

7778



**HM Courts
& Tribunals
Service**

Leasehold Valuation Tribunal

In the matter of S.20ZA Landlord & Tenant Act 1985

DECISION & REASONS

Case Number: CHI/21UD/LDC/2012/0013

Property: Lindsey Mansions
11 Terrace Road
ST LEONARDS ON SEA
East Sussex
TN37 6BN

Applicant: Mr J Sutton (in person) & Mrs J Tillery.

Represented by: Ms S Lewis (Stephen Rimmer solicitors)

Witness: Mr M Symmonds BSc (Hons) MRICS

Respondents: Mrs E Gray, Flat 1 (in person)
Miss H Sutton, Flat 2 (in person)
Mr & Mrs J Tillery, Flat 3 (not present)
Mr J Hennessey (in person)
& Mr L Grant, Flat 4 (not present)
Mr L Tebbutt, Flat 5 (not present)
Mrs A Banbury, Flat 6 (not present)

Date of Application: 14 March 2012

Date of Hearing: 13 April 2012

Date of this Decision: 19 April 2012

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Surveyor Chairman)
Mrs J K Morris (Lay Member)

DECISION

1. The Tribunal determines to dispense with all the S.20 consultation requirements in respect of certain of the qualifying works, the subject of this application namely:

2. **Emergency scaffolding erected on or about 8 February 2011 to the East elevation to respond to the urgent need to protect the pavement and the public from falling masonry.**

INTRODUCTION

3. This is an application by Mr Sutton and Mrs Tillery the freehold owners of this property, for dispensation of all or any of the S.20 consultation requirements in respect of qualifying works relating to the emergency erection of scaffolding in accordance with S.20ZA of the Landlord & Tenant Act 1985 (the Act).

THE LAW

4. The statutory provisions primarily relevant to this application are to be found in Sections 20 and 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.
5. 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.
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: an initial Notice of intention to carry out the works; a duty for the landlord to have regard to any comments received and to obtain estimates for the work from at least one unconnected contractor; and for the landlord to

advise the tenants with a statement of the amounts of the estimates received and make them available for inspection.

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 an undated and unsigned draft lease of Flat 1. It is understood that other leases are in a similar form.
10. Although the Tribunal had regard to the draft lease, little turned on its interpretation during the course of the representations made to it. There are covenants for the landlord to maintain, repair, decorate and renew all parts of the structure of the main building in good and substantial repair and in clean and proper order.
11. There were no matters raised by the parties in respect of the interpretation of the lease.

BACKGROUND

12. Following the application dated 14 March 2012 the Tribunal issued Directions on 26 March 2012 for the conduct of the case. The matter was listed to be dealt with on the fast track. The Applicant was to provide any relevant additional documents to the Tribunal at the hearing.
13. The Respondents that wished to contest the Application were Directed to attend the Hearing and bring with them any relevant documents.
14. Any Respondents who wished to agree to the Application were Directed to advise the Tribunal as soon as possible. The Tribunal did not receive any correspondence from the Respondents.

INSPECTION

15. In company with Ms Lewis, Mr Sutton and Mr Symmonds for the Applicant and Mrs Gray and Mr Hennessey as Respondent Lessees the Tribunal members inspected the exterior of the property from ground level. The interior was not inspected.
16. The property comprises a corner, end of terrace building located just off St Leonards seafront adjoining Warrior Square. It has a basement and five upper floors and is converted into, we believe, six self contained flats. The flats are approached from a common entrance and staircase from the return frontage to Warrior Square.
17. The exterior is rendered with decorative quoins and dressings. The roofs have parapets shielding the coverings from view. Extensive scaffolding has been erected to full height at the South East corner on the East elevation with a protective scaffolding tunnel projecting Northwards to the junction with Terrace Road. The exterior decorations to the woodwork are peeling and the rear fire escape staircase and some metal elements on the front and flank walls are badly corroded. The lower part of the rainwater downpipe on the East elevation is missing.
18. The decorative rendered/stone cornice at high level in is poor condition.

