RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CASE NO. CHI/OOHN/LDC/2010/0007

Decision of the Leasehold Valuation Tribunal on application made under Section 20 ZA of the Landlord and Tenant Act 1985.

Applicant	Headline Developments Ltd.
Respondents	Mr. Stanmore and Miss Shortland (Top Floor) Mr. Eden (Flat 2) Mr. D'Silva (Flat 3)

re: 72 Parkwood Road, Bournemouth, Dorset, BH5 2BL

Date of Application	19th February 2010	
Date of Inspection	26th March 2010	
Date of Hearing	26th March 2010	
Venue	Royal Bath Hotel, Bournemouth	
Appearances for Applicant	Mr. Paul Taylor Mr. Martyn Surman FRICS of Parsons Son and Basley	
Appearances for Respondents	Mr. Stanmore and Miss Shortland Mr. D'Silva Miss Payne	
Members of the Leasehold Valuation Tribunal	Mr. K. M. Lyons FRICS Mr. J. Mills	Valuer Chairman Lay Member
Date of Tribunal's Decision	16 April 2010	

REASONS

1. **This was an application by the Applicants under Section 20 ZA of the Landlord and Tenant Act 1985 for dispensation.**

2. **The Law;**

Section 20ZA Landlord and Tenant Act 1985. Application for Dispensation of all or any of the consultation requirements contained in Section 20 of the Landlord and Tenant Act 1985.

Consultation requirements : supplementary

(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 any 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 any other premises, and "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

3. **Relevant Parts of the Lease**

The Second Schedule of the lease describes the Reserved Property as:

ALL THOSE the main structural parts of the Building including the roof and foundations and external parts thereof the car parking area coloured orange and the right of way coloured brown on the plan and all parts used in common (but not the glass of the windows or doors of the flats and the maisonette nor the interior faces of such of the external walls as bound the flats and the maisonette) and the land on which the said flats and maisonette stand and all cisterns tanks sewers drains pipes wires ducts and conduits not used solely for the purpose of one flat or the maisonette.

Clause 1(a) of the Seventh Schedule of the lease requires the lessor to

(a) Repair and maintain in good order and condition:

(i) the Reserved Property

PROVIDED ALWAYS that the Lessor shall be under no liability to carry out any work or incur any expenses under this clause save upon a written request from the Lessee and that the Lessor may as a condition precedent to carrying out any work or incurring any expense under this clause require that the estimated cost of any work required plus the reasonable administration costs and expenses of the Lessor in respect of this shall be

paid or secured by the persons responsible therefore under the provisions as to contributions hereinbefore contained to the Lessor's reasonable satisfaction.

4. Inspection

The property comprises a detached house approximately 90 years old of brick construction partially rendered under a pitched roof. The accommodation is on three floors and has been converted into three self-contained units.

It was apparent to the Tribunal that there had been a lack of maintenance as was evidenced by the poor condition of the decorations of the front elevation. Mr. Taylor advised the Tribunal that the lessees had been notified on the 11th November 2009 of the landlords intention to decorate the exterior of the building.

The Tribunal inspected the first and second floor maisonette in the premises in the company of Mr. Taylor and Mr. Surman, Mr. Stanmore and Miss Shortland.

Mr. Surman had previously inspected the property for the purposes of reporting the extent of the damaged left hand flank wall and indicated the area concerned.

The damaged area of wall was located in the top four courses of brickwork and extended for a length of approximately one metre back about four metres along the flank wall from the front left hand corner of the building. The gap between the subject property and the adjacent property on the left hand side was about 45cm. wide. Due to the narrow gap it was not possible to access the damaged area of brickwork from outside. Furthermore, Mr. Taylor said the adjoining owner had informed him that he owned the land between the two properties. Mr. Taylor had not inspected the deeds of the subject property and was unable to confirm the adjoining owners statement although the fact that the eaves of both buildings overhung the land in the gap indicated to the Tribunal that ownership would in fact be shared. Regardless of this it was not physically possible to access the damaged area from outside.

Mr. Stanmore and Miss Shortland showed the Tribunal from the interior of the property the inside face of the exterior wall which had to be removed to access the damaged area of the outer skin. The area concerned was located on the staircase which gave access between the first and second floor. The Tribunal saw the triangular area which had been re-plastered and which had been carried out to make good the damage which had been caused to the inner face of the wall by the removal of a section of the inner skin of brickwork to gain access to the damaged brickwork of the outer skin.

