

SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Case No. CH1/00HH/LDC/2008/0019

IN THE MATTER OF an Application under Section 20ZA of the Landlord and Tenant Act 1985

BETWEEN:

SOLYMAR COURT (PAIGNTON) LIMITED
(The Society)
By one of their Managing Agents Ms Ekers **APPLICANT**

AND

MR. & MRS. HEATHER Flat 1
MRS. J. RENDALL Flat 2
MR. J. SALT Flat 3
MS J. EKERS Flat 4 **RESPONDENTS**

PREMISES: FLATS 1 – 4 SOLYMAR, 4 ROUNDHAM ROAD,
PAIGNTON, DEVON

ATTENDEES: Ms J. Ekers and Mr. G. Bishop
Mrs. & Mr. Rendall

TRIBUNAL: MR. I. ARROW Lawyer Chairman
MR. T. DICKINSON BSc FRICS Valuer Member
MR. J. McALLISTER FRICS Valuer Member

HEARING: 9 JULY 2008

DETERMINATION AND REASONS

DETERMINATION

The Tribunal confirms its decision given verbally at the hearing that it determines to dispense with the requirement for the Applicant to undergo the consultation procedure set out in Section 20 of the Landlord and Tenant Act 1985.

Dispensation is given to carry out the qualifying works without consultation which are the responsibility of The Society and are detailed:

In the plan approved 12 June 2007 drawn 15.5.2007 by E. J. Shepherd and numbered 07/574.

The specification marked A5 and produced at the hearing.

The letter from Case consultants of June 11 2008 to Mr G Bishop

The requirements of Torbay Council planning enforcement officer Paul Steen set out in his letter of 19 February 2008 which for ease of identification are:

1. New foundation to deal with the coal chute.
2. Re-build the bay wall to damp- proof course level.
3. Build new timber frame bay ply faced with metal lath and render.
4. Pavement to be re-compacted and made good in so far as The Society is responsible to make this good rather than the Highway Authority.
5. Scaffolding for so long as required to carry out the above works.

For the avoidance of doubt dispensation is NOT given for the windows and window frames which are the responsibility of each flat owner.

Dispensation is further allowed for the work required to make water-tight the front (East) pitched slated roof by repair or renewal whilst the scaffolding to the front elevation remains erected.

REASONS

1. The Application

1.1 This application was by one the Managing Agents Ms Jackie Ekers who is a Managing Agent for Solymar Court (Paignton) Ltd. under Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the consultation requirements in respect of certain works they intended to carry out at the property to be dispensed with. The Application had been received at the Tribunal office on the 17th June 2008 and was supported by a statement given by Ms Jackie Ekers

1.2 The scope of the works the Tribunal was therefore being asked to consider were

A) In an approved plan of 12 June 2007 prepared by E J Shepherd.

B) In a specification marked A5 and produced at the hearing.

C) A specification for foundation work in a letter of June 11 from Case Consultants to Mr G Bishop.

D) The requirements of Torbay Council Planning Enforcement Officer Paul Steen set out in a letter of 19 February 2008

1.3 Written representations were received from Ms J Ekers who produced a statement with her application.

2. Inspection

The Tribunal inspected the property immediately prior to the hearing on the 9th July 2008. It comprises a 3 storey traditionally built end terrace building about 150 years old and converted into 4 flats several years ago. The Tribunal

inspected the interior of Flat 1 at the request of Mr and Mrs Heather. The Tribunal noted the recent high quality refurbishment and redecoration of the flat. Flat 1 is located below road level. Mr and Mrs Heather expressed at inspection two particular concerns. Their first concern was that the defects to the front of the building exposed their property to potential water damage. Secondly they were concerned at the delay in rectifying the defects which was affecting their ability to sell flat 1. Mrs Heather had an important Hospital appointment later in the morning and she and Mr Heather were unable to attend the hearing. The Tribunal then inspected the site of the demolished bay. The Tribunal noted the redundant coal chute exposed during the demolition and excavation. The Tribunal noted the scaffolding extending onto the highway near to a road junction. The Tribunal noted the temporary boarding to Flat 2 and Flat 4. The Tribunal did not inspect the interior of Flat 2, but did have the opportunity to inspect the interior of Flat 4.

3. The Law

3.1 Section 20ZA(1) of the Act states:

“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 ... the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements”.

4. The Hearing

4.1 The hearing took place at The Kingsley Suite, Livermead House Hotel, The Seafront, Torquay, Devon on Wednesday 9th July 2008.

4.2 Those in attendance were as follows:

Ms J Ekers, Mrs J Rendall Managing Agents for Solymar Court (Paignton) Ltd.

And for the lessees:

Ms J Ekers together with her partner Mr G Bishop

Mrs J Rendall together with her husband Mr Rendall

Non attendance by

Mr and Mrs Heather who did not attend for the reason set out above

Mr J Salt

Preliminary matters.