EVIDENCE

19. A Hearing took place at the Horntye Leisure Centre in Hastings commencing at 11:00 a.m.
20. The Applicant, as Directed, presented the Tribunal with a bundle containing some 180 documents. This included some documents including the lease which the Tribunal and the parties had previously seen but also Witness Statements, photographs and other paperwork which the Tribunal and the Respondents attending had not seen. Ms Lewis assured the Tribunal that not all the documents would be directly relevant. The Tribunal consulted with the Respondents present and with their consent proceeded with the Hearing. The Tribunal emphasised that if at any time either the members or

the Respondents felt disadvantaged by not having previously seen a document, time would be given to allow a proper consideration of it. As the hearing progressed it was not necessary for any adjournments in connection with the examination of documents.

21. The Tribunal took the evidence orally and had regard to documents referred to but did not take account of all the documents in the bundle.

The Applicant's Case

22. Ms Lewis called Mr Symmonds, a chartered building surveyor, and briefly Mr Sutton. In February 2011 the stone/rendered cornice at roof level developed a crack and masonry collapsed on to the pavement below. Mr Symmonds for the Applicant and representatives of Hastings Borough Council met on site urgently in view of the dangerous situation. Protective scaffolding was erected to a design to satisfy the Council and this was completed on the same day.
23. There was no time to carry out the usual S.20 consultation procedure and the Applicant is seeking dispensation for the protective scaffolding that had been erected quickly to avert the danger.
24. A Sec.20 consultation procedure had been started by the issue of a Notice of Intention to the Lessees on 17 February 2011. That Notice described the work as "Urgent repair/replacement of render to exterior of building and removal of external staircase". An Improvement Notice requiring work to be carried out at the property to avoid structural collapse had been issued by the Council on 29 October 2010. However it would seem that no action had been taken by the Applicant in response to this Notice until the actual collapse in February 2011.
25. The Applicant intends to use the scaffolding to carry out works of repair to the masonry and rendering and other work at the property and it is understood that a S.20 consultation procedure will be carried out in respect of this additional work.

The Respondents' Case

26. The Tribunal's Directions provided for the Respondents to make submissions at the Hearing if they wished to.
27. Initially the three Lessees in attendance at the hearing indicated their support for the application.
28. As the case progressed Mrs Gray expressed some concerns and she became increasingly worried about the procedure. The chairman explained the law and the Tribunal's jurisdiction. Mrs Gray also had an opportunity to question Mr Symmonds. A short adjournment was granted to enable Mrs Gray to discuss the situation with her fellow Lessee Mr Hennessey.
29. Mrs Gray was offered the opportunity to request an adjournment of proceedings so that she could consider the matter in more detail but on further consideration she decided to support the application for dispensation in respect of the emergency scaffolding.

CONSIDERATION

30. There is no doubt from the Tribunal's inspection and the detailed report received at the hearing that the cornice and rendering was in a dangerous state. This is further confirmed by the Improvement Notice served by the Council. The scaffolding already erected has relieved the immediate danger but further urgent work is needed. That further work is not the subject of this case but can be the subject of a full S.20 consultation process.
31. The Tribunal considered whether dispensation would cause significant prejudice to the leaseholders and determined that it would not. All lessees have been made aware of the urgent nature of the work by way of the S.20 Initial Notice, issued in February 2011. The emergency scaffolding itself is work which would otherwise have required the S.20 consultation process, as the cost chargeable to the service charge would have exceeded £250 per Lessee. However to delay the erection of the scaffolding, in order to allow a full consultation process, would have not prevented further falling masonry.

32. For these reasons dispensation only in respect of the urgent and emergency scaffolding is granted.
33. It must be clear that this Tribunal does not determine the reasonableness of any of the work or its cost, including the scaffolding, and the Applicant should take steps to keep any continuing cost under control.
34. 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 19 April 2012

[signed]

Brandon H R Simms FRICS MCI Arb
Chairman