

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

Case No:CHI/00HB/LDC/2009/0003

In the matter of an application under Section 20ZA of the Landlord and Tenant Act 1985 (as amended)

And in the matter of 14 and 15 Arlington Villas, Clifton, Bristol, BS8 2EG

Between:

Guinness Housing Association

Applicant

and

- 1. Dr. Camilla Barclay (flat 14E)**
 - 2. Mr. and Mrs. Pascoe (flat 14A)**
 - 3. Miss R Hughes (flat 14B)**
 - 4. Mr. J Smith (flat 14C)**
 - 5. Mr. Jonny West (flat 15a)**
 - 6. Mrs. Lorraine Dunn-Ceylan (flat 15b)**
 - 7. Mrs. Chesters (flat 15c)**
 - 8. Mr. M Gudgeon (flat 15d)**
 - 9. Mr. Couchman and Miss Pack (flat 15e)**
- Respondents**

Date of application: 26 January 2009

Date of hearing: 18 February and 17 March 2009

Members of the Tribunal: Mr. J G Orme (Lawyer chairman)

Mr. J Reichel BSc MRICS (Valuer member)

Date of decision: 20 March 2009

Decision of the Leasehold Valuation Tribunal

For the reasons set out below, the Tribunal determines that it is satisfied that it is reasonable to dispense with the consultation requirements imposed by Section 20ZA of the Landlord and Tenant Act 1985 (as amended) in relation to the qualifying works which are the subject of the Application.

Reasons

The Application

1. On 26 January 2009, the Applicant, Guinness Housing Association, applied to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985 for the dispensation of all of the consultation requirements set out in Section 20 of the Landlord and Tenant Act 1985 ("the Act") and in the Service Charges (Consultation Requirements) (England) Regulations 2003 in relation to qualifying works to repair collapsed drains at 14 Arlington Villas, Clifton, Bristol BS8 2EG.
2. The Tribunal issued directions on 28 January 2009 providing for the Applicant to prepare a detailed statement setting out full details as to the nature and extent of the works required together with specialist reports, specifications, plans and estimates by 6 February 2009; for any respondent to file a statement in reply by 13 February 2009; and for the application to be heard on 18 February 2009.
3. In accordance with the directions, the Applicant filed an undated and unsigned statement accompanied by a report from Action Group Services Ltd dated 29 January. On 6 February, the 1st Respondent, Dr. Barclay, filed a statement in reply. On 16 February the 3rd Respondent, Miss Hughes, filed a statement in reply. At the hearing on 18 February, the Applicant confirmed that it did not object to the late filing of the statement by Miss Hughes.
4. The original application named as Respondents the leaseholders of 4 of the 5 flats in 14 Arlington Villas and Ms. T Osborne, who is the Applicant's tenant in flat 14d and who is not responsible for paying service charge. At the hearing on 18 February it was noted that the copy of the lease of flat 14e which accompanied the application provided for the service charge to be divided between the leaseholders of the flats in 14 and 15 Arlington Villas. Directions were made at the hearing removing Ms. T Osborne as a respondent and giving the Applicant permission to join as respondents the leaseholders of 15 Arlington Villas. That step was taken on 25 February 2009 when the 5th to 9th Respondents were joined to the application.
5. At the hearing on 18 February the Tribunal was not satisfied with the evidence provided by the Applicant and it adjourned the hearing to 17 March 2009 giving directions for the Applicant to file and serve further evidence by 25 February and for any respondent who wished to object to the Application to file a statement setting out his or her reasons by 11 March. The Applicant filed further evidence in accordance with the directions. None of the Respondents filed any further statement.

