had tendered for the planned work but they were available to start work immediately. Scaffolding was erected and work commenced. Mr Carter referred to letters to the tenants dated 5 and 24 July 2012 which showed that work had started by the first date and had been completed by the latter date. Some delay was caused by bad weather.
16. The letter of 24 July gives a great deal of technical detail about the work carried out. Not only was the previous single leaf parapet brickwork dismantled and rebuilt with a cavity structure matching the walls below, but concrete and steel lintels below the parapet were found to require repair and in some cases replacement. The letter went on to suggest that the previously planned works to the rear elevation should also be carried out while the scaffolding was up, and that Dean Developments was prepared to match the lowest estimate previously obtained.
17. The managing agents arranged a meeting with the residents on 6 August 2012, after which Dean Developments undertook the external redecoration and repairs to the rear elevation.
18. In the application to the Tribunal dated 15 August, Mr Carter had stated that the remaining parapet wall repairs should be undertaken as soon as possible and that it was proposed to obtain competitive tenders from Dean Developments and the contractors who originally tendered for the external redecoration and repair work based on a revised Specification which would include the parapet wall and lintel work. At that time Mr Carter hoped the work could be carried out before the coming winter. However Mr Carter told the Tribunal on 8 October that the revised Specification was not yet complete and had not yet gone out to tender. Realistically the work would not start until early next year, after the worst of the winter weather. There wasn't an imminent risk with regard to the remaining parapet wall, but it needed to be done. He now accepted that, based on his revised time-scale, there would be time for some consultation. He also accepted that the consultation requirements for the original works would not be complied with if those works were

carried out by a new contractor whose estimate had not been submitted to the tenants for consideration.

19. In response to questions from Mr Impett, Mr Carter said that the roof (normally accessible only by an external ladder) was not regularly inspected by Priors unless there was a query or complaint. There was no insurance cover for the works. Nothing had been done to secure the parapet wall pending repair. He would consider whether the rear access should be closed off as a safety precaution and whether warning notices should be posted. He also responded to questions from Ms Mulholland about concerns of water ingress into her flat while the proposed works were being carried out.
20. Mr Carter accepted that the tenants had not yet been informed of the real likely total cost of the works, which was a very substantial amount and which could not be met from the reserve fund.
21. Mr Phillips then gave evidence. He attended site when the brickwork fell, probably the same day, and went up to the roof using the ladder. The parapet wall was leaning outwards where the bricks had fallen and the only thing to do was to get scaffolding up so that any further fall would be onto the scaffolding and not the ground. The first scaffolding went up on 27 June in the affected area. He inspected again and considered that failure of the wall was imminent. The wall needed rebuilding with a cavity and wall ties with felt dressed over the top of the parapet, and the contractors were instructed to do this work. As the brickwork was taken down the problem with the lintels was encountered. It then became evident that the entire rear elevation required the same work, so the scaffolding was extended and the work was done.
22. The cost of the parapet/lintel work so far done is about £22,500. The cost of the parapet/lintel work to be done on the remaining three elevations is estimated at about £45000.
23. Mr Phillips disagreed with Mr Carter's proposed time-frame. The parapet wall that had failed was the one most exposed to the elements, but with a standardised structure there was a good chance that other areas would fail. He felt the work needed to be done earlier, despite the winter weather. The works would take 10-12 weeks in total, including the original redecoration/repair works. He could get the revised Specification ready by the end of this week, and realistically, allowing for tenders, lead-in times, and the Christmas break, work should start in early January 2013. It could begin in early December at earliest but this would mean scaffolding remaining up over the two week Christmas holiday so it would be better to start in early January.
24. In response to questions from Mr Impett, Mr Phillips said he had gone up on the roof in June 2010 and had not noticed any problem at that time with the parapet. He had not been on the roof again until June 2012 after the brickwork fall.
25. Photographs were then handed up showing the state of the rear parapet walls and lintels prior to repair.

The Respondents' Case

26. Mr Impett, who spoke for himself and his wife, said that seeing the photographs was an eye opener. He did not dispute that the work was required but said the need for the work should have been picked up much earlier. Some leaseholders would face real hardship in coming up with the money to pay for the work and could not afford it. He would like the opportunity to look at any estimates obtained and to make comments.
27. Ms Mulholland said she wanted the work done as soon as possible but was concerned that if tenants lost the opportunity to comment on the choice of contractors they could end up with a situation where the works were not taken seriously. She would like the opportunity to comment on the estimates.

The Loan Issue

28. As part of the application, the Tribunal was asked to authorise an interest charge of not more than 1% a month if the Applicant advanced money to fund the works pending recovery of the cost from the tenants. This is not provided for in the lease. Mr Carter was unable to identify any legal provision which would empower the Tribunal to make such a ruling.
29. Mr Impett objected to the payment of interest on the basis that the need for the work should have been identified years ago and carried out then, when the cost would have been lower.
30. Ms Mulholland said that she would be able to fund her proportion of the cost and that interest charges should be borne only by those who were unable to pay upfront.

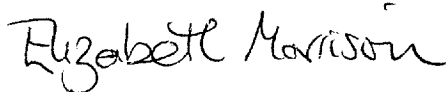
The Determination

31. With regard to the parapet wall and lintel repairs already carried out, the Tribunal determines that there should be retrospective dispensation from all consultation requirements. It is satisfied that the sudden fall of brickwork from the top of the building on 25 June 2012 presented a serious risk to the safety of residents and visitors at Cornwall Court and that the Applicant had no option but to take immediate remedial measures to ensure there was no further fall from the affected area. These measures appear to have reasonably encompassed work to the parapet wall along the entire rear elevation. Once the additional problem with the lintels became apparent there was no real or practical alternative but to attend to this at the same time. There was no time to carry out consultation before the works were done, although the managing agents took steps to keep the tenants informed. In the circumstances it is reasonable to give dispensation.

32. The specific works to the south elevation and west return for which full dispensation is given are those described at points 13 -16 of the attached letter from Mr Phillips to the Tribunal dated 11 October 2012 (supplied after the hearing).
33. With regard to the parapet wall and lintel repairs yet to be done, there are different considerations. Mr Carter and Mr Phillips both gave evidence that the work should be done as soon as possible, but they did not say there was an imminent risk. The lack of immediate urgency appears to be borne out by the fact that nothing was done to progress matters between making the application to the Tribunal on 15 August and the hearing on 8 October. The original application made reference to a revised Specification being prepared, but this was not completed by the hearing date and not made available to the Tribunal. Mr Phillips proposed a start date for the works in early January 2013, Mr Carter late February or early March 2013.
32. Mr Phillips accepted that his proposed time-table would give time for the Second Stage of the consultation process to be done, so that estimates obtained after the revised Specification had gone out to tender could be made available to the tenants and they would have 30 days to make observations.
33. Given the likely cost and importance of the works it is highly desirable that the consultation procedures should be followed unless there is good reason not to do so. A balance must be struck between getting the works done as soon as possible and affording tenants their rights so far as is practicable. In the view of the Tribunal the right balance is struck by dispensing with the First Stage only of the consultation requirements. The tenants have already been informed about the scope of the works and indeed the letter of 24 July 2012 contains much technical detail. There is no evidence that anyone has suggested that the proposed works are not necessary. The tenants will not have the opportunity to nominate a contractor (unless the Applicant accepts a nomination informally) but it is noted that during the last section 20 consultation there was only one nomination and the contractor chose not to tender. The Tribunal has not been informed that any of the tenants wish to nominate a contractor this time around. However there is no justification for dispensing with the Second or Third Stages. There will be sufficient time to comply with these aspects of the consultation process without causing any delay to an early January 2013 start date so long as matters are now dealt with promptly. The tenants will therefore retain the right to consider the various estimates and make observations.
34. The specific works for which dispensation from First Stage consultation is given are those described at points 1, 5 – 8 of the attached letter from Mr Phillips dated 11 October 2012.
35. The Tribunal notes that complying with the Second Stage with respect to the revised Specification should also help to avoid any section 20 problems for the Applicant with regard to the original redecoration and repair work if the contract is eventually awarded to a contractor other than one who tendered in the previous process.
36. This decision on dispensation under section 20ZA does not give or imply any judgment about the whether the costs of the works have or will be reasonably

incurred or about the standard of the works. The tenants retain the right to challenge the payability of service charges arising from the works under sections 19 and 27A of the Act. In *Garside and Anson v RFYC Ltd* [2011] UKUT 376 (LC) the Upper Tribunal held that the financial impact of major works on lessees through service charges and whether as a consequence works should be phased is capable of being a material consideration when considering whether costs are reasonably incurred for the purpose of section 19(1)(a).

37. The Tribunal has no jurisdiction to authorise interest-bearing loans to fund the works. This would amount to a variation of the lease, to which the provisions of Part IV of the Landlord and Tenant Act 1987 apply. The matter cannot be addressed within the scope of the present application.

Chairman: 

E Morrison LLB JD

Dated: 19 October 2012