

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
APPLICATIONS UNDER SECTION 27A(3) AND 20ZA OF THE LANDLORD
AND TENANT ACT 1985**

Property: Southall Court, Lady Margaret Road, Southall, Middlesex

Applicant: Southall Court (Residents) Limited (landlord)

Respondents: All the leaseholders of flats in Southall Court

Date heard: 23 July 2007

Appearances: Mr Peter Ward, leaseholder and director of the landlord company
Mr Alick Lawrence BSc (Hons) MRICS, of the Lawrence-Vacher
Partnership, chartered surveyors
for the applicant

Members of the leasehold valuation tribunal:

Lady Wilson
Mr D D Banfield FRICS
Mr T Sennett MA FCIEH

Date of the tribunal's decision: 24 July 2007

Background

1. These are applications by the landlord, Southall Court (Residents) Limited, to which the leaseholders of all of the 48 flats in Southall Court are respondents, under section 27A(3) and 20ZA of the Landlord and Tenant Act 1985 ("the Act"). The application under section 27A(3) is for a determination that, if costs are incurred for works to the roof of the north wing of Southall Court, a service charge will be payable for the costs, and for a determination of the persons by whom and to whom it will be payable, the amount which will be payable, the date at which it will be payable, and the manner in which it will be payable. The application under section 20ZA is for a determination to dispense with the consultation requirements in relation to the proposed works.

2. Southall Court is a block of flats built in 1936. The freehold is owned by a small number of the leaseholders and all the flats are held on long leases. There have been many proceedings in the courts and in the tribunal in relation to the affairs of the block, the most recent being a claim by 24 of the 48 leaseholders to acquire the right to manage the block under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 in which it was determined on 15 July 2007 that they were entitled to acquire the right to manage. The right has not yet taken effect.

3. The existing pitched, tile-covered roof of the block is the original roof which was installed when the block was built. It is in three sections, one over the north wing, one over the west wing and one over the south wing. The works which the landlord proposes to carry out are to re-roof the north wing of the block by stripping the existing tiles, flashings and battens, installing sarking felt, and re-tiling the roof. It is proposed that the work will be carried out by H Carolan Construction at a cost which is quoted as £40,530 plus VAT, together with the cost of scaffolding, which is likely to be in the region of £5,850 plus VAT, and supervision by the Lawrence-Vacher Partnership based on 7% of the cost of the works. The total cost is thus likely to be in the region of £60,000 plus contingencies.

4. By a decision dated 1 August 2002 a tribunal, having heard evidence from, among others, Mr A Fieldhouse BSc MRICS, then of the Lawrence-Vacher Partnership,

chartered surveyors, determined under section 19(2B) of the Act that the renewal of the roof, which the landlord then proposed to carry out, was unnecessary, but that a cost of up to £55,000 for the repair of the roof of the entire block and the replacement of roof insulation would be reasonable. In its decision (at page 156 of the bundle of documents) the tribunal said that it recognised that the roof was “approaching the end of its useful life and will need replacing before major failure occurs. The need for repairs will increase and eventually prove uneconomic”. It decided, however, that, with regular maintenance, the roof had “several years of useful life” but that the landlord “could propose replacement of the roof in say five to ten years”.

5. In a further decision dated 8 May 2006 a differently constituted tribunal (which included one member of the present tribunal) determined under section 27A of the Act, having heard evidence from, among others, Mr Alick Lawrence BSc (Hons) MRICS of the Lawrence-Vacher Partnership, again rejected the landlord’s case that the roof should be replaced. The tribunal determined (page 176 of the bundle) that although Mr Lawrence’s evidence to it that the roof should be replaced had been given in good faith, it could not be reconciled with his condition survey based on inspections carried out between October and December 2004 on the basis of which he had found no major failure of the roof covering at that time. The tribunal itself, from its inspection through binoculars, said that it could identify no major defects in the roof covering which justified its replacement (also at page 176) and recorded that Mr Lawrence had accepted that “the tiles could potentially last for 100 years” and that such defects as might exist in the tile covering could be dealt with by means other than wholesale recovering (page 177). The landlord sought permission to appeal to the Lands Tribunal from the tribunal’s refusal of permission for the recovering of the roof, but was refused permission, both by the tribunal and by the Lands Tribunal.

6. The tribunal which reached the decision summarised in the previous paragraph did, however, determine that it would be reasonable for a number of other works to proceed, provided that they were re-tendered in a manner compliant with the Service Charges (Consultation Requirements) (England) Regulations 2003. The permitted works were accordingly re-tendered and the tender of H Carolan Construction was accepted. It is not suggested that the tendering process did not comply with the Consultation Regulations. The works started in February 2007 and in the following

month scaffolding was erected to the inward facing frontages of the block, which include the south frontage of the north wing. The landlord says that close inspection of the roof from the scaffolding has shown that the north wing is in urgent need of immediate replacement and by this present application it asks that the cost of the works will be reasonably incurred and payable. It also asks for a determination that the landlord may raise the necessary funds by means of a demand for a contribution to the sinking fund, payable on demand. It further asks for a dispensation from the relevant consultation regulations.

