

SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CASE NUMBER: CHI/15UG/LDC/2009/0030

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

**FLATS 1 – 4
THE OLD POST OFFICE
FRADDON
ST COLUMB
CORNWALL TR 9 6NP**

**LANDLORD'S APPLICATION FOR DISPENSATION WITH THE CONSULTATION
REQUIREMENTS OF
s20 OF THE LANDLORD AND TENANT ACT 1985**

APPLICANT

FRADDON FLATS MANAGEMENT COMPANY LIMITED

RESPONDENT

**MR M C LEIGH
MRS K KESTELL
MR D GRIMSHAW
MORTGAGE EXPRESS
(MORTGAGEES IN POSSESSION OF FLAT 3)**

TRIBUNAL

**Mr R Batho MA BSc LLB FRICS FCIArb (Chairman)
Mr E Distin FRICS**

DETERMINATION

Introduction

1. On 21st September 2009 Mr M C Leigh as Company Secretary of Fraddon Flats Management Limited made an application to the Leasehold Valuation Tribunal for dispensation with the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 in connection with proposed repair and decoration works to the Old Post Office Fraddon St Columb TR9 6NP.
2. Directions in connection with the application were given by the Tribunal on 25th September 2009. In fulfilment of those directions, Fraddon Flats Management submitted further documentation, and statements were received by way of letter and email from Mrs Kestell and Mr Grimshaw.

Hearing

3. A hearing was held on Tuesday, 3rd November 2009. Shortly before the hearing, the members of the Tribunal attended at the Old Post Office in the company of Mr Mark Leigh, having previously given Notice to the leaseholders of their intention to do so. Mr Leigh directed the members attention to the areas of the building where work was proposed to be undertaken, and an inspection was carried out of as much of the relevant parts of the building as are visible from within the site and adjacent publicly accessible land from ground level externally, and from within Mr Leigh's apartment.
4. The hearing was attended by Mr Leigh, who spoke both on behalf of the landlord company and his own account as a leaseholder. None of the other leaseholders attended or was represented.

The Lease Terms

5. The papers submitted to the Tribunal included a copy of the lease of flat 4 The Old Post Office, that occupied by Mr Leigh, and the Tribunal accepted his evidence that all three leases were expressed in identical terms. Each of these leases has thus been shown to provide that the tenants are

“to pay the service charge calculated in accordance with the Third Schedule”

and that the landlord is

“to provide the services listed in Part One and Part Two of the Fourth Schedule for all occupiers of the building.

6. Under clause one of the Third Schedule

“service costs means the amount the landlord spends on carrying out all the obligations imposed by this lease (other than the covenant for quiet enjoyment) and no reimbursed in any other way”

and under part one of the Fourth Schedule the services to be provided are

“1 Repairing the roof, outside, main structure and foundations of the building and the footpaths in the grounds of the building.

2 Contributing a fair proportion of the cost of repairing, maintaining and cleaning any building, property or sewers, drains, pipes, wires and cables of which the benefit is shared by occupiers of the building and occupiers of other property.

3 Decorating the outside of the building once every three years.”

The Applicant's Case

7. In the evidence which he presented, both by the documentation submitted to the Tribunal and in his oral evidence before it, Mr Leigh explained that the Old Post Office had been converted to provide four units of accommodation by a firm of

developers who, in 2002, had formed the Fraddon Flats Management Company Limited.

8. Whilst the individual leaseholders had not appreciated that it has been the developers' intention, in August 2006 the Company, in which the freehold was vested, was transferred to the leaseholders, that is to say Mr Leigh, Mrs Kestell, Mr Grimshaw and (it was believed) Ms Deborah Stevens, who at that time occupied her apartment with her partner, Mr Moore, although they had subsequently separated.
9. During the first half of 2008 there had been two incidents which resulted in storm damage claims being made against the property insurance in respect of damage suffered to the roof. They were advised by the contractors who undertook the repair work that the roof had not been re-nailed or otherwise upgraded at the time of the conversion works and that the iron fixing nails were failing, so that the prudent course would be strip and re-cover the roof, taking the opportunity to install under felting at the same time. They were subsequently advised that it would make sense to demolish the two redundant chimney stacks whilst this work was being done.
10. Minutes of a meeting of the Fraddon Flats Management Company held on 23rd October 2008 and attended by Mrs Kestell, Mr Leigh and Ms Stevens noted this advice and recorded the agreement of the directors present

"that the roof is now a potential danger to pedestrians and vehicles using the access road. It was agreed that the roof should be replaced..."
11. It was then Mr Leigh's evidence that Ms Stevens undertook to obtain quotations for this work, and the minutes of a Company meeting held on 18th April 2009, attended by the same three directors, recorded that

“three separate quotes for the roofing works were obtained from local roofing contractors priced at £14,500, £17,500 and £19,500.”

12. The minutes also recorded that at that stage Mr Grimshaw objected to paying any share of the roofing works, on the grounds that his property had an ongoing damp problem in respect of which no contribution would be made, but that the directors present at the meeting had agreed that both as a leaseholder and a director in the company Mr Grimshaw had a legal responsibility to maintain the exterior fabric of the building in a safe and serviceable condition and would therefore be required to pay his share of the costs towards the roofing works.
13. E-mail correspondence then ensued between Mr Leigh and Mr Grimshaw, and on 22nd April 2009 Mr Grimshaw e-mailed Mr Leigh to say

“I do understand where you are coming from, and yes, we are all responsible.”

14. On 4th July 2009 a further meeting of the Company was held. The minutes produced in evidence record that all four directors were present, that they discussed the building works at length, and that they resolved the following

- “(a) the contract for the work should be awarded to Mr Peter Thompson.
- (b) The Brazilian grey/green slates should be used at the quoted cost of £15,600.
- (c) Redecoration. The building redecoration should be completed immediately following the roofing works to negate the expense of hiring scaffolding twice at the quoted cost of £2,500.
- (d) Additional works. The two chimneys should be removed to below roof height. Although this work was not originally quoted by Mr Peter Thompson both chimneys are not utilised but are a source of water ingress. If they remain in situ, they will require repair. The management company has agreed to remove the chimneys in conjunction with the re-roofing to remedy this at the additional cost of £500.00.
- (e) The total cost of the roofing and redecorating works is £18,600 to be divided equally between the four leaseholders at a cost of £4,650 each.”

15. It was also agreed that leaseholders' contributions would need to be paid into the Company's bank account prior to 1st August 2009, in readiness for the building works to commence in the week beginning 11th August 2009.
16. In the event, although Mr Leigh and Mrs Kestell had paid their contributions, Ms Stevens was unable to, and indeed her flat had been repossessed early in August 2009. It was Mr Leigh's evidence that Ms Stevens having obtained the three estimates, and the directors having agreed to accept the lowest one, provided by Mr Peter Thomson, they had not thought to retain the copies of the other two estimates, which were held by Ms Stevens, with whom they had now lost contact.
17. The essence of the application was therefore that a consultation process having taken place between the leaseholders, both as leaseholders and as the only directors of the Company, and they having agreed that the works should proceed as resolved at the meeting of 4th July 2009, the formal requirement of section 20 should be dispensed with so as to allow the works to proceed unhindered.

The Leaseholders' Response

18. Mr Leigh and Mrs Kestell supported that course of action. Ms Stevens was no longer a leaseholder and Mortgage Express had expressed no view on the subject.
19. On the day prior to the hearing Mr Grimshaw had sent an email to the Tribunal indicating that he would agree to that course of action only if it was demonstrated that the insurance company would not meet further claims in respect of storm damage to the roof, but that he accepted the need for the redecoration work. Mr Leigh conceded in evidence that the insurance company, NFU Mutual, had given no such indication of their intention, but he repeated that the advice which had been given was that the roof was in poor condition and that extensive work

should be carried out sooner rather than later. He said that there was a particular problem with water ingress into the flat formerly occupied by Ms Stevens, but that hers was not the only property affected.

Decision

20. The Tribunal gave careful consideration to the case put forward by Mr Leigh and to the reservation expressed by Mr Grimshaw.
21. The Tribunal concluded that, as a matter of fact, the parties had received advice that work was needed to the roof and that as lay people they were entitled to rely on the advice so given. The Tribunal further concluded, again as a matter of fact, that having recognised the need for the work to be done the Directors had taken a prudent course of action and obtained three competitive quotations, resolving to accept the lowest of those.
22. The Committee therefore determined that in all the circumstances presented to them it would be reasonable to grant the application to dispense with the full consultation requirements of section 20 of the Landlord and Tenant Act 1985 and to allow the works to proceed without further ado.
23. This determination does not affect any parties' right to make a further application to the Tribunal under the provisions of section 27 of the Landlord and Tenant Act 1985.



Robert Batho MA BSc FRICS FCI Arb
Chairman

6th November 2009