

**SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

CHI/19UD/LDC/2008/0029

Decision of the Leasehold Valuation Tribunal on application under Section 20ZA of the Landlord and Tenant Act 1985 as amended

Applicants	Arlington Limited	
Respondents	Mr J Charles	Flat 1
	Mrs W Kenny	Flat 2
	Mr Haynes	Flat 3
	Mr D Wragg	Shop
<b>Re:</b>	<b>8 The Square, Wimborne, Dorset</b>	
Date of Application	28 <sup>th</sup> October 2008	
Date of Inspection	11 <sup>th</sup> November 2008	
Date of Hearing	11 <sup>th</sup> November 2008	
Venue	The Lighthouse, Poole	
Appearances for Applicant	Mr K Charalambous, Nettleship Sawyer	
Appearances for Respondents	None	

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
K Lyons FRICS	Valuer Member

Date of Tribunal's Decision: 17th November 2008

### **Decision**

- 1) The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) from compliance with the consultation requirements of Section 20 of the Act **to the extent only:**
  - (1) That the Notice of Intention provided for by Paragraph 8 of Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 is dispensed with;
  - (2) That dispensation relates only to work to be done at the premises in respect of the parapet wall topping the front elevation wall of the premises in respect of health and safety, investigation and remedial work.

### **Reasons**

#### Introduction

- 2) This was an application made by on behalf of the Applicant, Arlington Limited the landlord of the premises, for dispensation from compliance with the consultation requirements of Section 20 of the Act in respect of
- 3) damage to the front parapet wall
- 4) decorating and repair to parts of the front and rear elevations
- 5) wastepipe at the rear of the premises

#### Inspection.

- 6) The Tribunal inspected the premises externally on 11th November 2008 in the presence of Mr Charalambous of the landlord's managing agents Nettleship Sawyer (NS)
- 7) The premises comprise a three storey terraced building comprising a shop on the ground floor and three self-contained flats above. It is constructed of brick under a slate pitched roof. The pitch on the front elevation falls to a point inside the parapet wall thus leaving a valley between the roof and parapet. It was not possible to inspect save from ground level. To the rear there is a garden. The horizontal drainage pipe referred to is located over a flat roof extension to the rear of the adjoining premises (No 9 The Square). The brickwork to both front and rear elevations shows some spalling and mortar which probably need attention. Other than these items the subject of this application, the premises appeared to be in reasonable condition for their age and character.

#### Hearing

- 8) Notice of the application had been served on all the Respondents to the application but none of them attended nor did they submit any representations.
- 9) The hearing was attended only by Mr Charalambous for NS on behalf of the Applicant
- 10) The substance of his evidence was that:

- a. He had taken over the management of the premises from a colleague in about June 2008 together with approximately another 50 blocks. He had no information or records as to the result of any external inspections by NS prior to his taking over its management but thought that his colleague would have mentioned to him any issues concerning the premises if there had been any. He himself had not carried out any inspection prior to receipt of the letter mentioned in the next paragraph.
- b. NS received a letter (addressed to the Applicant) dated 15<sup>th</sup> August 2008 from Peter May, Chartered Surveyor, who acted for the owners of No 9 The Square adjoining the premises. This mentioned the wastepipe to the rear and also that "the parapet wall at the front of the property leans inwards and is potentially vulnerable to collapse and failure. We have not undertaken any tests to determine its stability but simply draw your attention so that you may assess any risk as it may pose a danger to passing members of the public". That letter was produced to the Tribunal and has notes written on it. One says: "Karl. I have spoken to Peter May. Parapet wall is not perilous but does need rebuilding soon. They have rebuilt No 9 but left a small section untouched so as not to destabilise ours". Another note says "Not highly dangerous". Mr Charalambous said those notes resulted from colleagues' conversations with Mr May.
- c. He was under pressure of work so did not inspect until the first half of September when he went up No 9's scaffolding to look. He did not take further steps until mid-October when he contacted Pitcher and Son (who had done the parapet work for No 9) for a tender. He had not sent them a specification to work from. Pitchers had sent him a tender on 15<sup>th</sup> October covering the parapet and also external decorations and the waste pipe.
- d. He had then, on 28<sup>th</sup> October, issued the present application to the Tribunal. On the following day he made his first contact with the lessees by letters produced to the Tribunal. These say (inter alia)
  - (1) " I have recently been informed of a potential health and safety issue ...."
  - (2) He agreed with Mr May that the parapet wall "is not stable"... "that there is potential for the brickwork to go through the roof with debris falling on the pavement below. This could result in serious injury or death to those in the vicinity"
  - (3) He had applied to the Tribunal "which dispenses with the need to go through the consultation process, which could otherwise take some months". That the Tribunal "will decide whether this is an appropriate case to dispense with the consultation procedure."
  - (4) That at the same time, to reduce costs, they hoped to do other work which he specified.
- e. Mr Charalambous had since heard from Mr Haynes asking him to get estimates also from 4 named contractors. As a result he had then prepared a specification dated 4<sup>th</sup> November 2008 for all the work which on 6<sup>th</sup> and 7<sup>th</sup> November he had sent out to those contractors and also

another for tenders. He had not yet heard back from them, but had requested tenders within 7 days.

- f. On 5<sup>th</sup> November he had also contacted Mr Bird at the local authority to check that no listed Building Consent would be required for the work. That was confirmed save possibly in respect of the wastepipe. The Council has not expressed any concern about safety of the parapet.
- g. He had not contacted the lessees earlier as he didn't want to cause alarm and he wanted to gather more information on likely costs before doing so.
- h. There had been no attempt to investigate the cause of the parapet problem from the interior of the rooms on the second floor.
- i. In mid-September he had decided not to start the consultation process as he thought a Tribunal application would be quicker.
- j. There were no urgency grounds in respect of the non-parapet works – it would simply save money if that could be done at the same time so he accepted that there was no basis for the present application save in respect of the parapet. The basis for his application concerning the parapet was that it might not last the winter if delayed by the consultation process.

#### Consideration.

- 11) The Tribunal took into account its inspection, the case papers and the evidence and submissions made by Mr Charalambous.
- 12) The Tribunal noted:
  - a. Mr Charalambous said he had he had contacted the Applicant and advised them of the problem with the parapet but he could not remember when he did this.
  - b. There is no historical record (prior to the letter of 15<sup>th</sup> August) of any inspections showing either any defect in the parapet or that it was deteriorating
  - c. That although Mr May's letter put NS on notice of a potential problem, NS had taken no immediate steps towards having the matter investigated on site. Even after his own inspection in September, Mr Charalambous had taken no significant steps until mid October
  - d. That there is no evidence before the Tribunal that the condition of the parapet has deteriorated since August so that it now seems to be in its historical state.
  - e. That Mr Charalambous has not acted for two months (mid-August to mid-October) with any sense of urgency. Urgent steps would have been important if (1) he really believed what he said about the condition of the parapet in his letter to lessees as noted above and (2) the situation was such that the normal consultation process would cause delay in dealing with an urgent problem.

- f. That Mr Charalambous uses the word “recently” in his letter to lessees when NS had actually been put on notice about two and a half months earlier.
- g. That he has not, until recently before the hearing, actively considered even commencing the formal consultation process, appearing to believe that this could anyway be obviated by a Tribunal application.

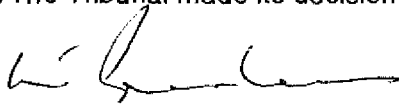
13) In summary the Tribunal found:

- a. That if NS had acted with due diligence, the consultation process could certainly have been concluded by early December to obviate the need for this present application
- b. That its failure to do so results in the Applicant asking the Tribunal to remove the rights of the lessees to be consulted
- c. That there is no evidence that the situation is actually urgent

14) In relation to the other works relating to decoration and the wastepipe, there is plainly no urgency – the Applicant says that it is just a question of trying to save money by carrying out all work while scaffolding is in place.

15) Whether a Tribunal should exercise its discretion to dispense with all or part of the consultation process it does not necessarily consider only the question of urgency. But in this case it is only urgency on which the Applicant bases its case – that the parapet might not last the winter. There is no evidence that it will not; it is possible that that might change and the Applicant may wish to keep that under close consideration. But on the basis of the present situation before the Tribunal, the Tribunal was not satisfied it would be reasonable to deny the lessees all their statutory rights to be consulted. However, the Tribunal was prepared to dispense with the Initial Notice as NS had now written their letter to lessees of 29<sup>th</sup> October.

16) The Tribunal made its decision accordingly..



M J Greenleaves (Chairman)

A member of the Southern  
Leasehold Valuation Tribunal  
appointed by the Lord Chancellor