

**CHI/21UC/LDC/2008/0007**

**DECISION OF THE LEASEHOLD VALUATION  
TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD  
AND TENANT ACT 1985: SECTION 20ZA, AS AMENDED**

Address: Kepplestone, Staveley Road, Eastbourne, BN20  
7JZ

Applicant: Kepplestone (Eastbourne) Ltd

Respondents: The Lessees

Application: 13 February 2008

Inspection: 19 March 2008

Hearing: 19 March 2008

Appearances:

**Landlord**

Mrs Pearce Company Secretary and Managing Agent, Stredder Pearce  
Mr Peach Heating Engineer, Hedley Visick Ltd  
Mr Courtnage MRICS MaPS Building Surveyor, Stredder Pearce

For the Applicant

**Tenants**

(1) Mr McDonald Chairman of the Residents Association and  
Leaseholder  
(2) Mrs Gilchrist Leaseholder (Flat 12)

For the Respondents

Members of the Tribunal: Mr I Mohabir LLB (Hons)  
Mr N Cleverton FRICS  
Mr B Simms FRICS MCI Arb

**IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**CHI/21UC/LDC/2008/0007**

**IN THE MATTER OF SECTION 20ZA OF THE LANDLORD & TENANT  
ACT 1985**

**AND IN THE MATTER OF KEPPLESTONE, STAVELELY ROAD,  
EASTBOURNE, BN20 7JZ**

**BETWEEN:**

**KEPPLESTONE (EASTBOURNE) LIMITED**

**Applicant**

**-and-**

**THE LESSEES**

**Respondents**

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**THE TRIBUNAL'S DECISION**

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**Introduction**

1. This is an application made by the Applicant pursuant to section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with the statutory consultation requirements imposed by section 20 of the Act in relation to the proposed replacement of the existing gas service pipe and associated meter. The estimated total cost of the proposed works is placed at £8,149.88.
2. The Applicant is the freeholder of the subject property. It is a Residents Management Company in which all of the leaseholders have a shareholding. The current managing agents instructed by the Applicants are Stredder Pearce. It appears that the day-to-day management duties are carried out by Mrs.

Pearce of Stredder Pearce who is also the Company Secretary of the Applicant.

3. The facts that give rise to this application are a matter of common ground. The subject property is a mansion block of flats constructed in 1938 and is comprised of 30 flats, all of which are subject to long leases. All of the flats benefit from communal space heating and hot water supplied by gas fired boilers.
4. In 1973 the three original oil fuelled boilers were replaced with boilers also fuelled by oil. In or about the early 1980s two of the boilers were adapted to run on gas, with the third boiler remaining fuelled by oil and used as a standby boiler. It seems that during the late 1980s this third boiler was also converted to run on gas.
5. During the Spring of 2005, one of the burners failed and was replaced with a modern unit. In June 2005, a report was commissioned from the retained heating engineers, Hedley Visick, with a view to possibly modernising the boiler installation. This report commented on the fact that the gas supply pipe originally installed in the 1980s to the boiler room could only properly supply gas to two boilers. A few months after this report, a second new burner was fitted to another boiler and in 2007 the remaining burner was also replaced. Hedley Visick noted that the new burners had to be set at their lowest setting to operate because of the limited gas pressure supply to the property. They advised that the gas provider should be contacted to review the existing gas supply pipe and meter to the property.
6. In October 2005, Stredder Pearce made the request for a review of the size and condition of the existing gas service supply pipe and meter. That request was made to Elf Business Energy who directed Stredder Pearce to Eco Project Management ("Eco"), it's appointed project managers. Eco provided a quotation in the sum of £925.72 plus VAT for the installation of a larger gas supply meter, meter base and housing. The quotation was accepted in June

2006 and the advance payment requested was paid so that installation could commence.

7. During the winter of 2006/07, problems were experienced with the burners "locking out", which resulted in them shutting down. These problems were remedied by Hedley Visick, who concluded that they had been caused by a drop in the gas supply pressure. It appears that the drop in pressure was as a result of the high demand caused by the prevailing inclement weather.
8. An installation date for the new meter was not provided until 13 July 2007. However, this did not proceed because on 18 July 2007 Eco withdrew their quotation for the new meter because they concluded that the gas supply pipe to the property was not sufficiently large enough to cope with the proposed demand.
9. Stredder Pearce then requested Eco to provide a quotation to install a larger gas supply pipe. This was received in January 2008 in the sum of £5,162.92 plus VAT. Shortly thereafter, a meeting was convened with the Board of Directors of the Applicants company to discuss this quotation. Subsequently, Stredder Pearce sought confirmation from Hedley Visick that the proposed works were necessary. In their letter of 29 January 2008, Hedley Visick, stated that they had verbally requested the manufacturers of the gas burners send an engineer to carry out a check, but in so doing, ran the risk of having the burners disconnected until such time as the gas pressure problem had been rectified. Stredder Pearce also sought further clarification from Eco that their estimated costs were accurate and that the gas supply pipe installed would provide adequate gas pressure during peak demand. This was confirmed to Stredder Pearce by e-mail dated 13 February 2008.
10. On 7 March 2008, Eco provided Stredder Pearce with amended to quotation for the installation of a new gas supply pipe, new meter and new meter housing in the sum of £7,408.87 including VAT. Additional costs for the installation of a new meter base (£350) and the project fees of Stredder Pearce (£391.01 including VAT) brought the total cost of the proposed works to

£8,149.88, thereby requiring the Applicant to consult with the lessees in accordance with section 20 of the Act. However, it brought this application on the basis that it was unable to obtain a second estimate for the proposed works because no other company apart from Eco is authorised to carry out work on Southern Gas Network infrastructure.

### **Inspection**

11. The Tribunal inspected the boiler room and location of the meter housing in the subject property on 19 March 2008. The subject property is a complex of three mansion style blocks, two of four storeys and one of three built of brick under interlocking tiled roofs. The blocks were constructed in 1938 and the front block has uninterrupted sea views.

### **Decision**

12. The hearing in this matter also took place on 19 March 2008. The Applicant was represented by Mrs. Pearce both as its Company Secretary and managing agent. Also in attendance was Mr. Courtnage, the Senior Building Surveyor employed by Stredder Pearce and Mr. Peach of Hedley Visick, heating engineers. The lessees were in effect represented by McDonald, the Chairman of the Residents Association. Mrs. Gilchrist, the lessee of Flats 12, also attended the hearing as an observer.

13. Mrs. Pearce explained that both the application and relevant supporting documentation had been personally served on all of the lessees on 10 March 2008 and no objections have been received from any of them. Indeed, a number of the leaseholders had confirmed to her that the proposed works were necessary. The problems encountered with the boilers had been discussed regularly at the annual general meetings and annual residents association meeting. This was confirmed by Mr. McDonald, as Chairman of the Residents Association. He also confirmed the historic problems encountered with the boilers based on a contemporaneous diary kept by the caretaker.

14. The Tribunal also heard from Mr. Peach of Hedley Visick, the heating engineers. He effectively confirmed the advice given to Stredder Pearce of the

necessity of having the gas supply pipe replaced to prevent the drop in pressure in the gas supply to the burners in the boilers. He also confirmed that the quotation provided by Eco was reasonable for the proposed works based on the comparative cost of other similar work carried out by his firm.

15. Mr. Courtnage confirmed that the gas infrastructure was owned by Southern Gas Network who had sub-contracted all project management of any work to its infrastructure to Eco. They in turn would obtain tenders for this type of work from a number of authorised contractors. It was not the case that the Applicant or Stredder Pearce could obtain alternative estimates from other contractors because they were not authorised by Southern Gas Network to carry out this work. Mr. Courtnage explained that Stredder Pearce was not privy to this tendering process.
  
16. The Tribunal granted the application to dispense with the consultation requirements imposed by section 20 of the Act in relation to the proposed works. It did so mainly for the following reasons:
  - (a) that he would be impossible for the Applicant to obtain a second estimate for the proposed works because the gas infrastructure was only owned by Southern Gas Network. Therefore, only it could provide an estimate and the proposed works could only be carried out by one of its authorised contractors.
  - (b) that all the leaseholders are in fact shareholders in the Applicant company and had been informed of the necessity and estimated cost of the proposed works.
  - (c) that no objections had been received from any of the lessees at all.
  - (d) that not to grant the application would lead to the absurd result the Applicant never being able to comply with the consultation requirements imposed by section 20 and, therefore, not being able to carry out the proposed works without being financially penalised when there was unanimous tenant support. Indeed, this was confirmed to the

Tribunal by Mr. McDonald, the Chairman of the Residents Association.

(e) that the Tribunal was told the estimated cost of the proposed works was reasonable in any event.

17. It should be noted that, in granting this application, the Tribunal does not make a finding that either the estimated or actual costs are reasonable although it heard evidence to this effect. The Tribunal's jurisdiction in this application is limited to the dispensation of the consultation requirements imposed by section 20 of the Act and nothing else. None of the lessees are thereby prevented from subsequently bringing an application under section 27A of the Act should they consider the estimated or actual costs incurred in relation to the proposed works to be unreasonable.

Dated the 3 day of April 2008

CHAIRMAN.....*I Mohabir*.....  
Mr. I. Mohabir LLB (Hons)