7. In the morning of 23 July, in the presence of Mr Ward, the tribunal inspected the south-facing slope of the north wing from the scaffolding and, using binoculars, it inspected the north-facing slope from the ground. We also inspected from a stepladder the roof void over Flat 39 in the north wing. The hearing commenced at 1pm on that day and occupied the afternoon. Mr Ward represented the landlord and gave evidence, and called Mr Lawrence to present his written report and give evidence. Mr Raghbinder Singh Guraya had submitted written representations in the form of a statement made on behalf, he said, of all the leaseholders, and a written report dated 6 January 2006 from Mr S G Hands BSc MRICS of Simon Hands and Associates which had been before the tribunal which made the decision the relevant parts of which are summarised in paragraph 5 above. Mr Guraya said in his statement that he did not propose to attend the hearing but we took his statement and Mr Hands' report fully into account.

The application under section 27A

8. Mr Lawrence said that he had no doubt that the roof of the north wing now required wholesale replacement. He said that he had held the same opinion at the time of the tribunal hearing in 2006 but, having now been able from the scaffolding to inspect the roof at close quarters, he was more than ever convinced that the work was urgent and that further repair would be uneconomic. He said that, ideally, the roof covering of the entire block should be replaced, and not just that of the north wing, but that he had had been instructed to deal only with the most urgent works to the roof, which he considered to be the re-covering of the roof of the north wing which

was the only section to have no sarking felt. He said that the absence of sarking felt meant that there was no second line of defence if a tile slipped or was damaged. He produced photographs (at pages 94 – 97 of the bundle) showing how the tiles on the north wing had deteriorated, with degradation of the top surface, some perforations, and considerable debris which had accumulated in the gutters. The photographs also, he said, demonstrated significant differences in thickness between new and original tiles. He said that photograph 4 (page 94) showed that a hip-tile had slipped on the south-west corner of the north roof. He explained that it was difficult but not impossible to match new metric tiles with the original imperial tiles and he said that in order to achieve a close fit when patch repairs were carried out it was necessary to trim the tiles and to provide a lead soaker. He acknowledged that in 2004 he had considered that 80 per cent of the original tiles could be re-used, but his current opinion was that, over time and with the benefit of close inspection, all of them should be replaced. He said that he had been informed that damp penetration had taken place through the roof into Flats 29, 39 and 41 and he had himself inspected Flat 39, which is adjacent to Flats 29 and 41, and had observed significant damp penetration through its ceiling. He also said that he had observed receptacles in the roof voids over the north wing which he assumed were placed to collect rainwater. His opinion was that the point had been reached where replacement of the north roof was more economical than continued maintenance. Asked when, in his opinion, the remainder of the roof would require replacement he said that he believed that it might last a further five years but that he was satisfied that the recovering of the north roof could not be delayed for such a period.

9. Mr Lawrence said that in his opinion the quotation of H Carolan Construction for the necessary works was realistic and fair and that the standard of the other works which they were in the course of carrying out was good. He said that it would be cost-effective to use the existing scaffold to carry out the works to the roof because, if it had to be re-erected at a later date, the cost would be in the region of £22,000 to £25,000, whereas, if the scaffolding currently in place was retained for the roof works, the likely cost would be limited to a hire charge in the region of £390 per week plus VAT. He said that, on the assumption that recovering the roof would take approximately four weeks, and allowing for two weeks mobilisation and an

instruction by the end of July 2007, the cost of additional scaffolding hire would be £5850 (fifteen weeks at £390 per week) plus VAT.

10. Mr Ward said that he relied on Mr Lawrence's professional opinion. He asked us to direct that the landlord could raise the service charges required from the leaseholders by means of a demand for a contribution to a sinking fund in accordance with the leases, which should be payable on demand.

11. Mr Guraya in his written submissions said that there had been no report of any leakage of rainwater into the top floor flats in the north wing despite the recent exceptionally heavy rainfall. He reminded us that after two previous hearings in the past five years it had been determined that the roof did not require re-covering and said that it had not yet reached the end of its economic life. He did not consider that the savings which could be made from using the existing scaffold justified works which he considered to be premature.

12. Mr Hands' report, which was based on an inspection on 6 January 2006, related to the then proposed re-covering of the entire roof. In the report he said that he had observed "no serious degradation to the roof tiles ... [and] that there has only been approximately £500 worth of roof repairs carried out to the various properties ... over ... five years". He concluded that "The roofs are undoubtedly drawing to the end of their economic lives but have not reached this yet."

13. We have come to the conclusion that the time has now arrived when the roof of the north wing should be re-covered. At our inspection at roof level we were able to confirm the general degradation of the original tiles, many ill-fitting patch repairs, some chipped tiles, and tile debris in the newly installed guttering. We also saw that the weatherproofing properties of the roof covering had been compromised by the need to use new and old tiles. From our inspection of the roof void we saw that daylight was visible in numerous places on both pitches.

