

CHI/00ML/LDC/2009/0036

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATION UNDER SECTION 20ZA OF
THE LANDLORD & TENANT ACT 1985**

Address: 5 Chesham Place, Brighton, East Sussex, BN2
1FB

Applicant: 5 Chesham Place (Brighton) Ltd

Respondents: The Lessees

Application: 12 November 2009

Inspection: 2 December 2009

Hearing: 2 December 2009 & 9 February 2010

Appearances:

Landlord

Mr J. Donovan BSc MRICS

Mr P. Overhill

Mrs J. Overhill

Surveyor, Peter Overill Associates

Partner, Peter Overill Associates

Property Manager, Peter Overill associates

For the Applicant

Tenants

Mr M. Bartsch

Leaseholder (Flat 2)

For the Respondents

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Mr N. Robinson FRICS

Miss J. Dalal

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IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/00ML/LDC/2009/0036

IN THE MATTER OF SECTION 20ZA OF THE LANDLORD & TENANT
ACT 1985

AND IN THE MATTER OF 5 CHESHAM PLACE, BRIGHTON, EAST
SUSSEX, BN2 1FB

BETWEEN:

5 CHESHAM PLACE (BRIGHTON) LTD

Applicant

-and-

THE LESSEES

Respondents

THE TRIBUNAL'S DECISION

Introduction

1. This is an application made by the Applicant pursuant to section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with all or any of the consultation requirements contained in section 20 of the Act.
2. The Applicant is the present freeholder of the subject property known as 5 Chesham Place, Brighton, East Sussex, BN2 1FB which has been converted into six self-contained flats and in respect of which long leases have been granted. The Applicant company is, effectively, a tenant owned company with each lessee being a shareholder. As the Tribunal understand, all the leases have been granted in the same terms. The lessees are the Respondents to this application. The present managing agent is Peter Overill Associates.

3. It seems that internal dampness was being experienced inside the rear flank wall of Flat 2A, a second-floor studio flat ("the studio flat"). The lessee of this flat is Park Avenue Estates Ltd. It complained to the local authority Environmental Health Department that the damp was a consequence of the Applicant's failure to repair and maintain the exterior of the subject property. The local authority, Brighton & Hove City Council served an Improvement Notice dated 11 July 2008 setting out a schedule of works it required to be carried out to the studio flat.
4. A large proportion of the scheduled works to the studio flat fell within the lessee's repairing obligations under the terms of its lease. However, it was accepted by the Applicant that the remedial works necessary to prevent further damp penetration to the internal plaster fell within the landlord's repairing obligations.
5. The Applicant commenced external repairs to the rear elevations which primarily included repairs to the exterior render and the chimney above the back addition. The works were completed in December 2008. Nevertheless, the studio flat continued to suffer from damp areas to the rear flank wall. In the opinion of Mr Donovan, a Partner and Chartered Surveyor from Peter Overill Associates, the reasons for the continued dampness were the age and construction of the subject property. He believed that the remaining aged render on a bungaroosh substrate exposed to the South West corner and partly salts therein drawing interior moisture could be responsible for the dampness. The situation was worsened by the relatively small size of the studio flat also being used for cooking, sleeping and living.
6. The first proposal to carry out waterproof plastering of the property was rejected on the basis that it is a listed building and the local authority would not approve this work as a satisfactory repair because it could push the dampness into other areas. The agreed solution was to carry out dry lining to the internal surfaces to the three external walls of the studio flat ("the proposed work"). Tenders were obtained from two contractors to carry out this work the firm of contractors known as "Gladstone" the sum of £6,860, being the

lowest tender, was accepted. Listed building consent was granted by the local authority to carry out the work on 12 November 2009. Mindful of the fact that the local authority was pressing for the proposed work to be completed as soon as possible, the Applicant issued this application seeking dispensation from the consultation requirements under section 20 of the Act.

7. On 16 November 2009, the Tribunal issued Directions to expedite the hearing in this matter. One of the directions was for any lessee who opposed the application to notify the Tribunal forthwith. No such objection was received by the Tribunal.

The Issue

8. The only issue for the Tribunal to determine in this application is whether or not it is reasonable to dispense with the consultation requirements imposed by section 20 of the Act in relation to the proposed work. This application does not concern the issue of whether the estimated or actual cost of the proposed work is reasonable or payable by the Respondents.

The Law

9. Section 20ZA of the Act provides the Tribunal with a discretion to dispense with the consultation requirements under section 20 of the Act in relation to qualifying works, such as these, where it is satisfied that it is reasonable to dispense with those requirements. The Tribunal is, therefore, granted a wide discretion under the section.

Inspection

10. The Tribunal internally inspected the studio flat on 2 December 2009. The flat is part of a mid terrace house built in the early mid 19th century which has subsequently been converted into flats which have been sold on long leases. Flat 2a is situated on the second floor mezzanine landing of a rear addition and comprises an entrance hall leading to a single small bed sitting room with kitchen area and a separate small bathroom. The flat was unoccupied and empty and generally looked in need of freshening up before next being occupied. The flat as a whole is rectangular in shape and being in a

protruding rear addition has three external walls – approximately to the south, west and north. The worst signs of plaster deterioration were noted to the south west corner internally.

Decision

11. The first hearing in this matter also took place on 2 December 2009. The Applicant was represented by Mr Donovan and Mr and Mrs Overill. Of the Respondents, only Mr Bartsch, the lessee of Flat 2, appeared in person. He indicated that he did not object to the application but simply attended as an interested party. However, the hearing was adjourned because it seemed to the Tribunal that no consideration had been given by the Applicant as to the scope of the proposed work and whether the cost of the work fell within the landlord's repairing obligations under the terms of the leases and could, ultimately, be recovered as relevant service charge expenditure from the Respondents. The hearing was adjourned with directions that the Applicant file and serve a supplemental statement of case dealing with this matter together with to revised estimates for the cost of the proposed work to the studio flat limited to the landlord's repairing obligations. The Tribunal also directed that any Respondent who opposed the application should file and serve a statement of case reply together with any relevant disclosure. Again, no such objection has been received.
12. The adjourned hearing took place on 9 February 2010. Mr Donovan and Mrs Overill appeared for the Applicant. None of the Respondents attended or were represented.
13. Mr Donovan said that he relied on the written submissions set out in the Applicants supplemental statement of case. At paragraph 2.1 it is stated that the lessor is only responsible for the repair and maintenance of the external walls and exterior of the building under clause 4(2) and the Fifth Schedule of the leases. Under clause 3(1) and the First Schedule the lessee is obliged to keep in repair the internal parts of the demise premises including one half of the external walls severed medially.

14. It is submitted, at paragraph 2.2, that the Applicant had complied with its repairing obligations by carrying out the exterior repairs and redecoration to the south and west rear elevations at the end of 2008. This included the replacement of any areas of defective render found to the exterior walls of Flat 2A. Unrepaired areas of the original render were tested and found to be sound. As a matter of causation, the Applicant is prepared to carry out any localised replacement of the internal plasterwork within the studio flat where damp has occurred as a result of any failure in the original render prior to the repairs carried out in 2008. The lowest amended estimate obtained by the Applicant for this proposed work has been provided by Gladstone in the sum of £1,551 including VAT.

15. The Tribunal grants the application to dispense with the statutory consultation required by section 20 of the Act. It does so primarily for the following reasons:
 - (a) at all material times, the Respondents have been kept apprised of both the requirement and estimated cost of carrying out the proposed work. It seems that this matter has proceeded by way of agreement with the Respondents.
 - (b) the application is wholly unopposed by any of the Respondents.
 - (c) the Respondents are not financially prejudiced by granting the application because, in so doing, the Tribunal makes no ruling as to whether the estimated or actual cost of the work is reasonable. It is open to any of the Respondents to separately challenge the actual or estimated cost.

16. It should be noted that the application to grant dispensation from the consultation requirements under section 20 of the Act applies only if it falls to the Applicant to carry out the proposed work to the studio flat because the obligation to consult only applies to a landlord and not a tenant.

Dated the 24 day of February 2010

CHAIRMAN.....*I. Mohabir*
Mr I Mohabir LLB (Hons)