

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



**THE DECISION OF THE LEASEHOLD VALUATION  
TRIBUNAL ON A PRELIMINARY ISSUE ARISING OUT OF AN  
APPLICATION UNDER SECTION 27A OF THE LANDLORD  
AND TENANT ACT 1985**

**Case No:** CHI/21UD/LSC/2007/0041

**Property:** 55 Ashburnham Road, Hastings TN35 5JL

**Applicant:** Mr B T Markham

**Respondents:** Mr J E Dunsford & Miss H L Smith

**Date of the Hearing:** 29<sup>th</sup> August 2007

**Appearances:**

**For the Applicant** Mr Cutting of Messrs Shuttleworth Solicitors

**For the Respondent** Mr J Dunsford

**Tribunal Members:** Mr RTA Wilson LLB (Chairman)  
Mr BHR Simms FRICS (Valuer)  
Lady Davies FRICS (Valuer)

**Date of the Decision:** 24<sup>th</sup> September 2007

## **THE APPLICATION**

1. The Landlord Applicant Mr Markham has applied to the Tribunal for a determination of the liability of the Respondents to contribute towards the costs of repair and decorations works carried out to the exterior of the property in 2004 (the Works).

## **BACKGROUND**

2. At the hearing it was agreed by the parties that the question of whether or not the Applicant had complied with the statutory consultation requirements in relation to the Works should be determined by the Tribunal as a preliminary issue.
3. Mr Cutting on behalf of Mr Markham explained that although the Works were carried out in 2004, the relevant consultation procedure had been undertaken in 2000. Therefore the transitional provisions of the Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings) (England) Order 2003 ("the Order") applied. These transitional provisions provided that the new consultation requirements set out in the amended section 20 of the Landlord and Tenant Act 1985 did not apply in relation to qualifying works where a Section 20 notice was given or displayed before the 31<sup>st</sup> October 2003. In short the relevant consultation procedure in this case was that contained in Section 20(4) of the Landlord and Tenant Act 1985 and not the new procedure contained in Section 20 of the Act.

## **DECISION IN SUMMARY**

4. The statutory consultation requirements have not been complied with in relation to the Works and therefore the maximum amount recoverable from the Respondents collectively for the Works is capped at £1,000 in the absence of a dispensation order from the County Court.

## **INSPECTION**

5. The Tribunal inspected the exterior of the property and the interior of the ground floor flat on the day of the hearing accompanied by the parties. The property is a semi detached four storey villa built around the turn of the last century. It has cement rendered elevations under an interlocking concrete tile roof. It has been converted into four self contained residential units.
6. The Tribunal was shown the extent of the Works which consisted of the rebuilding of the rear bay followed by associated external repair and re-decoration works. The Tribunal considered that the Works had been completed to a reasonable standard.

## THE HEARING

7. Mr Cutting explained that although the Works had been carried out in 2004 the consultation exercise, which his client relied upon, took place between 2000 and 2002 . On or about the 12<sup>th</sup> July 2000 his client had served upon each of the lessees a notice of intended works. This notice described the works as ‘*repair and redecoration of exterior / repair and re-roofing of property*’. In August 2000 his client had obtained a detailed specification of the Work prepared by Mr Sheppard a structural engineer. On or about the 16<sup>th</sup> October 2002 Mr Markham had sent to each lessee a letter which amongst other things stated the following, “*whilst writing I am now also in a position to advise you of the quotations we have received regarding the intended works on the property, they are as follows:*”

<i>William Ellis</i>	<i>£40,755 plus vat</i>
<i>West Ridge Construction</i>	<i>£35,308 plus vat</i>
<i>JDK Building and Plastering Contractors</i>	<i>£31,747 plus vat</i>

*In the light of the above we have instructed JDK Building and Plastering Contractors to supply a start date which is expected to be early spring 2003”.*

8. The Tribunal heard that sometime after the letters of the 16<sup>th</sup> October 2002 the Applicant had sent a copy of the specification of works to those lessees who had requested it.
9. Mr Cutting submitted that the combined effect of the above notice, specification and letter was to achieve full compliance with the pre CLARA consultation procedure as set out in section 20 (4) of the Landlord and Tenant Act 1985 as amended.
10. Mr Dunsford on behalf of the Respondents maintained that there was considerable doubt as to whether the original notices had been received by all the lessees. He made the point that one of the notices had been served on Mr Simms who was the previous owner. Mr Dunsford also mentioned that in 2003 he had received a second notice setting out the landlord’s intention to carry out works. As a result of this notice he had submitted his own estimate for the work to Mr Markham’s solicitors in the sum of £22,000. This estimate had not even been acknowledged let alone followed up.

