

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

CASE NO: CHI/00HB/LDC/2009/0009

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL IN THE MATTER OF AN APPLICATION UNDER SECTION 20ZA OF THE LANDLORD & TENANT ACT 1985

Property: Royal Parade, 2-7 Elmdale Road, Bristol BS8 1SY

Applicant: **ELMDALE MANAGEMENT LIMITED**

Respondent: **As set out in the attached list**

Represented by: Mr. David Bird, Solicitor, of Veale Wasbrough of Bristol

Also in Attendance: Dr Karen Phillips for the Applicant
Sarah Welby, a leaseholder at the Property
Anne-Marie Curran, a leaseholder at the Property and her husband John Curran

Date of Application: 31st March, 2009

Date of Directions: 14th April, 2009

Date of Inspection: 26th May, 2009

Date of Hearing: 26th May, 2009

Venue: Bristol Appeals Service, Vintry House, Wine Street, Bristol BS1 2BP

Members of the Tribunal: Mr. T. D. George (Lawyer Chairman)
Mr. S. Hodges, F.R.I.C.S. (Valuer Member)
Mr. M. R. Jenkinson, (Lay Member)

Date of Tribunal Decision: 26th May, 2009

DECISION:**Introduction:**

The Application considered by the Tribunal was for the dispensation of all of the Consultation requirements contained in Section 20 of the Landlord & Tenant Act, 1985 and in the Service Charges (Consultation Requirements) (England) Regulations 2003.

DETERMINATION

The Tribunal determines, under Section 20ZA of the Landlord & Tenant Act 1985 that all the consultation requirements contained in Section 20 of the Landlord & Tenant Act 1985 and in the Service Charges (Consultation Requirements) (England) Regulations 2003 be dispensed with in respect of the qualifying works set out in the Design Specification and Programme Proposal dated August 2008 ("The Proposal") prepared by 3. SIXTY REAL ESTATE with the exception of the preparation and redecoration of upper floor timber windows as detailed in Sections 3.13 to 3.18 inclusive of the Proposal.

REASONS.**Background to the Application**

1. In January 2008, a piece of masonry fell from the Property injuring a passer-by on the Queens Road side of the Property. Queens Road is a major public thoroughfare. Immediately following the accident, Legal & General, the head landlord of the Property, made the Property safe without reference to the Applicant. The Applicant is the owner of a long leasehold interest in the Property, the Landlord being Legal and General. The Applicant is the direct landlord of the leaseholders of the individual flats. The Applicant is owned by the leaseholders and is set up to manage the Property.
2. Legal and General obtained a structural report dated 3 March 2008 which was produced at the Hearing. It was prepared by Jenkins and Potter and was a limited inspection of the front elevation of the Property. The inspection took place on 10 February 2008. The Property is described as being a four-storey building originally constructed in the late 19th

century/early 20th century and is terraced with adjacent properties. The building is finished with a mansard roof which houses the fourth storey. The front elevation is clad in Bath stone with casement windows at second and third floor levels, sash windows at first floor level, all at regular and similar centres and contiguous arched openings at ground floor level. At the west end of the Property a short balcony projects from the first floor which is terraced with a similar feature on the adjacent property.

3. This Report revealed certain building issues. At one window location at the extreme west end of the building, the pad-stone was loose. It had lifted by approximately 20 mm to form a gap below and was slightly displaced to one side. It was removed, to prevent it from falling and so it could be re-fixed later. At second and third floor levels at the east end of the elevation, the stonework is restrained and tied to the building by two pattress plates and wall ties. At third floor level, the top half of the pattress plate was originally covered by a stone cornice. The pattress plate, wall tie nut, etc. are of mild steel. The painting system used was inadequate and had failed, allowing the mild steel of the whole assembly to corrode. Expansive corrosion of the primed plate behind the cornice has cracked the mortar and forced a short length of the stonework, consistent with the width of the plate, from the building. This is the section that fell from the building to the footpath below on 2 January 2008. A small amount of loose backing mortar surrounding the exposed top half of the pattress plate was removed, leaving only sound stonework. There is a general comment that in the vicinity of the pattress plate, the cornice is not well constructed. Insufficient consideration seems to have been given to its future behaviour. Only mortar bedding and backing have been used to attach the cornice to the pattress plate which itself has been inadequately protected against corrosion. There is no evidence of mortar on the face of the pattress plate and there is no support for the cornice from below. Good practice would have required a more substantial and secure fixing than that provided. The balcony at the west end of the building is in poor condition. The open stonework parapet has suffered severe weathering and erosion and, as a result, its surface is loose and friable. The first floor windows have semi-circular arch lintels. The side reveals have a pilaster

base and an ornately carved feature at the springing point of the arches. This feature is occasionally in poor condition. The deep texture of this carved feature has retained rainwater which has frozen in sub-zero conditions and caused pieces of stone to crack and de-bond. There was evidence of where this has already occurred and where it will occur as ongoing deterioration in the future. None of the cracked stonework of this feature was loose, but will certainly become so. In conclusion the Report says that the stonework to the front elevation is in reasonable condition with little evidence of significant movement or cracking. However some areas of the surfaces have become friable and loose to the extent that fine particles of stone will routinely be shed from the building. This did not require immediate attention. The stonework should be inspected annually. Large pieces of loose material should be removed by tapping and prising. The exposed parapet of the first floor balcony may require more regular treatment. Ultimately the more severely weathered and eroded stonework, particularly the dormer windows, the balcony parapet and the carved features at third floor level and at the heads of the first floor window reveals, will require repair or replacement. The stone cornice at the point that the third floor pargett plate has corroded should be replaced. The loose padstone to the head of the dormer window at the extreme west end of the building should be re-fixed.

4. The Applicant obtained a copy of the above mentioned Report on 9 April 2008. The Applicant endeavoured to obtain further information from Legal & General regarding works required to the Property and respective liabilities between Legal & General and the Applicant to carry out any works.
5. In an email dated 2 May 2008 Legal & General advised that it was to review the respective repair liabilities of Legal & General and the Applicant and would respond with some information. Legal & General confirmed that their Chartered Surveyor had advised that there were no immediate health and safety issues arising at the moment.
6. On 4 July 2008 the Applicant received a letter from the Surveyors acting for Legal & General, King Sturge, stating that the Applicant would wish to undertake such remedial

works recommended by Jenkins & Potter as was the Applicant's responsibility under the Lease dated 6 July 2004 (as varied by the Deed dated 29 July 2005).

7. The Applicant was unaware of the Deed dated 29 July 2005 and referred the effect of it to its Solicitors, Veale Wasbrough. As a result 3 SIXTY REAL ESTATE was instructed to inspect the Property to determine whether or not the areas requiring attention on the Queens Road elevation of the Property would be considered only as cladding or if it had structural properties. The result was that it was cladding and, therefore, the Applicant's responsibility.
8. On 5 August 2008, 3 SIXTY REAL ESTATE was instructed to make an inspection of the Queens Road elevation of the Property. This was duly undertaken during August 2008. This not only dealt with the cladding issue, but also detailed work that needed to be carried out, some urgently. This is detailed in the email dated 1 September 2008 which was produced at the Hearing.
9. Following two meetings of the directors of the Applicant on or about the first and ninth of September 2008, and completion of the final Specification and Contract documents and confirmation of the tender returned, a letter was sent to all leaseholders drawing attention to the urgency of the work and instructions were given by the Applicant on 21 September 2008 to 3 SIXTY REAL ESTATE for the works to the Property to commence.

THE LAW.

10. The relevant law is to be found in Section 20ZA of the Housing Act 1985 which provides so far as is relevant to the Application, as follows:
 - (1) 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 qualifying works or qualifying long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
 - (2) In Section 20 and this Section – "qualifying works" means works on a building or other premises.....

Section 20 of the Landlord & Tenant Act 1985 contains detailed provisions for the limitation of Service Charges, the obtaining of estimates and consultation with leaseholders. The Consultation provisions apply where the contribution which each leaseholder has to pay towards the cost of the qualifying works by way of Service Charge exceeds £250.

THE HEARING: THE APPLICANT'S CASE:

11. Mr. David Bird said that the Applicant was applying to the Tribunal to dispense with the requirements contained in S.20 of the Housing Act 1985. He referred to an accident that had occurred in Queens Road in January 2008, when some masonry fell from the Property causing injury to a passer-by. Legal & General are the Owners of the Property. A Report on the Property was made by Surveyors instructed by Legal & General. The Applicant was, in due course, made aware of the contents of this Report. At the beginning of August 2008, the Applicant became aware of a Deed of Variation dated 29 July 2005. This had not, apparently been handed over to Dr. Karen Phillips by the previous managing agents of the Property. Considerable time had passed since the January and the August. 3 SIXTY REAL ESTATE was instructed by the Applicant at the beginning of August 2008 to give a view about the cladding on the Queens Road elevation of the Property as to whether it formed part of the structure of the Property or not. 3 SIXTY REAL ESTATE carried out the inspection in early August 2008. At the beginning of September a Report on the full inspection of the Queens Road elevation of the Property was discussed by the directors of the Applicant. Certain questions were raised by the directors and replies were given. The works suggested were urgent in nature. A letter dated 17 September 2008 was sent to each of the leaseholders of the Property by the Applicant. In summary, the letter gave warning of the possibility of a levy to cover the cost of repairs to the Queens Road elevation of the Property. It referred to the falling masonry incident, also to the Surveyor's Report that urgent repairs were required to stabilise the stonework. The estimated cost was sixty thousand pounds.

Mr. Bird said the total cost turned out to be about fifty three thousand pounds (£53,000.00) including value added tax. There are eighty eight flats, all of which have Service Charges under their Leases. This means that the two hundred and fifty pounds (£250) threshold for consultation purposes under S.20 of the Housing Act 1985 is met, resulting in those requirements coming into play. There may be a Zurich Insurance Company payment of twenty one thousand pounds (£21,000) approximately to go against this figure in due course.

Mr. Bird said that if the consultation provisions had been implemented, at least sixty days would be added to the delay in getting the urgent works finished. They would not be able to start until that period had expired.

Mr. Bird added that the quotation dated 4 September 2008 is the one that was accepted. The letter containing the quotation states that the one recommended is the most competitive. The total amount is forty one thousand seven hundred and sixty nine pounds (41,769.00) plus value added tax. The redecoration of the windows is in the sum of Five thousand five hundred and sixty pounds (£5,560.00).

Mr. Bird mentioned that winter was approaching and this is all outside work. Further masonry might also fall. King Sturge, appointed Surveyors, took down a piece of broken masonry as did 3 SIXTY REAL ESTATE. Litigation could well follow if other masonry did fall. This work is specialist work. A cherry picker had to be used to carry out the inspection. Queens Road had to be closed and the Council would only allow that at 6 am on Sunday mornings. There would be too many problems for individual leaseholders to select contractors. He said that the directors of the Applicant are also leaseholders.

In reply to questions from the Tribunal Mr. Bird said that the Zurich policy was the ten year warranty policy on the building works. This was confirmed by Dr. Phillips. She said the negotiations over the twenty one thousand five hundred pounds (£21,500) offer were continuing. Dr. Phillips also confirmed that 3 SIXTY REAL ESTATE gave the details of the work to be carried out to the contractors who quoted. There are not details of any other quotations or of the other quotation mentioned in the letter from 3 SIXTY REAL ESTATE.

12. Dr. Karen Phillips said that she acts for the Applicant and undertakes the Managing agent's role for the Applicants. She confirmed that there are eighty eight flats let under long leases to the Respondents. A typical lease was produced to the Tribunal. It contains the usual Service Charge provisions and is very detailed in its form as would be expected. Dr. Phillips reports to a board of directors of the Applicant who are themselves long leaseholders.

Dr. Phillips related the incident about the injury to a passer-by from falling masonry in January 2008. Legal & General made the Property safe and did not consult the Applicant about that.

Dr. Phillips referred to the first report on the Property undertaken by Jenkins and Potter, consulting engineers. After a request to Legal & General a copy of that Report was sent to her on the 9 April 2008. In her view, the Report concluded that the stonework was in reasonable condition but certain areas would require attention in the future, but were not urgent.

Dr. Phillips said that in an email dated 2 May, 2008, Legal & General advised that it was to review the respective lease liabilities of Legal & General and the Applicant and would revert with information. Legal & General also confirmed that there were no immediate health and safety issues.

On 4 July 2008 the Applicant received a letter from the Legal & General Surveyor asking the Applicant to carry out works to the Queens Road elevation of the Property. There was mention in that letter of a Deed of Variation dated 29 July 2005. Dr. Phillips said she had no knowledge of such a Deed. Veale Wasbrough, Solicitors, were instructed to confirm the position regarding the liability for any works to the Property. On 1 August 2008 the Solicitors obtained a copy of the Deed of Variation from the Land Registry. The Solicitors reported that the Deed of Variation contained wording making the exterior cladding of the Property within the property demised to the Applicant.

Dr. Phillips added that the Solicitors advised that instructions should be given to 3 SIXTY REAL ESTATE to give a view on the issue whether the areas requiring attention on the

Queens Road elevation would be considered only as cladding or if it had some structural stability properties. 3 SIXTY REAL ESTATE attended the Property on 5 August and in due course confirmed that the stonework and patress plate of the Queens Road elevation had no bearing on the structural stability of the Property and, as such, would be considered to be the responsibility of the Applicant in the light of the Deed of Variation. Instructions were given to 3 SIXTY REAL ESTATE to carry out a full survey of the Property on behalf of the Applicant. The full survey took a few weeks to arrange due to the difficulty in reaching the high levels of the Property and the fact that Queens Road is a major thoroughfare for both pedestrians and traffic. A cherry picker had to be used and road closures put in place which involved a licence from the Council. In addition, the Council would only issue the Licence to close the road in the early hours of a Sunday morning. The full survey was carried out on Sunday 31 August 2008 and the subsequent report received on 2 September 2008. The Report set out nine immediate concerns. These are in summary

- Pinning coping stones of the top floor dormer windows
- Stabilising the same dormers
- Stabilising a number of the heads to the windows throughout the mid-floor front elevation
- Pinning back and repointing a number of jamb details which have fractured
- Cleaning and brushing back the cornice work, string details and the like to remove the loose and un-keyed section
- Inspecting and treating the balcony detail which is particularly weathered and soft
- Treating the ties to the right hand side of the elevation to prevent further corrosion
- Cross-pinning above and below the corroded tie from the side of the Property across the front elevation covering this top corner only. This is described as a more sinister defect
- Repair the section of wall on the side elevation above the roof line of the Post Office which has heavily fractured and blown.

On 4 September 3 SIXTY REAL ESTATE reported the result of obtaining the quotation for the works from two contractors. They recommended the lowest quote of forty one thousand seven hundred and sixty nine pounds (£41,769) plus VAT. The redecoration cost is five thousand five hundred and sixty pounds (£5,560) within the total figure.

There then followed the meetings of the directors of the Applicant and some further clarification of the works was sought from 3 SIXTY REAL ESTATE. Satisfactory replies were received culminating in an email dated 16 September 2008 which stated that in particular the top right hand corner of the front elevation was of grave concern in its current condition.

Dr. Phillips said she considered that the work had to start urgently in view of the Surveyor's advice and the approach of winter. The painting of the windows at the price of six thousand three hundred and ninety four pounds including VAT (£6,394.00) will be met from the reserve fund and not be part of the repair works. She said that the cost of the repair works for the qualifying works is expected to be in the region of forty six thousand seven hundred pounds including VAT (£46,700.00). Dr. Phillips added that a full consultation under S.20 of the Landlord & Tenant Act 1985 (which would have required three to four months) was not possible due to the immediate risk of leaving the Property in its current state. Therefore she considered that dispensation under S.20ZA of the Landlord & Tenant Act 1985 would be sought after the works had been carried out. Dr. Phillips wrote to the Leaseholders on 17 September 2008 outlining the nature of the works in brief terms and giving the explanation about the falling masonry incident and the urgency of the works: Also giving a rough estimate of Sixty thousand pounds (£60,000.00) for the cost of the works.

On behalf of the Applicant, Dr. Phillips seeks dispensation under S.20ZA of the Landlord & Tenant Act 1985 in respect of the repair works described in Design, Specification and Programme Proposal of 3 SIXTY REAL ESTATE dated August 2008 excluding the preparation and redecoration of the upper floor timber windows as detailed in Sections 3.13 and 3.18 inclusive of the Proposal.

THE RESPONDENTS CASE

13. It is significant and unusual that the Respondents are in complete agreement with the Applicant. There were no objections. Indeed nine of them have written letters of consent to the Application. Furthermore one of them Mrs. Anne-Marie Curran, attended the Hearing having also sent a letter of consent. Her husband Mr. John Curran said that if a Section 20 Notice had been sent, Mrs. Curran would have agreed with it. His only observation was the length of time the works actually took and the inconvenience caused in Queens Road. Sarah Welby, a leaseholder who had consented in writing to the Application, also took the trouble to attend the Hearing.

FINDINGS:

14. There are no objections to the Application from any of the eighty eight leaseholders. Nine of them have consented in writing and two of them attended the Hearing.

The January 2008 report by Jenkins & Potter, Consulting Engineers, contains the description of important defects in the Property, but did not consider they required urgent attention. The Report followed a very serious incident when a piece of stonework fell from the third floor of the Property at the east end, injuring a passer-by. The Report by 3 SIXTY REAL ESTATE dated 1 September 2008 and subsequent correspondence contained further repair requirements and stressed the urgency of the required works. Indeed the email dated 16 September 2008 indicated that the top right hand corner of the front elevation of the Property was of grave concern in its current condition. The Applicant had also received a notice dated 4 July 2008 stating that the Applicant will wish to consider undertaking such other remedial works recommended by Jenkins & Potter in their Report, for which the Applicant is responsible pursuant to the terms of the lease from Legal and General.

CONCLUSION

15. The Tribunal is satisfied that there was great urgency in getting the repairs to the Property completed. The January 2008 incident was very serious. The two reports described important defects in the Property which required prompt action. The Applicant could not risk a further fall of masonry. The Applicant was under notice from Legal & General to execute repairs. Winter was approaching. If the consultation requirements had been followed, it would have added some three months to the time scale to get the works completed. That would have been unacceptable. The long leaseholders have not objected to the application and, indeed, nine have actively consented.

For the reasons set out, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 in respect of the qualifying works already described in these Reasons.

By way of comment the Tribunal feels that the Applicant and the Respondents should have been informed who the two bidding contractors were in the Report by 3 SIXTY REAL ESTATE dated 5 September 2008 together with details of the two tender bids received. Also it would have been helpful if the letter dated 17 September 2008 warning the long leaseholders of a possible levy had mentioned that the consultation provisions of Section 20 of the Landlord & Tenant Act 1985 would not be followed.

The Tribunal would also mention that it is open to the Respondents to make an application to the Tribunal under S. 27A of the Landlord & Tenant Act 1985 which relates to the amount and payability of Service Charges.

DATED this *Twenty-fourth* day of *June* 2009

CHAIRMAN of the Tribunal

T. D. George

T. D. GEORGE

A Member of the Southern Rent Assessment Panel
and the Leasehold Valuation Tribunal
appointed by the Lord Chancellor

DATED

2009

DECISION OF THE LEASEHOLD
VALUATION TRIBUNAL
ON AN APPLICATION UNDER
S.20ZA OF THE LANDLORD &
TENANT ACT 1985

List of respondents

Ms Margaret Dullah Lau
Ms Sophia Michael
Mr & Mrs Barrett
Mr Malcolm Hepworth
Mr & Mrs Hartcliff
Mr & Mrs Al-Hashimi
Mr I Onuora
Dr Roba Khumdkar
Ms Clarissa Box
Mr D Britton
The Trustees of the Kerry Michael 2002 Children's Trust
Ms Hazel Hardy
Redland Housing Association Ltd
Mr & Mrs Curran
Ms Amanda Antonius
Mr Nicholas Hale
Ms Louise Cummings
Mr Raymond Hogan
P J & L L Owen
Mr & Mrs Lock
Mr & Mrs Bell
Mr Richard Bennett
Ms G Bhabra
Mr & Mrs Smart
Mr Christopher Worle
Mr & Mrs Healy
Mr John Katsouris
Ms Kingston
Mr & Mrs Bennett
J E Rincon Saucedo & D F Rincon Santana
Mr Angus J McFadyen
Mr & Mrs Jonna
Mrs A Demetriou
Mrs Mary McHugh
Mr N Skelton
Mr J Arnold
Mr Joylan Woodard
Mr G Bultitude
Mr Moon
Dr Aditi Desai
Mr A G Al-Jibouri
P Varanyuwatana
Ms Linda Riley
Mr T King
Ms Sarah Niven
Ms N Evans
Mr Jason Hunt
J E Somerscales

Mr Ding
Ms Sarah Elizabeth Welby
Mr & Mrs Gemski
Mr Christian Bamber
Kwok Kee Lau
Ms Alice Ward
Mr I Case
Ms A Green
Heard Investments Limited
Mt Terrence Hayes
Mr Nicholas Owen
Ms Michelle Michael
Ms C M Field
Mr Nicholas Church
Enjoo Jang
Mr Andrew Buchanan
Dr S Ledwidge
Mrs J Denham
Mr Marcus Newland
Mr & Mrs Parsons
Ms Carol Penny
Ms Catherine Slack
Ms G Reynard
Mr & Mrs Ahmed
Mr & Mrs Wyatt
Mr & Mrs Reina
Douet House Limited
Mr Brian Glasson
Mr & Mrs Birse
Ms R Storer
Mr Ian Johnson
Express Contract Drying Ltd