5. The Hearing

Mr Taylor, who is a Senior Property Manager at Parsons Son and Basley, advised the Tribunal that the lease of the property made no provision for establishing a service charge fund and that monies to enable work to be carried out could only be recovered by the landlord after works had been completed. After his firm had served notice of intention to carry out repairs and external decorations on the lessees on 11/11/2009 on behalf of the landlord he had been

informed that some bricks had fallen from the top of the flank wall and were laying in the gap between the two buildings. He had made arrangements to carry out an inspection of the property and was to be accompanied by Mr Surman FRICS who is a Director and who is responsible for carrying out building surveys on behalf of Parsons Son and Basley gives advice to the Property Managers. The arrangements which had been made by Mr Taylor to inspect the damaged brickwork had been cancelled on two occasions because the adverse weather conditions had made their journey from Bognor Regis impossible. They had finally managed to inspect the property on 29/01/2010. Mr Surman, who was appearing as an expert witness, had decided at the inspection, having had the inner skin of brickwork removed by a builder, Mr J M Lynch, who was in attendance, that the whilst the mortar in which the bricks in the immediate vicinity of those which had fallen was very friable and sandy giving little or no bond strength the reminder of the wall was sufficiently sound to enable a repair to be carried out from inside the building using a "hand over hand" method to relay the external brickwork. The report and specification prepared by Mr Surman sets out in detail, illustrated by photographs, the state of the brickwork at the time and the method of repair although Mr Surman had been unable to identify the reason why the brickwork had fallen out. The specification included provision for carrying out temporary protection works to prevent access to the area between the houses.

Mr Taylor sent the first consultation notice to the lessees on 01/02/2010 together with the specification of the works. The notice required the lessees to make observations and to submit the name of contractors from whom they required the landlord to obtain a quotation on or before 02/03/2010. Mr Taylor advised that no responses had been received from any of the lessees. Mr Stanmore said that he had anticipated that the cost of the repairs would be covered under the buildings insurance policy and he had not therefore thought that it was necessary for him to respond.

On 02/03/2010 Mr Taylor wrote to all lessees advising that "due to the fact the works must proceed prior to completing a four months consultation period, we have applied for dispensation from the leasehold valuation tribunal. The tribunal will write to you direct, but I enclose a bundle of documents from which the tribunal will be working from." The bundle included two quotations for the work. The quotation dated 02/02/2010 from Mr Andrew Hurst of HBL Builders was in the sum of £1750.00 plus £390.00 for the second item on the specification namely, remedial work to top two courses of brickwork flank wall. The second quotation dated 03/02/2010 from Mr.J.N.Lynch was in the sum of £5387.00. All figures are subject to VAT. Mr Surman advised the Tribunal that Parsons Son and Basley followed a strict routine in regard to opening of tenders involving the tenders being received in sealed envelopes and the envelopes opened in the presence of more than one person. Mr Surman accepted that the two quotations in the present matter, which had been received respectively by fax and e-mail had not followed this procedure.

Mr Taylor had stated during his evidence that a regular inspection of the property had been carried out by a representative of Parsons Son and Basley but this was disputed by Mr Stanmore who said that he had occupied the maisonette for 17 years during which time he had never seen a representative from the firm. Mr Taylor was unable to assist further as he had not brought any of the

inspection records. Mr Taylor advised that the inspections had only been of the exterior and that prior appointments had not been made. He also confirmed that he did not have a key to the small front entrance porch which was kept locked. Mr Stanmore also advised that the damaged brickwork had been discovered by Miss Shortland who had been searching outside for a missing shoe and that he had reported the damaged wall to Mr Taylor on 15/12/2009. Miss Shortland confirmed that both she and Mr Stanmore had been concerned for the safety of their two young children both in regard to the access to the gap between the properties and to the interior of the maisonette whilst the works were in progress. They advised that the works took two days to complete.

The application to the Tribunal was made on 19/02/2010 indicating that the works were to commence on 22/02/2010. On 24/02/2010 the Tribunal issued directions stating that a hearing was to be held on 26/03/2010. It is understood that the works were commenced on 08/03/2010.