## DELIBERATIONS

11. On the basis of its inspection, the Tribunal was satisfied that work had been carried out to the property in 2004 by the Applicant and that the value of that work was in excess of £1,000. The Tribunal accepts the parties rights to adduce further evidence touching upon the value of the Works should this application continue beyond determination of the preliminary issue.

12. Placing reliance upon the evidence submitted by the Applicant, the Tribunal accepts that the transitional provisions of the Order apply in this case and accordingly the consultation procedure to be followed by the landlord is that set out in Section 20(4) of the Landlord and Tenant Act 1985. The relevant requirements are as follows:-

- a) At least two estimates for the work shall be obtained, one of them from a person wholly unconnected with the landlord.
- b) A notice accompanied by a copy of the estimates shall be given to each tenant or shall be displayed in one or more places where it is likely to come to the attention of all the tenants.
- c) The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and address in the United Kingdom of the person to whom the observations may be sent and the date by which they are to be received.
- d) The date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b) above.
- e) The landlord shall have regard to any observations received in pursuance of the notice and unless the works are urgently required they shall not be begun earlier than the date specified in the notice.

13. It is the opinion of the Tribunal that neither the notice of intended works dated the 12<sup>th</sup> July 2000 nor the letter dated the 16<sup>th</sup> October 2002 complied with the above requirements. In particular neither communication contained all the statutory information as set out in (c) and (d) above. Neither communication contained a date for receiving the tenants' observations and neither communication contained name and address of the person on whom the observations should be sent. The statutory information given to each lessee was therefore lacking. Moreover there was a time lag of over two years between the initial notice and service of the estimates. In the opinion of the Tribunal the legislation requires both the notice and the estimates to be sent to each lessee contemporaneously.

14. For the above reasons the Tribunal is bound to find that the consultation requirements in relation to the Works were not complied with. As a result the costs incurred in carrying out Work above the statutory limit cannot be recovered unless the service of a valid Section 20 notice is dispensed with by the Court. That limit is currently £1,000. It is the County Court and not the Leasehold Valuation Tribunal which remains the only venue in which to bring an application to dispense with service of a valid notice.

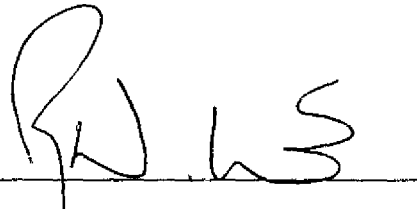
15. Upon Mr Cutting supplying undertakings to the Tribunal to

- a) apply to the County Court for an order dispensing with a valid Section 20 notice for the Works within 14 days of the Tribunal issuing these reasons and
- b) to supply the Tribunal office with a copy of the County Court decision within 14 days of receiving it,

The Tribunal agreed to adjourn this application pending the decision of the County Court.

16. The Tribunal wish to make a record of the following procedural matters. During the course of the hearing it was suggested to the Chairman that the Applicant may have been recording the proceedings with the aid of an electronic device placed in front of the Applicant's brief case in the direction of the Tribunal. When questioned by the Chairman in relation to this matter the Applicant categorically confirmed that no part of the proceedings had been recorded by him and that the electrical device had no recording capabilities. The Applicant's solicitor also confirmed that his client had not recorded any part of the proceedings. The Chairman accepted these assurances but reminded all parties that the recording of any part of a Tribunal hearing without the consent of all parties was unlawful and not permitted under any circumstances.

Chairman



R T A Wilson LLB

Date 24<sup>th</sup> September 2007