If SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/00MR/LDC/2010/0039

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

Applicant:	Ashcorn Estates Ltd
Respondent:	All leaseholders of 16 Waverley Road Southsea
Re:	16 Waverley Road, Southsea, Hants PO5 2PW
Date of Application	15 November 2010
Date of Inspection	13 December 2010
Date of Hearing	13 December 2010
Venue	Tribunal Office, Chichester
Appearances for Applicant	T Hillsdon, Property Manager, DMA Chartered Surveyors; C Beamish MBA FRICS MIRPM
Appearances for Respondent	none

Members of the Leasehold Valuation Tribunal

M J Greenleaves	Chairman
PD Turner-Powell FRICS	Valuer Member

Date of Tribunal's Decision: 20 December 2010

Decision

The application under Section 20ZA of the Landlord and Tenant Act 1985 is refused.

Reasons

Introduction

1. This was an application made by the Applicant Landlord in respect of 16 Waverley Road, Southsea ("the property") under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) for dispensation of consultation

requirements under Section 20 of the Act. The full terms of the application were:

a. determination as to liability for the cost of repairs in respect of phase 1 and phase 2 work;

b. determination as to reasonableness in respect of the scope and the cost of works relating to the front elevation (phase 1);

c. determination as to dispensation statutory consultation in respect of the gable wall (phase 2).

2. At the hearing, the Applicant accepted that within the terms of section 20 ZA, the Tribunal did not have power to determine reasonableness in relation to the phase 1 work and it withdrew that part of its application. It submitted that it was relevant to determination of the application to dispensation that the Tribunal should consider whether Lessees had an obligation to pay service charge in respect of the gable wall as, if they did not, dispensation or otherwise was not relevant.

Inspection

3. The Tribunal inspected the property in the presence of Mr Hillsdon and sub-tenants of some of the flats.

4. The property is an end of terrace four-storey building built in the 19th century and converted into 4 self-contained flats, one on each floor. External access is by stone steps which are in poor condition. The building itself is of brick and a tiled roof and, again, appears to be in poor condition for its nature and character. The gable wall in question appeared to be bowing and, in the top flat, there is evidence of ingress of water from that gable end.

5. It is evident from the inspection that the front elevation, which is not the subject of this application (by reason of the withdrawal referred to at paragraph 2 above) is in urgent need of repair as result of water ingress.

Hearing

6. The Tribunal then held a hearing which was attended as above. The Applicant's evidence and submissions, so far as relevant to the issues in the application were, in outline, that:

a. as regards liability of Lessees to contribute service charge to the cost of repair of the gable wall, it referred the Tribunal to the terms of the lease of flat 1 dated 12 July 1986, which is understood to be a standard release for all flats so far as relevant to the issues in this case. It refer particularly to clause 3(d), clause 6(b) and the 1st schedule.

b. A report dated 19 February 2007 of Philip Sealey, chartered surveyor and particularly the statements in that report: "we did notice very serious deflection and bellying to the wall in the vertical plane" and "it is our opinion that this wall is not suffering from wall tie corrosion but is suffering from a lack of any tie at all (or possibly very minimal tieing)."

c. An initial notice under the consultation procedure had been issued in August 2008 but no further notices served

d. A report dated 15 April 2010 by Ross Associates, chartered building surveyors, and in particular "the gable wall is bulging at mid level and is badly bowed at high-level towards the ridge. This wall requires rebuilding from the mid-level bulge up to ridge level." A further

recommendation in that report that phase 1 work concerning the front elevation be carried out and then phase 2 to rebuild the gable wall." A further recommendation "that phase 1 works are carried out urgently and phase 2 works are carried out as soon as possible when funds are available."

e. While the consultation procedure had been carried out in relation to the phase 1 works, there had been no consultation procedure carried out in relation to the phase 2 works other than that in 2008 after which there have been various difficulties in obtaining professional assistance. Now they wish to carry out phases 1 and 2 together to deal with all the dampness problems sooner rather than later.

f. They accepted that there was no indication the war had worsened in condition since April 2010.

Consideration

7. The Tribunal considered the papers and the Applicant's submissions.

8. Interpretation

9. Our findings in relation to the preliminary point on whether Lessees were liable under service charge to contribute towards the cost of the gable wall were as follows:

    a. Clause 1 of the lease defines the demised premises by reference to the description in the First Schedule to the lease. After reference to the number and floor position of the flat, the First Schedule continues with the following words: "(and including one half part in depth of the structure between the ceilings of the demised premises and the floors of the flat above it) and... the internal and external walls of the demised premises below such levels".

    b. Clause 3(d) of the lease is a Lessee's covenant to "maintain and keep the demised premises (other than the common parts thereof)... and all walls sewers etc and all lessors fixtures and fittings in and about the same in good and substantial repair and condition".

    c. Clause 6(b) is a covenant on behalf of the management company, (subject to payment of service charge) to "maintain and keep in good and substantial repair and condition... the main structure of the building including the foundations and the roof of and gutters and rainwater pipe".

10. If one were to consider the terms of the First Schedule and Clause 3 (d) in isolation from clause 6 (b), it would appear that the external wall of the flat is part of the demised premises and is the Lessee's liability to repair. In our experience that would be a most unusual provision in a lease of property of this nature. Clause 6 (b) is the normal provision and which provides for the landlord to maintain all the structure of a building and to recover the cost by way of service charge, so we do not think that the First Schedule was intended, by reference to "external walls" to refer to the main structure. The lease is not well drafted but we consider that the only sensible interpretation is that where the provisions of these 3 parts of the lease conflict, clause 6 (b) applies. It follows that in our opinion liability to repair the gable wall falls on the landlord subject to payment of service charge by the Lessees.

11. We add a caveat to our interpretation, that the finding of this Tribunal does not bind any future Leasehold Valuation Tribunal.

12. Application for dispensation

13. Section 20ZA provides that "the Tribunal may make the determination [to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with the requirements".

14. The intention of the Section is to deal with cases where it is urgent that works should proceed such that it was appropriate to dispense with the otherwise important rights of the Lessees to be consulted in advance.

15. On the evidence before us, it is clear that there has been concern about the gable wall for 3 years; that there is no evidence at all that its condition has worsened during that period, not just since April 2010; that in April 2010 the surveyor's recommendation was that the phase 1 works be given priority and that the gable wall only receive attention when funds permit, which could be a significant period ahead.

16. However, the landlord now wishes, understandably, to save expense by carrying out the 2 phases at the same time but has only consulted in relation to phase 1 and not phase 2.

17. Had there been any evidence of recent deterioration in the wall, the application for dispensation could have been justified. Although deterioration in the near future cannot be ruled out, it does not appear to have occurred in 3 years and we do not consider on present evidence that there is any ground to dispense with or reduce the Lessee's rights to be consulted in advance. Saving expense or convenience of carrying out 2 phases together is not sufficient and do not constitute reasonable grounds on which the Tribunal could exercise its discretion to dispense.

18. The Tribunal made its decision accordingly.

[Signed] M J Greenleaves

Chairman.
A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor