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BIR/44UE/LDC/2006/0001

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE MIDLAND LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S20ZA OF THE LANDLORD AND TENANT ACT 1985

Property: **Flats 1 - 9, Seven House, Main Street, Tiddington, Stratford-Upon-Avon. Warwickshire CV37 7AN**

Applicant: Silhill Investments, represented by Pennycuick Collins, chartered surveyors

Respondents: Mrs P A M Fox (Flat 1)

National Farmers Union Mutual Insurance Society (Flats 2, 3, 4, 5, 6, 7, 8 , 9)

Heard: 27 January 2006 at Birmingham

Appearances:

Ms Sarah Breeze AIRPM, property manager
Ms Emma Wilkins BSc (Hons) assistant property manager and
Mr Brian Robinson BSc MRICS, all of Pennycuick Collins, chartered surveyors, the managing agents

No appearance by the leaseholders

Members of the leasehold valuation tribunal:

Lady Wilson
Mr J C Avery BSc FRICS
Miss B Granger

Date of the tribunal's decision: 27 January 2006

1 This is an application for a determination under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") that the consultation requirements contained in section 20 of the Act and in the Service Charges (Consultation Requirements) (England) Regulations 2003 should be dispensed with in relation to works which the landlord proposes to carry out.

2 The application, which is dated 6 January 2006, relates to the works required to seal a balcony serving the flat on the second floor of Seven House, which is a three story purpose built block of nine flats. All the flats are held on long leases. Previous temporary repairs to the balcony surface have failed and rainwater is now leaking into the two flats below and making them virtually uninhabitable.

3 The landlord's managing agents, Pennycuick Collins, have obtained a quotation from Hyflex Liquid Systems who are prepared to carry the work out for £6326.94 plus VAT

4 The managing agents had in the application indicated that the landlord would be content with a determination without an oral hearing under regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. The tribunal agreed that such a form of proceeding was appropriate and made directions on that basis, including a direction that the matter would be determined after not less than 28 days had elapsed as regulation 13(1)(a) requires. However, because the matter is urgent, the managing agents have asked to proceed by way of an oral hearing which, by regulation 14(4), may in exceptional circumstances be heard at short notice. Accordingly a hearing was arranged for 27 January 2006 after notice was given to the leaseholders.

5 The hearing was attended by Ms Emma Wilkins BSc (Hons), Ms Sarah Breeze AIRPM, property manager and Mr Brian Robinson BSc MRICS, all of Pennycuick Collins, chartered surveyors, the managing agents Neither of the leaseholders attended or sent written

representations. The managing agents' representatives produced a written report from Miss Wilkins, together with relevant emails and memoranda. They said that, although the surface of the balcony was demised with the second floor flat, the underlying structure was not and that they regarded the proposed works as within the landlord's repairing covenant and the reasonable cost as recoverable as a service charge. Mr Robinson explained that the proposed use of the Hyflex System involved a cold applied membrane over the existing concrete slabs covering the balcony. He said that he was familiar with the system, which he had found to be reliable and which would attract a ten year guarantee but might well protect the balcony for a longer period than that. He said that the complete recovering of the balcony would be likely to cost three or four times as much.

6. Section 20ZA of the Act provides:

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.

7. We are satisfied that it is reasonable to dispense with the consultation requirements. This is a genuine emergency and the landlord is acting responsibly in ensuring that the works are carried out urgently to prevent further damage to the structure of the building. In the circumstances we are satisfied that the order should be made.

8. This decision does not, of course, determine the reasonableness of and the respondents' liability to pay the costs when they are in due course placed upon the service charge.

9. We would add that, although this decision cannot fetter the discretion of a future tribunal

considering a similar application, it seems to us that, where an application under section 20ZA is unopposed, a landlord protects its position in relation to the recoverability of future service charges if, having quite properly issued an application under section 20ZA, it consents to a determination without an oral hearing on 28 days' notice and, if the work is clearly of extreme urgency, proceeds with it in the interim. Such a course has the advantage of saving the hearing fee and public money. If the tribunal, having received the application, has misgivings about the information provided, it can call for an oral hearing even if the application is unopposed by the leaseholders.

CHAIRMAN

DATE