

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION  
TRIBUNAL

Case No: CHI/15UC/LDC/2009/0014

In the matter of an application under Section 20ZA of the Landlord and Tenant Act  
1985 [as amended] [“the Act”]

Property: Beach View Apartments, Westcliff, Porthtowan, Truro, Cornwall, TR4  
8TZ

Applicants: Devon & Cornwall Leasehold Solutions

Respondents: The Lessees

Application dated 10th.June 2009

Tribunal Mr. J.S. McAllister F.R.I.C.S. [Valuer Chairman]  
Mr. A.J. Lumby BSc. F.R.I.C.S. [Valuer Member]

Hearing and Decision issued: 26<sup>th</sup>. June 2009

DETERMINATION AND REASONS

SUMMARY DECISION

1. For the reasons set out below, the Tribunal determines that it is satisfied that it is reasonable to dispense with the consultation requirements of section 20 of the Act in respect of the specific qualifying works which are the subject of this application.

REASONS

THE APPLICATION

2. On 10<sup>th</sup>. June 2009, the Applicants, the managing agents, applied to the Tribunal under section 20ZA of the Act for the dispensation of all of the consultation requirements in section 20 of the Act and in the Service Charges [Consultation Requirements] [England] Regulations 2003 [“the Regulations”] in respect of qualifying works being specified repairs to the property.

3. The Tribunal issued directions dated 15<sup>th</sup>. June 2009 for the matter to be the subject of an oral hearing on 26<sup>th</sup>.June 2009, immediately following their inspection of the

property, and for the Applicants to submit a written statement of case etc. and the Respondents to produce any written statements etc. at the hearing.

## THE LAW

4. Subsection 1 of Section 20 of the Act, as amended provides:

“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.”

5. The effect of Subsections 2 and 6 of Section 20 is that the consultation requirements apply where the contribution which each tenant/lessee has to pay towards the cost of qualifying works by way of service charge exceeds £250.

6. Subsection 1 of 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 qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

## INSPECTION

7. The Tribunal inspected the property on 26<sup>th</sup>. June 2009 in the presence of Mr J. Bell, Ms. S. Davies and Ms. L. Laity, of the Applicants and the Respondent lessees, Mrs. G. Howard, Ms. S. and Mr. J. Hobson, Mr. R. Wadham-Smith, Ms. G. Rogers, Mr. S. Mills, Mrs. M. Saunders and Ms. P. Grant.

8. Briefly the property comprises a detached 2 storey block of 16 flats built in 1979/1980. It is of timber frame construction with rendered elevations under a concrete tile covered roof. The Tribunal inspected externally and the inside of flat 1, the subject of the virtually completed qualifying works. They also inspected the inside of flats 2, in particular the balcony and flat 13 where they were shown a partially collapsed ceiling, damp staining etc.

## THE HEARING

9. This was held at the Camborne Community Centre, South Terrace, Camborne, following the inspection where those parties at the inspection attended except Mrs. Saunders and Ms. Grant.

## APPLICANT'S EVIDENCE

10. Mr. J. Bell, a chartered surveyor, the senior building surveyor of the Applicants produced for the Tribunal and Respondents a detailed written “Statement of Facts”, dated 19<sup>th</sup>. June 2009.

The Respondents agreed that they did not need an adjournment to read and consider this statement and that they were content that Mr. Bell speak to and refer to it. He

stated that the landlords were the management company with currently only one director, the lessee of flat 15 and a secretary, the lessee of flat 14. Neither attended or were represented.

11. He referred to having taken legal advice, which he included in the statement, concerning the interpretation of the repairing covenants in the flat leases which were somewhat contradictory. As a result of this advice he considered that all of the qualifying works specified were the landlord's responsibility, and as such were recoverable from the lessees as service charges.

12. He outlined the history of repair problems to the property since November 2005, when wet rot to the floor joists was discovered in flats 7 and 8. A water main burst in August 2006 etc. Some of the works involved the insurance company. In November 2008 a major water leak occurred in flat 1, which again involved the insurance company and Cathedral Builders of Truro were instructed to carry out the repairs at a cost of over £38,000. This work is nearly completed. However of these repairs, wet rot, the insurers would not accept liability being a "maintenance issue". The cost of these works is £6103.80 and is a service charge matter. In addition is extra work, as yet uncoded, requested by the Building Regulation Department of the local Council, being works to strengthen the floors between flats 1 and 2.

13. Mr. Bell specified these qualifying works:-

"Asbestos sampling and removal of asbestos boarding to flat 1 balcony soffit by licensed contractor.