14. We recognise that this was not the conclusion of the tribunal which considered this matter in April and May 2006, of which one of the present tribunal was a member. However, that tribunal did not have the advantage of a close inspection

from the scaffold. Moreover, that tribunal relied on a report from Mr Lawrence which concluded that 80 per cent of the original tiles could be re-used, a conclusion from which, on the basis of the evidence currently available to him, he has now resiled. Furthermore, neither Mr Lawrence nor Mr Hands had at that time inspected the exterior of the roof at close quarters. We also bear in mind that there is no direct evidence of recent rainwater penetration through the roof despite heavy rainfall. Nevertheless we are now satisfied, both from the evidence of Mr Lawrence, which we accept, and from our inspection, that the time has come when the roof of the north wing now requires replacement. We are also satisfied from the evidence of Mr Lawrence considered in the light of our own knowledge on which, as an expert tribunal, we are entitled to rely, that the price quoted by H Carolan Construction, the price quoted for the scaffolding, and the proposed supervision fees of 7 per cent, are not unreasonable. We accordingly determine that if such costs are incurred, they will, if the standard of the work is adequate, be reasonably incurred and recoverable from the leaseholders in the proportions specified in their leases.

15. Mr Ward has asked us to determine that the landlord may raise the service charges required for these works by means of demands from each leaseholder for an appropriate contribution to a sinking fund, such sums to be payable on demand. There are three forms of lease current in the block, designated in previous proceedings as Types A, B and C. The Type A leases were varied by order of the tribunal dated 8 November 2006 so that they conformed with the Type B and C leases which are essentially in the same terms as each other. All three forms of lease provide that: "The landlord shall be entitled to retain such sum or sums from time to time as the managing Agents of the Landlord shall certify as desirable as a reasonable provision by way of a sinking fund for prospective service charges." They also provide that the landlord is required "to maintain and keep in good order repair [and] condition [the] roof".

16. We are aware that there have in the past been county court judgments for the recovery of debts to the sinking fund over and above the "maintenance charge" for which provision is made in the leases. We are also satisfied that it would be desirable for the landlord, in the interests of good management, to be able to recover in advance and in full the cost of works which are required to the block such as the works

presently proposed. Nevertheless we have come to the conclusion, on balance, that the sinking fund provisions in the leases entitle the landlord only to “retain” funds out of the “excess maintenance charge” calculated in accordance with the leases, which is based on past expenditure, and not to demand in advance a sum over and above the maintenance charge. We are therefore, regrettably, unable to make the order which the landlord seeks as to the “manner” in which the service charges for the works to the roof are to be paid.

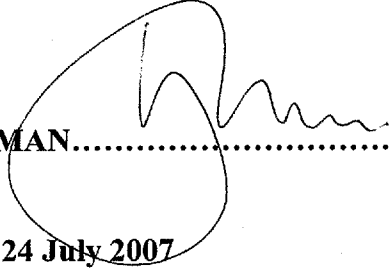
Section 20ZA

17. The landlord seeks dispensation under section 20ZA of the Act from the relevant consultation requirements which are contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003. The grounds for the application are that additional costs will be incurred if the scaffolding which is presently in place has to be taken down and re-erected at a later date or if it remains in place while the consultation process, which would be likely to take at least three months to carry out, takes place.

18. Mr Lawrence said that the roof works, together with the other works considered in the previous decision of the tribunal in May 2006, were the subject of a tender for which three contractors, including H Carolan Construction, provided tenders. Of the three, he said, H Carolan Construction provided the lowest tender overall, but the middle price, by a small margin, for the proposed works to the north roof. He said that following the tribunal’s previous decision which required the package to be re-tendered, the landlord invited the leaseholders represented by Mr Guraya to nominate contractors to tender for the works. He said that three contractors were nominated by Mr Guraya. Of these, he said, one, Zolee Construction, could not be traced, but he had by registered post sent invitations to tender to the two others, Carmelcrest and R F Refurbishment, but that both had declined to tender on the ground that the project was beyond their scope.

19. Mr Guraya invited us to reject the landlord’s application.

20. Section 20ZA provides that the tribunal may dispense with the relevant consultation requirements if it is satisfied that it is reasonable to do so. We are satisfied that it is reasonable in the circumstances to dispense with the requirements. The relevant circumstances are the additional cost which would be incurred if the works are delayed, and the fact that the leaseholders have been given a reasonable opportunity to nominate contractors for the works and have taken advantage of that opportunity. We are satisfied from Mr Lawrence's evidence that the price quoted by H Carolan Construction is reasonable, and that the leaseholders have not been prejudiced by any non-compliance there may have been with the relevant consultation regulations.

CHAIRMAN.....

DATE: 24 July 2007