The Law

6. Subsection 1 of Section 20 of the Act as amended provides:

Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either –

- (a) complied with in relation to the works or agreement, or*
- (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.*

7. Qualifying works are defined by Section 20ZA(2) as works on a building or any other premises.
8. The effect of subsections 2 and 6 of Section 20 is that the consultation requirements apply where the contribution which each tenant has to pay towards the cost of qualifying works by way of service charge exceeds £250.
9. Subsection 1 of Section 20ZA of the Act provides:
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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Inspection

10. The Tribunal carried out an inspection prior to the hearing on 18 February 2009 in the presence of Mr. Chris Gilbert, the Applicant's Senior Housing Officer, Miss Fiona Stokes, the Applicant's Maintenance Surveyor, and Dr. Camilla Barclay, the 1st Respondent, who is the leaseholder of the basement flat at 14 Arlington Villas.
11. 14 and 15 Arlington Villas form part of a terrace of properties that appear to be of Victorian construction. They are now divided into 10 flats with 2 flats on each floor.
12. The Tribunal was shown a soil pipe at the rear of 14 Arlington Villas which takes effluent and dirty water from each of the flats in no. 14. The soil pipe goes under ground at the rear of the basement flat owned by Dr. Barclay and travels under that flat. The Tribunal was shown where the floor of Dr. Barclay's study had been taken up in order to gain access to an inspection chamber from which it had been possible to rod the drain leading towards the main sewer in the road at the front of the property. This access had also been used to carry out a CCTV survey of the drain.
13. The Tribunal was shown by Dr. Barclay the area both within her flat and outside in her courtyard which had been flooded by effluent and dirty water when the drain had blocked.

The Hearing

14. The Hearing commenced at Whitefriars, Bristol on 18 February 2009. It was then adjourned for further evidence to be produced on 17 March 2009. On both occasions the hearing was attended by Mr. Gilbert and Miss Stokes on behalf of the Applicant and by the 1st Respondent in person. No other Respondent attended any part of the hearing.

15. The purpose of the adjournment was to allow the Applicant to adduce further evidence about the detail of the proposed work and an estimate for the cost of the proposed work. That information was given in the form of a report from Action Group Services Ltd dated 20 February 2009.

The Evidence

16. Dr. Barclay's statement dated 6 February 2009 tells how she awoke on 9 November 2008 to find raw sewage in her basement courtyard. Although she says that she reported the problem to the Applicant and that a contractor attended to clear the blockage, the Applicant says that it has no record of this incident.

17. Dr. Barclay says that throughout November, December and January, the toilets and shower were not effectively flushing and draining away at a normal rate of flow. On 19 January 2009, after heavy rain, she noticed that rain water had not drained away and that the environment was smelly. She reported that fact to the Applicant.

18. On 25 January Dr. Barclay says that she awoke to find raw sewage spilling out of the drain in her courtyard which was flooded. She reported the matter to the Applicant which instructed a contractor to take remedial action. The remedial action took several days and involved taking up the floor covering of her study at the front of her flat, finding and excavating an inspection chamber to gain access to the drain leading to the main sewer. This work resulted in further contamination of the inside of her flat.

19. Dr. Barclay told the Tribunal at the hearing on 17 March that there had been no further incidents of flooding but that the floor had not been re-instated, that she was unable to use her study, that she lived in fear of further flooding when there is heavy rain and that she is unable to resume normal occupation of her flat until the problem with the drain is resolved.

20. The initial statement filed by the Applicant and the report by Action Group Services Ltd dated 29 January record the work which was carried out during the week commencing 25 January in an attempt to remove the blockage in the drain including replacing the broken inspection chamber under the floor of Dr. Barclay's study. They conclude that there is a further blockage about 5 metres downstream from the inspection chamber in Dr. Barclay's study and

that a CCTV survey is required. The report shows that the cost of that work was £2,490 plus VAT. That work is not the subject of this application.

21. The further report from Action Group Services Ltd dated 20 February records that the CCTV survey shows a large displaced joint in the drain 4.8 metres downstream from the inspection chamber in Dr. Barclay's study. This locates the displaced joint at a depth of about 4 to 5 metres under the pavement in the road. The report recommends excavating the broken joint having obtained a road opening licence and road closure permit (a process which may take up to 6 weeks) and replacing it with a new section of 150mm UPVC pipe. The estimated cost of the work is £12,207 plus VAT.
22. In her verbal evidence to the Tribunal, Miss Stokes said that she did not know the distance between the displaced joint and the entry to the public sewer. She said that until the drain was excavated, it was not possible to inspect that section of the drain to see if there might be further problems. As far as she was aware, the CCTV survey indicated that the section of drain between the inspection chamber and the displaced joint was in good condition. She confirmed that the Applicant had not instructed any other person to inspect the drain.
23. Mr. Gilbert's evidence was that if the Applicant went through the consultation process, it would take about 60 to 90 days. It would then be necessary to wait a further 6 weeks to obtain the necessary permits to carry out the work in the road. Therefore there could be a total delay of 4 to 5 months before the work could be carried out. Miss Stokes said that the repair work needed to be carried out as a matter of urgency because:
 - (a) Until the work is carried out there remains the possibility of the drain blocking and flooding Dr. Barclay's flat. Although it would be possible to carry out regular flushing of the drain in an attempt to prevent blockages, it would be necessary to gain access from Dr. Barclay's flat for this to be done. Until the work is carried out, Dr. Barclay cannot resume normal use of her flat and the study.
 - (b) There is a possibility that the drain could collapse completely thereby preventing the flow of any dirty water and making all the flats uninhabitable until the work is carried out.
 - (c) There is a possibility of rats gaining access to the drain through the broken joint.
24. Having heard the Applicant's evidence, Dr. Barclay said that she wanted the work to be carried out as soon as possible so that she could resume normal occupation of her flat. She had spoken to Miss Hughes, the 3rd Respondent, and Dr. Barclay understood that Miss Hughes also wanted the work to be done as soon as possible.

25. Miss Hughes' statement raises a number of issues which may need to be investigated in other circumstances but they are not relevant to this application. Miss Hughes does not say that she is opposing the application to dispense with consultation.

Conclusions

26. None of the relevant evidence is in dispute between the parties and the Tribunal accepts the evidence before it.

27. The question which the Tribunal must determine is whether it is satisfied that it is reasonable to dispense with the consultation requirements.

28. Following the adjournment, the Tribunal has before it a report setting out the nature of the work which is to be carried out and the estimated cost of that work. On the basis of the report, the Tribunal accepts that remedial work is required and that the estimated cost appears reasonable. The Applicant is not able to say whether further work will be needed once the broken joint has been excavated. The Tribunal accepts that when dealing with drains, further problems may be uncovered once excavations have been carried out.

29. The Tribunal would have preferred to see a report prepared by an independent surveyor setting out the options available to the Applicant and the need for urgency. The course of action proposed by the Applicant deals with mending the broken joint. No consideration has been given to the possibility that other parts of the drain may be in need of replacement, nor to the possibility of lining the existing drain. The only evidence of the need for urgency is that of Miss Stokes. Whilst she has expressed an entirely proper fear of further blockages or collapse, the Tribunal has no evidence as to the risk of that happening. If the Tribunal's decision was to be based just on the evidence of the Applicant, it is likely that the Application would have been refused.

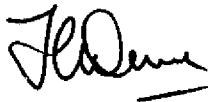
30. The Tribunal is mindful of Dr. Barclay's position. She is the one who is suffering as a result of the blockage in the drain. The Tribunal accepts that her enjoyment of her flat has been interrupted by the flooding which has occurred and that she will not be able to resume normal occupation of her flat until the work is carried out. In effect, she is supporting the Application by saying that she wants the work to be carried out as soon as possible. She has told the Tribunal that Miss Hughes supports her in that position. In her own statement, Miss Hughes does not oppose the Application.

31. No other Respondent has responded to the Application in any way.

32. The Tribunal is satisfied that work is required to repair the drain. The work proposed by the Applicant will achieve that object at a price which appears to

be realistic. There is a risk that if the work is delayed by the need to carry out the consultation process then further flooding may occur and, at worst, the whole of 14 Arlington Villas could become uninhabitable. Dr. Barclay wants the work to be done as quickly as possible and no other Respondent has objected. Any delay caused by carrying out the consultation process would have an adverse affect on Dr. Barclay's enjoyment of her flat. For those reasons, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements imposed by Section 20ZA of the Landlord and Tenant Act 1985 (as amended) in relation to the qualifying works which are the subject of the Application.

Dated 20 March 2009.

A handwritten signature in black ink, appearing to read 'J G Orme', with a horizontal line underneath the name.

J G Orme
Chairman