The Tribunal established that Ms J Ekers and Mrs J Rendall held a written Authority dated 12 June 2008 from Mr David Rayment a Director of Solymar Court (Paignton) Ltd to act as Agents for that Company.

The Tribunal established all flat owners had been served with details of the application and the hearing date and venue by post on 18 June 2008.

4.3. Evidence

The Tribunal considered a copy Lease provided by Ms Jackie Ekers which they were informed was in standard form. The Lease was of Flat 4 Solymar, it being dated 14th December 1994, it is understood the form of Lease is common to the other flats at Solymar Court

The lease provides inter alia: the Landlord Devonshire Freeholds Ltd, appointed Solymar Court (Paignton) Ltd. to be the Managing Agents referred to in the Lease as “The Society”.

The Society comprises the leaseholders of Solymar Court (Paignton) Ltd. for the time being. This in particular is dealt with in Clause 1 (n)(2) of the Lease.

The Society has an obligation under paragraph 4 (c) of the Lease to repair, maintain uphold and to keep the flat so as to afford all necessary support shelter and protection to the parts of the Court. That obligation is more particularly described in Section 6 (f) of the Lease.

Ms Ekers produced an Evidence bundle. A copy letter from Case Consultants dated June 11 2008. An original plan approved on 12 June 2007 drawn on 15 May 2007 by E J Shepherd and numbered 07/574

The applicants were asked to give a chronology of events. They were assisted in this by Mr G. Bishop. The principal events were as follows:

Solymar is approximately 150 years old. It has been divided into four flats. Flat 1 at basement level Flats 2 and 3 at ground floor level Flat 4 at second floor level. A double height bay window extended from the front elevation of flats 2 and 4. In 2005 a crack was noticed appearing in the bay. The original timber framed windows had been replaced by UPVC windows. This together with the decay of the pitch pine sub-frame had led to the failure of its structural integrity. It was collapsing. E J Shepherd was commissioned to prepare plans and specification for a replacement bay. TMS a management company then acting for The Society concluded an insurance claim to reinstate the bay. This is detailed in Cunningham and Lindsey's letter of 29 June 2007 C3 in the evidence bundle. The sum of £5390.28 was received in settlement.

In February 2008 leaseholders received a letter from Torbay Council asking that improvements be made to the condition of the building. On the 3 of April leaseholders of Flats 1, 2 and 4 met in flat 1 to agree a course of action. The minutes of the meeting are produced as B1 in the evidence bundle. Remedial

work was commenced on the bay. Its brick skin was removed, the UPVC windows and old frame removed. On 26 May 2008 work tidying the footing revealed a hole going below ground level. It transpired it was a redundant coal chute. It had not been capped. The main load bearing wall of the front elevation over the chute was not properly supported. All building work stopped. Case Consultants, at Mr Bishop's request, produced a specification to deal with the chute and unsupported wall. It became clear additional works at additional cost would be required. There would be a call for funds from the leaseholders. At a meeting onsite the management company invited Ms Ekers and Mrs Rendall to "sort it out" and subsequently appointed them agents. Further correspondence was received from Torbay Council requiring remedial work commenced by 1 September 2008 and finished by 1 October 2008. A budget for the proposed works was produced. This is C1 in the evidence bundle. This budgeted cost per flat is £4229.23. The ongoing cost for scaffolding hire is £30 per week plus vat and £34.80 per month for a council permit.

Evidence from the lessees was as follows:

They wished the work to be undertaken as quickly as possible

Mr Rendall expressed the view he was content that Mr Bishop would be able to carry out the essential works at the most favourable cost.

The Tribunal was made aware Torbay Council had indicated its intention to take enforcement action should repair work not be carried out by the 1st September 2008 and completed by the 1st of October.

4.4 The determination

The Tribunal decided it would be reasonable to dispense with Section 20 consultation requirements. The proposed works were qualifying works. They were urgently required to:

- A) Make safe the foundations.
- B) Secure the stability of the building and highway.
- C) To make good the bay to ensure it and the front pitched roof were weather tight.
- D) To expeditiously carry out the work to allow the prompt removal of the scaffolding which is obstructing the highway.
- E) To comply with the requirements of Torbay Council.
- F) To reduce the ongoing costs of scaffolding hire.

In all the circumstances therefore, the Tribunal consider it reasonable to dispense with the Section 20 consultation procedures under Section 20ZA of the Act for the works set out under the heading "Determination" above and makes a determination accordingly.

Furthermore the Tribunal in its decision does not make any determination as to the responsibility for the cost of the works between the Landlord and the Lessees having regard to the repairing covenants in the Leases. Accordingly this decision would not prevent any party making an application in the future to the Tribunal under Section 27A of the 1984 Act (Section 155 of the Commonhold & Leasehold Reform Act 2002) with regard to the reasonableness of service charge costs and/or whether or not the standard of any works for which the costs are charged is reasonable.

DATED THIS 21st DAY OF JULY 2008

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L.M. ARROW - CHAIRMAN