

9016



**HM Courts
& Tribunals
Service**



**Residential
Property
TRIBUNAL SERVICE**

LEASEHOLD VALUATION TRIBUNAL (Eastern Region)

LANDLORD AND TENANT ACT 1985 Sections 20ZA ("the Act")

CAM/11UB/LDC/2013/0007

**Property: 16 Market Street & 6 The Chewar, Buckingham, Bucks
MK18 1NW**

**Applicants: Hobart 35 Limited (1)
Dauber Homes Management Limited (2)**

**Representatives
For Applicants: Miss C Freeman of London & Capital, Property
Managers for Hobart
Mr C Green of Colliers International Property
Consultants Limited**

**Respondents: Mr L & Mrs M Bush (Flat 1)
Mrs K Pryor (Flat 2)
Miss J O'Halloran (Flat 3)
Mr M Ogborn (Flat 4)**

**Representatives
For Respondents: Mr M Ogborn (Flat 4)
Mrs M Bush (Flat 1)**

Date of Hearing 2nd May 2013

**Tribunal Members: Mr Andrew Dutton – chair
Mr Derek Barden MRICS**

Date of Determination: 2nd May 2013

DECISION

The Tribunal determines that dispensation should be granted as set out below pursuant to Section 20ZA of the Landlord and Tenant Act 1985 for the reasons set out below.

REASONS

Background

1. The application on behalf of the Applicants Hobart and Dauber Homes was made on 18th December 2012 and follows on from a previous application for dispensation under case reference CAM/11UB/LDC/2012/0013. In that case dispensation was granted for works to be undertaken to the gable wall of the premises. This second application came before us on 2nd May 2013.
2. It appears that in carrying out those works it became apparent that more extensive works were required to correct the problems. As a result this further application for dispensation was made. We were told in a document headed "Grounds for Seeking Dispensation" that the timber frame with brick infill was showing *"extreme levels of wet and dry rot along with beetle infestation. Due to the level of deterioration the timbers are unsalvageable and need complete replacement."*

"The wall is becoming unstable while the render was being removed and the render was actually holding the wall in place. As a precautionary measure it has been braced with scaffolding to secure it in place and works have ceased."
3. Under the heading Qualifying Works there was listed various items of works or steps to be taken, which included the rehousing of the tenants of Flat 3 and 4 for the duration of the investigations and the works. Under the heading "Investigatory Works" this set out further details of the work to be undertaken which included reparation works.
4. In a bundle provided to us at the Hearing we saw a quote from a Mr Burgess indicating the costs could vary from £38,000 to £50,000 depending upon what was required. In addition there was correspondence passing between Miss Freeman and Mr Faiman, a director it is thought of Dauber Homes, correspondence between Dauber and the leaseholders, the structural engineer's quote from AP Consultation Engineers Limited and the project management quote from Mr Green of Colliers International Property Consultants Limited. We were also provided with copies of what appeared to be alternative accommodation that could be provided to those tenants it was said had to leave and further correspondence passing between the parties. In addition we were provided with copies of the leases between Hobart 35 Limited and now Dauber Homes and what appeared to be counterpart licences to sub-let to each of the four

Respondents. These licenses to sub-let included the terms of the lease between Dauber Homes formerly MOH Properties Limited and the leaseholders. We shall refer to the terms of the leases as necessary in the findings section.

5. We inspected the subject property prior to the Hearing and were able to gain access to Flat 4 owned by Mr Ogborn. This was tenanted at the time but we could see no evidence of any internal difficulties arising from the problems with the gable wall. It appears that only Flats 3 and 4 will suffer from any damp or rot and it is only the tenants of these flats that it is said will need to vacate.
6. We listed in the previous Decision dated 8th October 2012 the nature of the building and the ownership structure.
7. At the time of our inspection on 2nd May scaffolding had been erected to keep the wall in place and we were able to see where render had been removed and that the wooden frame and brickwork was indeed in poor condition.

The Hearing

8. The Hearing was attended by those named at the front of this document. None of the Respondents had filed any form of written response to the application notwithstanding that they were requested to do so in the Directions.
9. Miss Freeman told us that they were now at the situation where they knew that works were needed but that they believed it was necessary to rehouse the tenants of Flats 3 and 4. Certainly Mr Green thought it unwise to remove the gable end without the tenants being temporarily accommodated but did not think that any works would effect Flats 1 and 2. Mr Ogborn told us that he had in fact given his tenant notice to quit although she wished to stay but it was not clear from the parties present what the situation was with regard to Flat 3. It was not known for example whether notice had been served on that tenant and whether he or she was willing to vacate.
10. Miss Freeman told us that she had obtained legal advice that the recovery of rent paid to rehouse the tenants was a service charge matter. It seems that it was felt appropriate to rehouse the occupants of Flats 3 and 4 and for the rent to be paid by the landlord and then recovered from the leaseholders. Discussions then took place as to the terms of the leases between the Respondents and Dauber Homes. These appeared to be common and in particular reference was made to clause 7(7) which says as follows:
"To permit the covenantees and the persons authorised by the covenantees at reasonable times except in the case of emergency and whenever possible on giving reasonable notice to enter the flat for the purpose of executing works of repair, decoration, reinstatement,

replacement, renewal, alteration additional or improvement to or upon the estate, the work being done with reasonable dispatch causing as little disturbance as possible and making good all damage caused.”

In the lease the covenantee is defined as being the landlord and the tenants. It seems clear therefore that this clause enables the landlord to gain access to Flats 3 and 4 for the purposes of carrying out certain works and the question as to whether or not the tenants needed to vacate is perhaps therefore a matter which should be revisited.

11. Certainly Mr Green indicated in evidence to us that he thought it would take no more than a week to carry out investigative works to see whether the rot and damp had spread to the supporting timbers within the flats themselves and that relocation of the tenants within the flat, for example Flat 4 has two bedrooms, might well be a suitable way of avoiding the need to gain vacant possession.
12. Both Mr Ogborn and Mrs Bush confirmed that the works need to be done and were prepared to agree that there be an element of dispensation granted in respect of the works required to complete the investigations and to determine what was then needed. We were told that the scaffolding was costing £32 per week and it was therefore important to move this matter forward as quickly as possible.
13. The evidence to us by Mr Green was that once they had completed their investigations there would be a four to six weeks lapse while consent was obtained from the listed building officer, although it might be possible to get the listed building officer to confirm steps before the internal inspection had taken place. Either way it seems that there would then be the need to engage with builders of sufficient experience to potentially create a new timber frame and to reinstate the property to a level approved by the listed building officer. All this would take time.

The Law

14. The law relevant to this application is set out in the appendix attached.

Findings

15. There appears to be little doubt that works are required as a matter of some urgency to maintain the structural integrity of the gable wall to the property. Our inspection revealed that the brickwork was failing and that the wooden structure was beyond repair. It is not clear, however, how far the rot and damp has penetrated into the timbers which support the floors and ceilings of Flats 3 and 4. We are prepared to grant some dispensation but not for the total works. We expressed our views to the parties who were in agreement with the following dispensation.

Dispensation is granted for:

1. reasonable investigation to be undertaken which includes the removal of render to exterior of the property and any testing which may be required and the retention of scaffolding to maintain the structural integrity of the property until the works of repair have been fully concluded, and
2. That the applicants be allowed access to Flats 3 and 4 for carrying out internal investigations to determine the extent of any damp or rot infestation into the supporting timbers whilst making good any such investigative works on a temporary basis which might include propping of the structure.

The intention is that the works to the interior should be completed within 7 days or thereabouts and that the room be put back into a condition, subject to safety, that means it is habitable by the tenants until such time as specifications and tenders can be obtained for the full works to be undertaken, when the question of vacant possession will need to be revisited. The leaseholders may wish to consider, with their tenants, how the matter is resolved to all parties satisfaction, if possible.

3. The dispensation includes the use of AP Consulting Engineers as the structural engineers for the investigative undertaking and the use of Colliers International Property Consultants to manage the property in respect of the investigative works and for that period.
16. For the avoidance of doubt the dispensation does not include any works of repair or subsequent costs arising from the investigation. It seems to us given that there will need to be consultation with the listed building officer and the preparation of specifications and tenders, there is no reason why the Section 20 procedures cannot be fully complied in respect of the works determined to be required, without causing any undue delays.

Chairman:

A A Dutton

Date: 15th May 2013.

THE RELEVANT LAW

S20 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.

S20ZA 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) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
- (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
- (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.