

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property
TRIBUNAL SERVICE**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 20ZA OF THE LANDLORD
AND TENANT ACT 1985 (AS AMENDED) ("the Act")**

Case Number:	CHI/00ML/LDC/2007/0004
Property:	79 The Drive Hove East Sussex BN3 3PG
Applicant:	79 The Drive, Hove Limited C/O Ellman Henderson
Respondents:	The Leaseholders of Flats 1,2,3,4, of the Property
Date of Application:	19 th February 2007
Date of Hearing:	26 th March 2007
Venue:	Maritime House Basin Rd North Hove BN41 1WR
Tribunal Members:	Mr Robert Wilson LLB Chairman Mr R A Wilkey FRICS FICPD
Date of Decision:	3 rd April 2007

Application

1. On 19th February 2007 79 The Drive Hove Limited (“the Company”), through its agents Messrs Ellman Henderson, made an application to the Tribunal for dispensation from the requirements of section 20 of the Landlord & Tenant Act 1985 (as amended) (“the Act”) in connection with works intended to deal with an outbreak of dry rot to the rear of the building at 79 The Drive (“the premises”). The purpose of such a dispensation is to remove the requirement to go through the consultation and notification procedures for which section 20 of the Act provides, and thus the limitation on recoverable service charges that failure to comply with those requirements would otherwise incur.

Directions

2. Provisional directions were given on 23rd February 2007 which indicated that the Tribunal had determined to dispense with the usual 21 days notice of hearing in view of the urgency of the situation, and provided that a hearing should be held on 26th March 2007. In the meantime the Applicants were to provide a bundle of documents for the hearing, and any of the Respondents who wished to contest the application were required to produce copies of any documents or witness statements that they wished to introduce at the hearing.

Inspection

3. The Tribunal inspected the premises prior to the hearing in the presence of Mr Perry of Messrs Ellman Henderson and Mr Hall plus colleague of Messrs Philip Hall Associates. They saw a brick built house with some stone facing erected on a sloping site. The house appeared to date from the latter half of the nineteenth century and is typical of the large dwellings erected in The Drive at around that time. There are three stories at the front and four at the rear. The property is divided into four flats, and it appeared externally that one flat occupied each floor, the lower ground floor flat facing to the rear. At the time of inspection there was scaffolding to the southern (side) and western (rear) elevations.
4. The dry rot outbreak had been identified on the rear western elevation of the first floor in the flat occupied by Mr & Mrs Grant. There was evidence of dry rot in some of the exposed joists, and pictures were available which also showed signs of dry rot to the adjoining bay window. The Tribunal also inspected flat 2 and again was shown evidence of dry rot.

Hearing

5. Mr Perry attended the hearing on behalf of the Applicant with Mr Grant. None of the other lessees attended the hearing and none had communicated with the Tribunal.

6. Mr Perry reminded the Tribunal that this was a follow on application from the application now decided by the Tribunal in relation to dry rot to the front east elevation. Dispensation had been granted for the works to the front but that decision had indicated that if dispensation was required for works to the rear of the building then a fresh application would have to be submitted to the Tribunal.
7. Mr Perry said a thorough investigation of the rear had now taken place and there were clear signs of further dry rot. The consensus of opinion was that this outbreak was not connected with the outbreak to the front. However, the same principles applied. Speed was crucial to minimize the damage. Specialist contractors would soon be on site and cost savings could be achieved if dry rot works were carried out both to the front and rear of the building by the same contractor under one contract. If consultation had to take place this would result in a delay of some three months during which time the dry rot would spread and cause yet more damage.
8. Mr Grant gave evidence that both he and his wife suffered from asthma and that the work needed to be carried out as soon as possible on health and safety grounds. Furthermore his wife was expecting their first child in June and it was crucial to get all the work done before the baby was born. Mr Grant reminded the Tribunal that the freehold was jointly owned by all four lessees and as far as he was aware all were in favour of the application. Certainly no lessees had objected as far as he was aware.
9. Mr Perry reiterated that the reason for the dispensation was that the fungus can spread very rapidly and the outbreak become a great deal more serious, therefore costing more to eradicate if the Applicant had to go through the section 20 procedure before carrying out any work. Such a procedure would occupy some three months during which time extensive further damage would very probably occur.

Decision

10. The Tribunal was satisfied from its inspection that this is a potentially serious outbreak of dry rot. It is aware from its collective knowledge and experience of the locality that properties of this type in the Brighton and Hove area are prone to such infestations. It would be wholly inappropriate for the Applicant to have to wait for the section 20 procedures to take their course before it could carry out any work because, as Mr Perry said, extensive further damage may well occur in that time. It concluded that the appropriate dispensation for it to grant was a dispensation in respect of the whole of the outbreak in the rear of the building. That is because in its experience such outbreaks are usually better dealt with comprehensively than on a piecemeal basis because of the very considerable speed with which the fungus that causes dry rot can sometimes spread. That will enable the lessees to deal with the matter on a more comprehensive basis, or not, as they may choose.
11. Accordingly the Tribunal grants dispensation from the requirements of section 20(1) of the Act to enable the Applicant to carry out all works of exposure and

reinstatement to determine and treat the further outbreak of dry rot centred between the ground floor and first floor of the rear of the building (as viewed from the rear)

12. The dispensation granted relates solely to the requirement that would otherwise exist to carry out the procedures in accordance with section 20 of the Act. It does not prevent an application under section 27A of the Act to deal with the resultant service charges if any lessee so wishes, but simply removes the cap on the recoverable service charges that section 20 would otherwise have placed upon them.

A handwritten signature in black ink, appearing to be 'RW' with a flourish above it and '3rd' written below.

Robert Wilson
Chairman

April 2007