6. Decision

The Tribunal considered the evidence and decided for the following reasons that it would not be reasonable for the Tribunal to make an order dispensing with the remaining outstanding requirements of S20 of the Landlord and Tenant Act 1985. It follows therefore that the maximum amount recoverable in respect of the works carried out to repair the defective areas of brickwork and the subsequent making good (the decorations were still to be carried out at the time of the inspection by the Tribunal) from the three lessees who each pay 33.333% of the service charge is £250.00 each inclusive of VAT.

6.1. Delay in carrying out initial inspection.

The Tribunal accepts that difficulties were caused by the weather conditions during December and January. Mr Taylor said that it had been necessary to cancel the visits which had been arranged on two occasions. The Tribunal considers, however, that in view of the degree of emergency which was apparent to Mr Taylor as was evidenced by his letter to the lessees dated 01/02/2010 it would have been prudent for a local surveyor to be requested to inspect the property and report to Mr Taylor. This would have significantly reduced the overall time scale and enabled the necessary notices to be served on the lessees. Furthermore there was no reason why the first notice advising the lessees of the intention to carry out repair works could not have been served at this stage.

6.2. The disparity of the quotations.

Two quotations were obtained in the sums of £2140.00 (including part 2 of the specification) and £5387.00, both figures exclusive of VAT. That is to say the higher quotation was approximately 2.5 times the lower quote. In response to questions from the Tribunal Mr Taylor said that he did not feel there was a need to investigate the amounts further as to whether for example the work content in the 2 quotes was the same or not. Bearing in mind that Mr J Lynch had carried out the initial opening-up of the wall it is reasonable to believe that he had a thorough understanding of the works required. Mr Taylor acknowledged that the higher price equated to approximately £2600.00 per square metre. The Tribunal

considers that prudent enquiries should have been made by Mr Taylor to ensure that the best information was being passed to the lessees. The Tribunal also considers that at least one more quotation should have been obtained to give a more meaningful spread of prices for the lessees to consider.

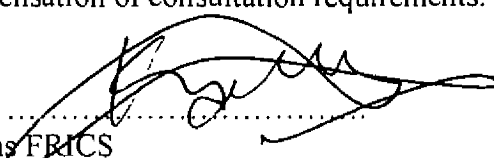
6.3. The statement made on 02/03/2010 that "due to the fact (that) the works must proceed prior to completing a four month consultation period, - we have applied for dispensation from the leasehold valuation tribunal."

In reply to questions from the Tribunal Mr Taylor advised that his firm always waited until the first notice period had expired as until that date it was not possible to know whether there would be a requirement to obtain further quotations from contractors nominated by the lessees and also as to whether queries would be received that might require amendments to the details on which quotations would be obtained. In the present case, however, the Tribunal suggested that rather than not serve the second notice it would have been preferable for the second notice to have been sent as soon as the quotations had been received i.e. 03/02/2010 together with a letter of explanation for the lessees. In the event the quotations were included with the letter dated 02/03/2010 which was in any event almost 30 days from the date of the first notice and which could have included the second notice required. By advising the lessees that the matter had been transferred to the Tribunal it is reasonable to expect that the lessees would not raise further matters on receipt of the letter of 02/03/2010 as they would anticipate having an opportunity to raise questions at the proposed hearing. In the event the works were carried out on 08/03/2010. No reasonable opportunity was therefore given to the lessees to raise objections before the works were carried out. Mr Taylor acknowledged that there was no statutory basis for the consultation period being stated to 4 months as referred to by him in the letter dated 02/03/2010.

6.4. The Applicant had not made safe the area between the property and the adjoining one to prevent access before and during the works. If this had been done then there was no urgency to press on with works before serving the second notice because this area had been made safe.

6.5. Summation.

The Tribunal is satisfied that properly managed the works could have been carried out in a shorter time scale which would have been appropriate bearing in mind the "urgency" referred to, in accordance with the requirements of Section 20 and in a way which would have given the lessees a proper opportunity to consider the quotations which in the event did not appear to have been realistically calculated on the same work content. The delays by the Applicant does not then give an urgency that the Tribunal should recognise as a reason for dispensation of consultation requirements.



Signed by ....
K M Lyons FRICS
16 April 2010