

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/00MR/LDC/2010/0040

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

Applicant:	First Wessex
Respondent:	All leaseholders of Cunningham Court
Re:	Cunningham Court, 1 Collingwood Road Southsea Hants PO5 2SU
Date of Application	25 November 2010
Date of Inspection	13 December 2010
Date of Hearing	13 December 2010
Venue	Tribunal Office, Chichester
Appearances for Applicant	Mrs J Collins and Miss C Thomson, Home Ownership Managers; A Parker FRICS, surveyor
Appearances for Respondent	none

Members of the Leasehold Valuation Tribunal

M J Greenleaves	Chairman
PD Turner-Powell FRICS	Valuer Member

Date of Tribunal's Decision: 20 December 2010

Decision

The application under Section 20ZA of the Landlord and Tenant Act 1985:

1. as to the erection and continuing cost of scaffolding for a reasonable period is granted;
2. but in relation to the other future remedial works is refused.

Reasons

Introduction

1. This was an application made by the Applicant Landlord in respect of Collingwood Court, 1 Collingwood Road Southsea ("the property") under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) for dispensation of consultation requirements under Section 20 of the Act in relation to proposed repair of gable ends of roof of part of the property.

Inspection

2. The Tribunal inspected the property in the presence of those who attended the hearing as noted above
3. The Tribunal inspected the block, the subject of this application, which other than the East and West gable ends of the roof, appears to be in good condition for its age and character. The Tribunal inspected the Western gable end from the scaffolding erected around it. The projecting parapet shows that brickwork below the coping has moved significantly and indeed some had fallen prior to the erection of the scaffolding. The damage has affected the integrity of the roof and some plastic sheet protection has been put in place although it may not be wholly effective. The Tribunal did not inspect the eastern gable closely, but from ground level it appears that that parapet is suffering in the same way..
4. At the time of inspection, the damaged gable areas were surrounded by scaffolding with wallboards and toe boards at roof level.

Hearing

5. The Tribunal then held a hearing which was attended as above. The Applicant's evidence and submissions, so far as relevant to the issues in the application were, in outline, that:
 - a. the damage arose as result of a storm on 3 November 2010 and resulted in masonry falling to the ground endangering pedestrians and others. Scaffolding had almost immediately been erected around the affected areas such that there was, Mr Parker said, now no danger;
 - b. the Applicant had approached the insurers with a view to covering the cost and as a result Lessees have not been consulted about the work and its cost, which is anticipated to total around £26,000. There has not been a final outcome to the discussions with the insurers but the Applicant submitted this application on 25 November 2010;
 - c. The Applicant wished to proceed with the remedial works without going through the consultation procedure (it estimated to be 60 days) as that would cause additional ongoing scaffolding costs and possible damage from water ingress;
 - d. the Applicant had been waiting for approval of the remedial work from the Planning Authority. That had only just been given as a result of which a final specification for the work had not yet been prepared. However it was hoped that the contractor would be able to start the work in early January and complete by the 3rd week of January;
 - e. the Applicant did not know the daily cost of the scaffolding.

Consideration

6. The Tribunal considered the papers and the Applicant's submissions.

7. Section 20ZA provides that "the Tribunal may make the determination [to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with the requirements".
8. On the evidence, the property is safe. While there is a small risk of water ingress, we did not consider that to be serious. Conversely, the Lessees paying service charge have a statutory right to be consulted in advance of work being carried out and the Tribunal considered that that right is not to be dispensed with unless there are very good reasons to do so.
9. While we understand the reasons given for not promptly proceeding with the consultation procedure, it was incumbent on the Applicant to make every effort to at least start consultation promptly but it did not do so and indeed did not make this application until 3 weeks after the damage occurring. Had they commenced consultation procedure promptly, on the basis of the Applicant's timescale of 60 days, we estimate that the work could very probably have been completed by the end of January, resulting in very little delay beyond what the Applicant now expects.
10. As it is, other than scaffolding and achieving safety, the Applicant finds itself in a position where it asks this Tribunal to dispense with the Lessees' important rights when it has not acted promptly or given proper consideration to the Lessees' rights.
11. The Tribunal did not consider that substantial damage would occur to the fabric of the building as a result of the state of repair of the roof.
12. It did not consider that saving ongoing scaffolding costs enabled it to find that it would be reasonable to dispense with any consultation requirements.
13. The intention of the Section is to deal with cases where it is urgent that works should proceed. The Tribunal could not find that the future works were so urgent such that the Lessees' statutory rights to consultation should be affected in any way.
14. The way the application was put at the hearing was an application for dispensation in respect of proposed future work only i.e. not to include the scaffolding work to date. It was on the basis of the application as put that at the end of the hearing the Tribunal informed the Applicant that dispensation would not, for the above reasons, be granted. However, the written application as submitted, and of which the Lessees have had notice, does actually refer to the schedule of works in its request for dispensation and that schedule does also provide for the scaffolding works. There is no doubt that the scaffolding works were urgent and, on the evidence, made the building safe and that it was impossible for the Applicant to carry out the consultation procedure or indeed await a Tribunal decision before erecting scaffolding. For that reason the Tribunal considers it can and should now make the dispensation in respect of the initial erection of scaffolding and its cost for a reasonable period.
15. The Tribunal made its decisions accordingly.

[Signed] M J Greenleaves
Chairman.
A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor