

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00HN/LDC/2009/0029

REASONS

Application : Section 20ZA of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

Applicant/Landlord : Stisan Investments Limited

Respondent/Leaseholders : Mr & Mrs P M Wickson (Flats 5 and 7), Mr D Jenner (Flat 6), and Mr J K Hammoud (Flat 8)

Building : Harewood Court, 2a Harewood Avenue, Bournemouth, Dorset, BH7 6NQ

Flats : The residential Flats in the Building

Date of Application : 9 September 2009

Date of Hearing : 23 September 2009

Venue : The Bay View Room, Royal Bath Hotel, Bath Road, Bournemouth, BH1 2EW

Appearance on behalf of the Applicant/Landlord : Mr P R Stewart MBIFM MIRPM, of Goadsby

Appearance on behalf of the Respondent/Leaseholders : Mr Wickson (on behalf of himself and Mrs Wickson as leaseholders of Flats 5 and 7, there being no attendance or representation by or on behalf of the other Respondent/Leaseholders)

Members of the Leasehold Valuation Tribunal : Mr P R Boardman JP MA LLB (Chairman), Mr J S McAllister FRICS, and Mrs J E S Herrington

Date of Tribunal’s Reasons : 23 September 2009

The Application

1. The application was dated the 9 September 2009. It was made under section 20ZA of the 1985 Act, namely for the Tribunal to determine whether it was reasonable to dispense with the consultation requirements referred to in section 20 of the 1985 Act, and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”)
2. The Applicant/Landlord stated that the application was urgent because of the serious nature of the water ingress into Flats 5 and 7. The Applicant/Landlord referred to photographs attached to the application
3. The Applicant/Landlord stated that the proposed works involved the flat roof replacement. A price had been obtained, but no start date had been organised pending the result of the application
4. In relation to consultation, the Applicant/Landlord referred to papers from 2004. Unfortunately only two of seven, including commercial, since wished to renew the roof covering. The Applicant/Landlord referred to papers from 2009 about the need to repair again. All seven parties had just paid the Applicant/Landlord £63.25 each for another round of repairs
5. The Applicant/Landlord was seeking dispensation from the consultation requirements because it was inappropriate to repair only, and water ingress was so bad that the Applicant/Landlord could not afford the time delay following the Landlord and Tenants Act notification procedure

Photographs

6. Attached to the application form were three photographs with the caption “Flat 7, 2a Harewood Avenue, Boscombe - Pat Wickson's photos”

Other documents attached to the application

7. Other documents were :
 - a. an estimate from Henley’s Building and Maintenance Ltd dated the 4 September 2009 in the sum of £11,925 plus VAT for the following work to the flat roof of the Building:

To erect scaffolding. Take off chippings, 4x2 hard edge diameter. Lay 50 mm insulation board and 3 no. layers of high performance felt. 15 year guarantee on completion. To fence off secured area for skip, storing of materials, site toilet and rubbish chute for scaffold. We have allowed a provisional sum of £1,000 plus VAT within our price for any timber repairs required
 - b. a letter from Goadsby dated the 23 June 2009 addressed to all tenants at the Building,

stating that following further water ingress from the flat roof to the Building the Applicant/Landlord had decided to instruct Henley's at a cost of £385 plus VAT to apply cold tar to the cracks to the flat roof, that this was a further repair to the roof which it was hoped would prevent further water ingress into Flats 5 and 7, and requesting a cheque for a contribution towards the cost that once all sums were cleared an order would be given to Henley's for repairs to be carried out

