



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CHI/00HP/LSC/2016/0068**

**Property** : **The Hermitage, 53 Hermitage Road,  
Parkstone, Dorset, BH14 0QG**

**Applicant** : **Tyrrel Investments Inc**

**Representative** : **Napier Management Services  
("Napier")**

**Respondent** : **The Leaseholders**

**Representative** : **-**

**Type of Application** : **Service Charges : Section 27A of the  
Landlord and Tenant Act 1985 ("the  
1985 Act")**

**Tribunal Members** : **Judge P R Boardman (Chairman) and  
Mr P Turner-Powell FRICS**

**Date and venue of  
Hearing** : **Decided on the papers**

**Date of Decision** : **13 September 2016**

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**DECISION**

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## Introduction

1. This application, dated 11 July 2016, is for the Tribunal to decide whether works for water ingress prevention and repair costing £44104.80 are the responsibility of the landlord under the leases, and whether the cost is a reasonable service charge expense under the terms of the leases
2. Attached to the application is a list of the names and addresses of the leaseholders of the nine flats
3. The Tribunal has decided the application on the papers before it, without an oral hearing, pursuant to rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”), and the Tribunal’s directions dated 25 July 2016 and 23 August 2016, no party having requested a hearing in the meantime
4. The Tribunal has decided that it is not necessary for the Tribunal to inspect the property in view of the nature of this application

## Documents

5. The documents before the Tribunal are as follows :
  - a. the application form
  - b. a letter dated 23 February 2016 from Napier to the leaseholder of Flat 1, with a “notice 1” under section 20 of the 1985 Act
  - c. a documents entitled “Tender Opening Minutes” stating that the following tenders had been opened on 3 May 2016 at Napier’s offices :
    - Greendale Construction Limited : £37671 plus VAT
    - InSync Property Group : declined to tender
    - John Dewhirst Builders Limited £33419 plus VAT
    - Prestige Builders Limited : £36590 plus VAT
  - d. the quotation dated 20 April 2016 from Greendale Construction Limited
  - e. a letter dated 17 May 2016 from Napier to the leaseholder of Flat 1, with a “notice 2” under section 20 of the 1985 Act
  - f. a document entitled “Summarised Tender Sheet”, setting out the tenders, stating a proposal to instruct John Dewhirst Builders Limited, and setting out the total cost of the works as follows :

John Dewhirst Builders Limited	33419.00
Surveyor/Contract Administrator	1735.00
Napier (section 20 fee)	<u>1600.00</u>

VAT @ 20%

36754.00

7350.80

44104.80

- g. a notice dated 17 May 2016 from Napier under section 20 of the 1985 Act entitled "Notice to Accompany Statement of Estimated in Relation to Proposed Works"
- h. the lease of Flat 5 dated 18 April 1988
- i. a schedule of works dated November 2015 prepared by Greenward Associates
- j. signed forms supporting the landlord's application for water ingress prevention and repair at a cost of £44104.80 from the leaseholders of Flats 2, 3, 7 and 8

### **The lease of Flat 5**

- 6. The only lease copied for the Tribunal is the lease of Flat 5. For the purposes of this decision the Tribunal has assumed that all the leases are in materially the same terms
- 7. The material provisions of the lease of Flat 5 are as follows :

#### ***Recitals***

**(1)** *In this Deed unless the context otherwise requires :-*

*(e) "The Reserved Property" means that part of the Property not included in the Flats.....*

#### ***Sixth Schedule***

##### ***Covenants by the lessee***

**19.** *The Lessee shall keep the Lessor indemnified from and against the share of all costs charges and expenses incurred by the Lessor.....in the maintenance repair and redecoration or replacement of the Reserved Property or of any other relevant expense incurred by the Lessor pursuant to the Lessor's obligations in the Seventh Schedule hereto.....*

**22.** *The Lessor shall be entitled to employ any reputable form of estate agents to manage the Property upon such terms as the Lessor shall think fit*

#### ***Seventh Schedule***

##### ***Covenants by the lessor***

**4.** *The Lessor shall keep the Reserved Property.....in a good and tenantable state of repair decoration and condition including the*

*renewal and replacement of all worn and damaged parts.....*

## **8. The Tribunal's findings**

9. The Tribunal makes the following findings
- a. the proposed works are those detailed in the schedule of works prepared by Greenward Associates
  - b. those works fall within the landlord's obligations under paragraph 4 of the seventh schedule to the lease
  - c. the leaseholders are obliged under paragraph 19 of the sixth schedule to the lease to pay a contribution to the reasonable costs incurred by the landlord in doing so
  - d. the proposed costs of £44104.80 are reasonable, in that :
    - the quotation from the chosen contractor, John Dewhirst Builders Limited, was the lowest quotation following a tendering process, and is, in any event, a reasonable figure for the works proposed
    - the proposed figure of £1735 plus VAT for "Surveyor/Contract Administrator" is a reasonable figure in that respect
    - the proposed figure of £1600 plus VAT for "Napier section 20 fee" is a reasonable additional figure in that respect
  - e. the consultation procedure undertaken on behalf of the landlord under section 20 of the 1985 conforms with that section and with the regulations made pursuant to that section
  - f. none of the leaseholders has notified the Tribunal of any dispute about the nature of the works, the reasonableness of the works or the cost of the works, or about the consultation procedure undertaken on behalf of the landlord under section 20 of the 1985 Act; indeed, and on the contrary, leaseholders from four of the nine flats have indicated their support to the proposals
  - g. having considered all the circumstances, the Tribunal finds that the proposed works are the responsibility of the landlord under the lease, and that it is reasonable for the proposed costs to be included in the service charges to be paid by the leaseholders

## **10. Appeals**

11. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case
12. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision
13. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying

with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal

14. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 13 September 2016

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Judge P R Boardman