Removal of section of rotten timber joists supporting balcony including reinstatement by bolting alongside existing remaining timber joists and trimming balcony timbers onto new joist.

Reinstatement of ceiling within flat 1 where removed to facilitate works.

Demolition of timber balcony end support wall to underside of balcony, provision of all necessary temporary supports and replacement with block work rendered wall built of new substructure [eliminating future timber decay].

Removal of render to area from right of patio doors to gable corner up to underside of balcony, reinstatement of decayed structural boarding and re-rendering on stainless steel mesh with breather paper backing.

Alter timber decking as required to facilitate works.

Reinstatement of balcony soffit in pvc boarding.

Leadwork weatherproofing at junction of head of new block work to existing construction.

Decoration of all affected areas."

The, as yet uncoded, qualifying works are in flat 1:-

"..... strengthen up the remaining 8 inch by 2 inch joists using 6 inch by 2 inch tanalised timber and joist hangers".

14. Included in the statement was a copy letter from Mr. Bell to the residents dated 9<sup>th</sup>. April 2009 referring to the ongoing repairs etc., a copy letter [undated] from Mr. P. Keane to his "Fellow owners", a copy of the above builder's quotation for the above qualifying works dated 24<sup>th</sup>. April 2009 and legal advice dated 24<sup>th</sup>. April and 5<sup>th</sup> June 2009 from Trowers, their solicitors as referred to above.

15. In reply to questions from the Respondents and Tribunal, Mr. Bell explained why there was a delay in the application to the Tribunal, why they did not contact all lessees individually about the qualifying works, that they taken advice from Lease as to their application and why they did not obtain competitive quotes for the qualifying works.

16. Mr. Bell concluded by stating that they had managed the property since 2005, that there was apathy on the part of some lessees, that the property is not of traditional standard construction, and that the specified qualifying works had been discovered during repairs carried out under the insurance claim. As a result the works could not be completed until dispensation was granted. He also said that some lessees were in arrears with their service charge payments.

17. The Tribunal had also received a letter on 19<sup>th</sup> June 2009 from Ms. M. Jewell lessee of flat 1 in which she stated “..... I would like to confirm that as a respondent I am in full agreement with the application submitted to you by Devon and Cornwall Leasehold Solutions.”

#### RESPONDENTS' EVIDENCE

18. Mrs. Howard stated that 11 lessees in total opposed the application. She referred to the lack of regular maintenance to the property, the lack of proper consultation, the delay in dealing with certain repair works etc. the lack of balanced expenditure on the property and the failure to obtain several quotes for the qualifying etc. works. She stated that the Respondents did not dispute Trower's interpretation of the repair responsibilities in the flat leases. Several other Respondents spoke in essence confirming Mrs. Howard's evidence.

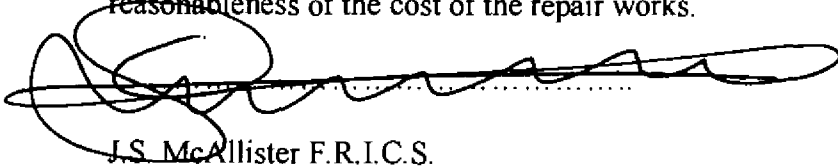
#### CONSIDERATION AND DECISION

19. The Tribunal carefully considered all the written and verbal evidence submitted by the parties. They particularly noted that the application was made after the works had started and before completion rather than before commencement of repairs. In such cases there is normally some sort of emergency or urgency for dispensation to be appropriate. They did not have to decide if the landlord had acted reasonably, only if it is reasonable to grant dispensation. The Tribunal also considered the degree of prejudice, if any, to the lessees for failure to comply with the consultation procedure. They took into account the Respondents' admission that, upon reflection, their opposition to the application may be misguided due to their initial lack of full understanding of the exact nature of this application to the Tribunal. They also considered that any delay due to the consultation process would have an adverse affect on the owner of flat 1 in particular.

Taking all factors into account the Tribunal concluded that, on balance, it is reasonable to dispense with the consultation requirements of Section 20 of the Act in relation only to the above specified qualifying works.

20. The Tribunal gave the decision verbally to the parties at the end of the hearing, indicating that this written decision and reasons would follow. They also informed them that this decision does not prevent the Applicants from making a future

application to the Tribunal under Section 27A of the Act in respect of the  
reasonableness of the cost of the repair works.

A handwritten signature in black ink, appearing to read 'J.S. McAllister', written over a horizontal dotted line.

J.S. McAllister F.R.I.C.S.

Chairman

Dated 3 July 2009