- c. a manuscript note dated the 22 June 2009 with the address of the Building as the heading, with a total of £442.75 (£385 plus VAT £57.75), and with contributions by each of the Respondent/Leaseholders of one seventh i.e. £63.25
- d. a letter from Goadsby to each of the Respondent/Leaseholders dated the 26 January 2004 referring to a previous letter of 12 January 2004 and the ongoing issue of repair/renewal of the flat roof, stating that having consulted with all contributing parties the Applicant/Landlord had accepted a democratic view to repair the roof, even though the Applicant/Landlord could have insisted that renewal be carried out, but there were only two parties at that stage prepared to go along with that solution, pointing out that it was the view of Goadsby and the Applicant/Landlord that the long-term problem would have been better served by renewing the roof and that there was no guarantee that the repair for £290 plus VAT would solve the problem, and stating that a copy of the letter was being given to the contractor, Henley and Smith, so that they could programme the works, and that in the next few days each of the Respondent/Leaseholders would receive their demand for a contribution of £48.68
- e. a file note by Goadsby dated the 20 January 2004 summarising the responses to a letter of 12 January 2004, namely that 5/7 of the contributing parties wished to repair the roof, although Mr Hammoud and Mr Jenner wished to renew

Statutory provisions

8. Section 20 of the 1985 Act provides as follows :

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying

long term agreement—

*(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.*

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

*(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.*

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined

9. The material parts of the 2003 Regulations are :

Reg. 2 (1) In these Regulations-

"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice

Reg. 6

For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250

Schedule 4 Part 2

Post Office

Para 8

(1) The landlord shall give notice in writing of his intention to carry out qualifying works-

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall-

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be

inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify- *(i) the address to which such observations may be sent;*
 (ii) that they must be delivered within the relevant period;

and

(iii) the date on which the relevant period ends.

Para 11

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate-

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons;

or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate-

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)-

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out-

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(10) The landlord shall, by notice in writing to each tenant and the association (if

any)-

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify- (i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

Documents

10. The documents before the Tribunal are :

- a. the application and supporting documents numbered 1 to 83 in the Tribunal's bundle
- b. the documents attached to the letter from the Applicant/Landlord dated the 8 September 2009
- c. the documents numbered 84 to 86 produced by Mr Stewart at the hearing
- d. eight photographs produced by Mr Wickson at the hearing

Inspection

11. The Tribunal inspected the exterior of the Building on the morning of the hearing on the 23 September 2009. Also in attendance was Mr Wickson

12. The Building was a 3-storey end-of-terrace block on the corner of Christchurch Road and Harewood Avenue, which appeared to have been built in about the 1950s. There were shops on the ground floor with frontages to Christchurch Road. Flats 5 and 7 were on the first and second floors on the right-hand side of the Building looking from Christchurch Road. The first floor of the elevation of the Building overlooking Christchurch Road was brick faced. The second floor of that elevation up a was tile hung with dormer windows. Where the Building abutted the next property in the terrace the second floor tile hung section projected about a third of a metre beyond the roof of the adjacent property, with lead soakers facing the right-hand edge of the projection looking from Christchurch Road. The rear elevation of the Building was brick faced on all three floors. There was a flat roof. Access to the Flats was via concrete steps to a small flat roof area at first floor level

13. The Tribunal inspected the interior of Flats 5 and 7. In each case, the bedroom abutting the adjoining property in the terrace, at the rear of the Building looking from Christchurch Road, showed evidence of damp in the right-hand corner at the rear. In Flat 5, the wallpaper was coming off for about 1 m along the party wall with the adjoining property in the terrace, and for about a third of a metre along the rear wall. There was some evidence of damp in the adjacent area of the ceiling. In Flat 7, the ceiling paper in the corresponding area was hanging off, exposing a hole with visible insulation board and felt above. There was also some evidence of the ceiling paper lifting all along the junction between the ceiling and the party wall. There was also some evidence of damp in the kitchen in the corner of the ceiling adjacent to the bedroom,

but with no evidence of corresponding damp on the other side of the wall in the bedroom itself

14. The Tribunal was unable to inspect the roof itself as there was no means of access to it

The Leases

13. There are before the Tribunal copies of new leases, and of the previous leases referred to, of Flats 5, 6, 7, and 8, although some pages were missing from the copies before the Tribunal. The parties confirmed at the hearing that all the leases were materially in similar terms

14. For the purposes of these proceedings the material parts of the leases are as follows :

- a. a covenant by the tenant to pay a service charge to cover the costs and expenses mentioned in the Fourth schedule (clause 4(ii))
- b. covenants by the landlord to carry out certain works, including maintaining and repairing and renewing the roof and a flat roof (clause 5(b)(1)(a))
- c. a list of the costs and expenses outgoings and matters in respect of which the tenant is to contribute under clause 4(ii), including the expenses of maintaining repairing and renewing the roof and the flat roof (Fourth Schedule paragraph 1(a))

The hearing

Preliminary matter

17. The Chairman indicated at the hearing that he and Mr and Mrs Wickson were social acquaintances, as were their respective children. However, they had not had any dealings in their respective professional capacities, and the Chairman had not even realised that Mr and Mrs Wickson were leaseholders in the Building until reading the application and accompanying papers. The Chairman was not aware of any actual conflict of interest in this case but was concerned that there should not be any perception of conflict either

18. The parties indicated that they were both happy that there was indeed no conflict and that there was no objection to the Chairman continuing to act as such

Documents produced by Mr. Stewart at the hearing

15. Mr. Stewart showed the documents to Mr. Wickson, who confirmed that he had no objection to them being admitted in evidence

16. The documents, which now formed pages 84 to 86 of the Tribunal's bundle were :

- a. a quotation from Coastal Roofing Services dated the 7 September 2009 for £13,450 plus

VAT (including £1,000 provisional sum for any unforeseen timber repairs) for the following work :

To supply and erect Herras security fencing to create secure storage space for skips and site toilet. To supply and erect tubular access scaffolding and safety handrail around the perimeter of the building. Scaffolding to include for rubbish chute

To remove existing limestone chippings from existing flat roof. To provide 100x50 mm sawn timber hard edge around roof perimeter. 50 mm Kingspan TR27 rigid insulation boards bonded in hot bitumen. To supply and fix 3-layer Delta high-performance torch on felt system, comprising perforated base layer, 1 layer Delta 2000 underlay and 1 layer Delta 4.5 kg mineral surfaced felt top layer. To form drips around the perimeter in matching Delta Mineral felt. To clear all allied rubbish from site, and leave in a clean and tidy condition. This system would generate a 15 year manufacturer guarantee

- b. a note by Mr. Stewart entitled “A Harewood Avenue, Boscombe East, Bournemouth roof costs” :

Henleys

£11,925 plus VAT (£1,788.75) including £1K pc sum £13,713.75

£300 LVT fees £300.00

£14,013.75

Goadsby administration fee £250.00

£37.50

total costs £14,301.25

= £2043 03 per contributor

- c. a letter from Mr Wickson dated the 16 September 2009 stating that he and Mrs Wickson were happy to agree to the application, and trusted that works could begin soon in accordance with the estimate produced by Henleys dated 4 September 2009

Photographs produced by Mr Wickson at the hearing

19. Mr. Wickson showed the photographs to Mr. Stewart, who confirmed that he had already seen them and that there was no objection to them being admitted in evidence
20. The eight photographs were of the interior of the bedrooms of Flats 5 and 7 which the Tribunal had inspected on the morning of the hearing and were dated 20 May 2009, 21 July 2009, and 3 August 2009, respectively

The nature of the proposed works

21. Mr Stewart stated that the works were as set out in the two estimates. The Applicant/Landlord was a well-known housebuilder and had met Mr Henley on site and had decided that replacement of the existing felt with new felt with a 15 year guarantee was the most cost-effective solution to the problem of water ingress. Mr Stewart did not know when the last re-felting had taken place, but it had not been done since he joined Goadsby in 1991. He had not himself been up onto the roof to inspect but the Applicant/Landlord and Mr Henley had done so, and Mr Stewart had seen photographs of the exterior of the roof. The Applicant/Landlord, in deciding on the course of action to take, had taken account of the possibility, raised by one of the commercial shop tenants, that there might be a problem with the junction between the roof of the Building and the roof of the next building in the terrace. Roof repairs had been attempted in 2004, 2008, and 2009 because in 2004 an informal poll of tenants had indicated that a majority preferred the repairing option rather than the renewal option. However, the repairs had not been successful in preventing water ingress and the Applicant/Landlord had now decided that the water ingress could no longer continue and that renewal must now take place. Mr Stewart understood that Mr and Mrs Wickson agreed with this course. Mr Stewart had spoken to Mr Jenner this week, who had confirmed that he too was happy with renewal. Mr Stewart had not spoken to Mr Hammoud recently but he had voted for renewal in 2004, as evidenced by Mr Stewart's file note at page 18 of the Tribunal's bundle, and he was aware of the current proposals and had not notified Mr Stewart of any objections
22. Mr Wickson confirmed that he agreed the Applicant/Landlord's proposals to replace the roof with new felting. He had met Mr Henley, and indeed had instructed him to carry out the internal repairs to Flat 7, and was satisfied with the works set out in his quotation and with the choice of him as the proposed contractor for the re-roofing works

The service charge provisions in the leases

23. The parties agreed that the proposed works were within the service charge provisions in the leases

The reason for applying for dispensation

24. Mr Stewart said that the reason for asking for dispensation from the consultation procedure was that the Applicant/Landlord was anxious to start the work as soon as possible to avoid further water penetration, particularly with the impending onset of winter weather
25. Mr Wickson stated that he too wished to avoid a worsening of the current position by delaying any longer and fully agreed that the work should start as soon as possible

The nature of the dispensation applied for

26. Mr Stewart said that the Applicant/Landlord would like all of the consultation requirements to be dispensed with to enable to work to start as soon as possible, and in any event by the middle of October. However, he accepted that he had not written to the Respondent/Leaseholders with notice of the Applicant/Landlord's intention to carry out the works, or with details of the works, or with copies of the estimates, or with the Applicant/Landlord's choice of contractor

The Tribunal's preliminary findings

27. The Tribunal indicated at the hearing that :

- a. the Tribunal had taken account of all the documents, of Mr Stewart's evidence of the urgency of the proposed works, of Mr Wickson's consent to the application, and of the file note by Goadsby dated the 20 January 2004 indicating that Mr Hammoud and Mr Jenner wished to renew the roof rather than repair
- b. however, the Tribunal had also taken account of the fact that :
 - o the Applicant/Landlord had not sent the other Respondent/Leaseholders notice of the Applicant/Landlord's intention to carry out the works, or details of the works, or copies of the estimates, or the Applicant/Landlord's choice of contractor
 - o neither of the other Respondent/Leaseholders were present at the hearing
- c. the Tribunal therefore proposed to give directions for notification to be given to the Respondent/Leaseholders, and for the Respondent/Leaseholders to be given the opportunity to respond

28. The Tribunal indicated to the parties the nature of the proposed directions, with which the parties express themselves to be happy


Directions

29. The Applicant/Landlord shall by the 30 September 2009 send to each of the Respondent/Leaseholders and to the Tribunal written notice :

- a. setting out in detail the proposed works and the reasons why the Applicant/Landlord proposes to carry them out
- b. attaching copies of the estimates from Henleys and Coastal Roofing Services
- c. identifying the estimate which the Applicant/Landlord proposes to accept

30. If any of the Respondent/Leaseholders wishes to oppose the Applicant/Landlord's application to dispense with the consultation requirements set out in section 20 of the Landlord and Tenant Act 1985 and in the 2003 Regulations in relation to the proposed works, they shall, by 14 October 2009, notify the Applicant/Landlord and the Tribunal of that opposition in writing, with detailed reasons for doing so
31. In the event of there being no written notification of such opposition by the 14 October 2009, the Tribunal is minded to make an order dispensing with the whole of the consultation requirements set out in section 20 of the Landlord and Tenant Act 1985 and in the 2003 Regulations in relation to the proposed works, without a further hearing
32. However, in the event of written notification of such opposition by 14 October 2009, the Tribunal will fix a further hearing date to enable the parties to be heard
33. The application is adjourned generally in the meantime

Dated the 23 September 2009



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor