

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/OOHP/LDC/2009/0011

REASONS

Application : Section 20ZA of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

Applicant/Landlord : Tyrrel Investments Inc, by its agent, Napier Management Services Ltd

Respondent/Leaseholders : Mr Andrew Newman and Miss Claire Louise Wagstaff (Ground Floor Flat, 74 Cranbrook Road), and Mrs J Singleton (First Floor Flat, 76 Cranbrook Road)

Building : 74 and 76 Cranbrook Road, Parkstone, Poole, Dorset

Flats : The ground floor flat and the first floor flat in the Building

Date of Application : 15 April 2009

Date of Directions : 29 April 2009

Date of Hearing : determined on the papers without a hearing

Members of the Leasehold Valuation Tribunal : Mr P R Boardman JP MA LLB (Chairman),
Mr K M Lyons FRICS

Date of Tribunal’s Reasons : 21 July 2009

Introduction

1. This Application by the Applicant/Landlord is under section 20ZA of the 1985 Act, namely for the Tribunal to determine whether it is reasonable to dispense with the consultation requirements referred to in section 20 of the 1985 Act, and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations")
2. On the 29 April 2009 the Tribunal gave directions, including a direction that the Tribunal would determine the matter without a hearing, and a further direction that any Respondent/Leaseholders who wished to join either in support of, or in opposition to, should send to the Tribunal any response within 28 or 21 days respectively
3. The Tribunal has received no response from any of the Respondent/Leaseholders
4. The determination of the application took place on the 15 July 2009
5. Section 20 of the 1985 Act provides as follows :

20 Limitation of service charges: consultation requirements

(1) 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.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the

appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined

6. The material parts of the 2003 Regulations are :

Reg. 2 (1) In these Regulations-

"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice

Reg. 6

For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250

Schedule 4 Part 2

Para 8

(1) The landlord shall give notice in writing of his intention to carry out qualifying works-

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall-

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify- (i) *the address to which such observations may be sent;*

(ii) that they must be delivered within the relevant period;
and

(iii) the date on which the relevant period ends.

Para 11

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the

- landlord shall try to obtain an estimate from the nominated person.*
- (3) *Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate-*
- (a) from the person who received the most nominations; or*
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or*
 - (c) in any other case, from any nominated person.*
- (4) *Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate-*
- (a) from at least one person nominated by a tenant; and*
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).*
- (5) *The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)-*
- (a) obtain estimates for the carrying out of the proposed works;*
 - (b) supply, free of charge, a statement ("the paragraph (b) statement") setting out-*
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and*
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and*
 - (c) make all of the estimates available for inspection.*
- (10) *The landlord shall, by notice in writing to each tenant and the association (if any)-*
- (a) specify the place and hours at which the estimates may be inspected;*
 - (b) invite the making, in writing, of observations in relation to those estimates;*
 - (c) specify-*
 - (i) the address to which such observations may be sent;*
 - (ii) that they must be delivered within the relevant period; and*
 - (iii) the date on which the relevant period ends.*

Documents

7. The documents before the Tribunal are the application and supporting documents at pages 1 to 59 in the Tribunal's bundle, and a subsequent bundle dated the 6 May 2009 received from Napier Management Services Ltd, with documents numbered 1 to 13
8. Reference in these reasons to page numbers are to pages in the Tribunal's bundle, and reference to document numbers are references to the documents in the subsequent bundle received from

Napier Management Services Ltd

Inspection

9. The Tribunal inspected the exterior of the Building on the morning of the 15 July 2009. Shelley Harford of Napier Management Services Ltd was also in attendance
10. The Building was a semi-detached building which appeared to have been built in about the 1930s. The ground floor was brick finished. The first floor was of spar-dash rendered finish. There was a pitched tiled roof. There was a driveway on the right-hand side looking from the road
11. The Tribunal noted four areas of making good corresponding with the holes shown in the photograph at document 7. The area nearest the road measured about 4' x 3'. The area near the corner of the Building measured about 7' x 3'. The area near the small return in the side wall of the Building measured about 2 feet square. The area between the doors of the Flats measured about 4' x 3'
12. Ms Harford told the Tribunal that the lessees of number 74 had telephoned Napier Management Services Ltd to say that water was coming up through the driveway and that they had lost water pressure and could not have a shower and that it was urgent to rectify the situation

The Leases

13. For the purposes of these proceedings the material parts of the lease of the Ground Floor Flat, 74 Cranbrook Road, at pages 10 to 22, are as follows :

Recitals (page 10)

- (1) (e) " *the reserved property*" means that part of the property not included in the two flats being the property more particularly described in the Second Schedule hereto

Second Schedule (page 13)

First all those the paths gates boundary walls and fences forming part of the property and not included in the premises hereby demised and secondly all those the main structural parts of the building forming part of the property including the roof main walls foundations and all external parts thereof including the guttering and down pipes (but not the glass in the windows of the flat(s) nor the interior faces of such external walls has bound the flat(s)) and all cisterns tanks sewers drain pipes wires ducts and conduits not used solely for the purpose of one flat and the joists or beams to which are attached any ceilings relating to the premises thereby demised

Clause 1 (page 11)

.....PAYING.....by way of additional rent a yearly sum payable on the 26 May in every year in advance amounting to the sum of [£60] or an amount equal to one half of the estimated cost for the ensuing year of the amount or amounts to be expended by the Lessor in carrying out the Lessor's obligations under the Seventh Schedule hereto whichever is the greater and if the actual cost incurred by the Lessor in performing such obligations is less or more than the amount so paid by the Lessee the due proportion of the difference shall be forthwith credited to the Lessee or paid by the Lessee as the case may be.....

Seventh Schedule (page 20)

- 1.....
2. The Lessor shall keep the reserved property and all fixtures and fittings therein and additions thereto in good and tenantable repair and condition.....

14. For the purposes of these proceedings the material parts of the lease of the First Floor Flat, 76 Cranbrook Road, at pages 23 to 59, are as follows :

Recitals (pages 25 and 28)

1.1 "Annual Expenditure" means all costs and expenses and outgoings whatever incurred by the Landlord during a Financial Year in or incidental to providing all or any of the Services.....

1.2 "the Building" means the land and premises owned by the Landlord and known as [the Building].....

1.3 "Common Areas" means the paths gates boundary walls and fences forming part of the property and not included in the premises hereby demised and second all those the main structural parts of the building forming part of the property including the roof main walls foundations and all external parts thereof including the guttering and down pipes (but not) the glass in the windows of the building nor the interior faces of such external walls as bound the building and all cisterns tanks sewers drain pipes wires ducts and conduits not used solely for the purpose of one flat and the hoists [sic] or beams to which are attached any ceilings relating to the premises thereby demised

1.14 "the Services" means the services facilities and amenities specified in the Third Schedule hereto

1.15 "the Service Charge" means the aggregate of all (a) the Service Charge Percentage of the Annual Expenditure incurred in relation to Part I of the Third Schedule and (b) a fair proportion of the Annual Expenditure incurred in relation to Part II of the Third Schedule

1.16 "the Service Charge Percentage" means 50%

1.17 "the Service Media" means all pipes sewers drains mains ducts conduits gutters wires and cables tanks channels systems plant and apparatus and any other conducting media

Third Schedule – The Services (page 51)

Part I

1. To maintain and keep in good and tenantable repair and condition and renew or replace when required the Building or any part thereof
2.
3.
4. to maintain and keep in good and tenantable repair and condition and renewal or replace where necessary any Service Media used by the Building but not used exclusively by a tenant of the Building

Part I

1.
2.
3.
4.
5.
6. to maintain and keep in good and substantial repair and condition the, and Areas

The grounds for the application

17. Napier Management Services Ltd stated that a leaseholder at the property had advised that water was coming up through the driveway and had been doing so for a few days. The residents also reported a loss in water pressure. The insurance company advised that the problem would be covered only if it was proved that the cause was accidental damage. Napier Management Services Ltd asked a contractor to investigate further, who advised that it would be necessary to dig up the driveway and that the cost of the work and repair would be in the region of £2,000. This exceeded the limit of £250 a flat under the criteria in section 20 of the 1985 Act
18. In view of the emergency, Napier Management Services Ltd instructed the contractor to proceed with the work, but to confirm in writing exactly what was planned. The consultation had not been carried out in accordance with section 20, although there had been telephone calls with the lessee of Flat 74 who reported the leak. The Applicant/Landlord had agreed to pay for the works in advance but was asking for retrospective permission from the Tribunal to recover the costs

Notice under section 20 of the 1985 Act

19. There are no notices under section 20 before the Tribunal

Invoices from Keens Drainage Services Ltd 17 April 2009 (documents 2 and 13)

20. Document 2 was in manuscript, and was difficult to read. Its narrative started with the words "Re conversation regarding quote in region of £2000". Document 13 was typed. Both documents

contained the following narrative : “ at the request of the owners not to remove tree on the front boundary, we have excavated down in front of tree and located water main. We have, at this point, joined on with MDPE 20 mm water main pipe and moled in two new water mains services connected to half inch steel pipes as they enter the building. Both these water mains had rusted out and were at the end of their lives”. The invoice sum in each document was £1,895.

21. Document 13 also showed VAT at 15% of £284.25 and an invoice total of 2,179.25

Photographs (documents 5 to 11)

22. The photographs showed :

- a. the driveway of the Building during excavations
- b. pipes
- c. the driveway after making good

The Tribunal's findings

23. Having considered all the evidence in the round, the Tribunal finds, in relation to the works referred to in the invoice from Keens Drainage Services Ltd, that

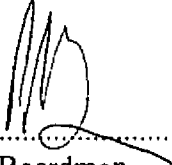
- a. the works carried out by the Applicant/Landlord were :
 - works for which the Applicant/Landlord was liable under the Applicant/Landlord's repairing covenant in the leases
 - works in respect of which, in principle, the Applicant/Landlord might seek to recover the cost from the Respondent/Leaseholders by way of service charge
 - works relating to problems which the Respondent/Leaseholders of Flat 74 had requested the Applicant/Landlord to take urgent action
- b. there is no evidence before the Tribunal of any objection from the Respondent/Leaseholders
- c. the Tribunal has also taken account of the statement by Shelley Harford during the Tribunal's inspection that the leaseholder of number 74 had told Napier Management Services Ltd that the leaseholder could not have a shower and that it was urgent to rectify the situation
- d. however :
 - according to page 9, the leaseholders of number 74 advised that water was coming up through the driveway and had been doing so for a few days and had also reported a loss in water pressure, and Napier Management Services Ltd described the source of the problem as a “leak”
 - according to document 1, Napier Management Services Ltd sent a request for Keens Drainage Services Ltd to attend the site on 30 March 2009
 - the invoices from Keens Drainage Services Ltd at documents 2 and 13 were both dated 17 April 2009, over two weeks later
 - there is no evidence before the Tribunal that any attempt was made in the meantime on behalf of the Applicant/Landlord to consult either the leaseholders of number 74 (who had notified the problem in the first place) or the leaseholder of number 76

(who, according to page 3, lived in California) about the nature of the proposed works, their likely cost, or the reasons for not carrying out full consultation in accordance with section 20 of the 1985 Act and the 2003 Regulations

- indeed, at page 9 it is expressly stated on behalf of the Applicant/Landlord that “at present no consultation has been carried out, other than phone calls to Flat 74, who reported the leak. We propose writing to both leaseholders to advise of [sic] what we propose doing, particularly as one leaseholder does not live in this country”
- e. the Tribunal, having considered all the evidence, is not persuaded that the works were so urgent that the Applicant/Landlord could not reasonably have consulted the Respondent/Leaseholders at all, even if full consultation under section 20 of the 1985 Act and the 2003 Regulations was not reasonably possible in the circumstances
- f. it is accordingly not reasonable to dispense with the consultation requirements referred to in section 20 of the 1985 Act so far as the works referred to in the invoice from Keens Drainage Services Ltd are concerned

24. The Tribunal accordingly refuses the application to dispense with the consultation requirements referred to in section 20 of the 1985 Act, so far as the works referred to in the invoice from Keens Drainage Services Ltd are concerned

Dated the 21 July 2009



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor