

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case Number: CHI/00MW/LDC/2007/0023

RE: 68 PYLE STREET, NEWPORT, ISLE OF WIGHT

THE PARTIES

Corne & Plant Southern Ltd - The Applicants

&

Mrs K A Thomas (Flat 1)
Miss S Coombes (Flat 2) - The Respondents

Date of application: 19 SEPTEMBER 2007
Date of Hearing: 4th December 2007
Date of determination: 7th December 2007
Date of Reasons: 15th January 2008

DECISION: The application for dispensation of
consultation requirements was refused.

Members of the Tribunal

Mr D M Nesbit JP FRICS FCI Arb – Chairman
Mr P D Turner-Powell FRICS

RE: 68 PYLE STREET, NEWPORT, ISLE OF WIGHT PO30 1UJ

Introduction

1. This is an application under Section 20ZA, Landlord & Tenant Act 1985, seeking dispensation from the consultation requirements applicable to works for this property.
2. Following Directions, the parties submitted representations and a Hearing was held at The Quay Arts Centre, Newport.
3. Prior to the Hearing the Tribunal made a brief inspection of the property and noted the works that had been completed, the age and location of the building.
4. The property comprises a three storey building in a mixed commercial/residential area in central Newport arranged on three floors, with a ground floor shop and two self-contained residential flats above. The flats had been sold on long leasehold terms.
5. The works comprised the renewal of the top floor east gable wall. With the consent of the occupier of the adjoining property, the Committee were able to note externally the area in question, that area not being visible from within the subject property.

Hearing

6. The Hearing was attended by Mr Andrew Hatch, partner of RJR Solicitors representing the freeholders. Mrs Karen Thomas, the lessee of Flat 1 and Miss Sarah Coombes, the lessee of Flat 2 attended.
7. At the outset Mr Hatch confirmed that neither the freeholders or their Managing Agents, Gully Howard, had complied with the consultation requirements of Section 20 of the Act. Mr Hatch with reference to the case bundle of documents, outlined the background and time scale from which a problem of dampness affecting the property had become apparent, and the action taken by the Managing Agents, their building surveyors, and consultant engineers.
8. The nature of the defects and the extent of works required were only apparent after the wall had been opened. The documents included

photographs of defective timbers and brickwork where renewal was necessary.

9. Mr Hatch acknowledged that the two stage timetable requirement of Section 20 had not been followed, but in the opinion of the freeholders and on the basis of professional advice received, stated there were potential dangers to the structure and also to the internal common parts. There was thus an “emergency” situation where it was more appropriate to deal with repairs, and accordingly he requested dispensation under Section 20ZA.
10. Mrs Thomas, who had submitted her own evidence and with a timetable of action that she had taken and repeated requests for information, specifically challenged that if two quotations had been obtained, why the lessees had not been informed and no information provided? There was no disagreement about the work needing to be undertaken, but the freeholders, through their agents, could have kept the lessees informed and consulted, and had the time to do so.
11. Miss Coombes, the lessee of Flat 2, also challenged the freeholders’ and agents’ approach pointing out that the freeholders were aware of the need for work in April 2006, the works apparently became urgent over that Christmas, but were not started until February 2007. There was more than adequate time for the lessees to be informed.
12. In answer to questions from the Tribunal, Mr Hatch was not aware of the reasons for delay and why information and estimates had not been sent to the lessees.

The Law

13. Section 20ZA the Landlord & Tenant Act 1985, as amended, applies 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, and the Tribunal may make a determination if satisfied that it is reasonable to dispense with the requirements.
14. “Qualifying works” are any works on a building or premises and “the consultation requirements” are the requirements set out in Section 20 of The Act.
15. Those requirements are

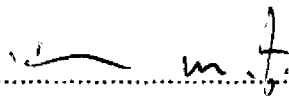
- a) To provide details of proposed works to tenants.
- b) To obtain estimates for proposed works.
- c) To invite tenants to propose names of contractors from whom the landlord should try to obtain their estimates.
- d) To have regard to observations made by the tenants in relation to the proposed works, and
- e) To give reasons in prescribed circumstances for carrying out works.

Consideration

16. Currently in respect of qualifying works, the consultation requirements apply where costs result in the payment by any tenant greater than £250. If the consultation requirements are not complied with or a dispensation is given by the Leasehold Valuation Tribunal, then the relevant contribution of each lessee will be capped at £250.
17. Where the landlord has not complied with Section 20 requirements and amounts recoverable are subject to capping, it is understood that there may be harsh consequences in certain circumstances. That could apply where there is a technical defect in the consultation process, or where work is of an urgent nature and where there is no time to go through the full consultation requirements. The current Section 20 requirements differ from those originally applicable, whereby the two stage process for consultation was introduced for the purposes of more effective consultation and the opportunity for lessees, who pay the service charges arising for those building works, to have an opportunity to make representations and propose other contractors.
18. Whilst the Tribunal fully reviewed all documents included in the case bundle, it was regretted that there was no representative present at the Hearing from the Managing Agent or the consulting engineers, and neither the lessees or the Tribunal were able to question and cross-examine the evidence and reports submitted.
19. The Tribunal accept that it was clear when the flank wall was exposed, there were defects that required repairing or renewal, and where specialist advice would have been very appropriate. Further, the Tribunal accept there were additional costs with the need for external scaffolding and which could only have been installed to the rear of the neighbouring property. The Tribunal noted the repairs were in different materials from the original.
20. However, it is clear to the Tribunal from the consideration of the timetable and the chronology of events, that the freeholders, through their Managing

Agents, would have had ample opportunity not only to warn the lessees of an apparent problem and for which a specialist report was being obtained, but also to inform the lessees of estimates that had been obtained. The freeholders and their Managing Agents failed to do so. It is clear, as admitted at the Hearing, that the Section 20 consultation process was not followed in any material way. Consequently the Tribunal have no grounds for granting the dispensation from the consultation requirements, and do not accept the works could be undertaken without any consultation or information being provided to the lessees.

21. The Tribunal, therefore, determines that the application be refused.

Signed:.......... Date: 15th January 2008

DAVID M NESBIT JP FRICS FCIArb
Chairman