



LEASEHOLD VALUATION TRIBUNAL

Case Number: CAM/26UG/LVM/2012/0001

Property : 1-8 Reed Place, Blomfield Road, Harpenden, AL5 4DE

Applicant : Bruce R Maunder Taylor

Respondents : John Rafferty
David Synnott
Denis Healy
S & D Luton Ltd
Myertor Ltd
Mr and Mrs R Muller
Denise Dollimore (for the estate of Emily Cope deceased)
R J Chapple

Type of Application: Section 24 of the Landlord and tenant Act 1987 - for directions to clarify matters contained in the original Order.

Hearing date : 3rd July 2012

Tribunal Members : David S Brown FRICS MCI Arb (Chair)
Francis J M Davey (Lawyer)

DECISION

The Tribunal directs that –

- (a) The functions and duties of the Manager set out in Paragraph 1 of the Directions appended to the Order of 11th November 2010 (“the original Order”) include the demolition and rebuilding of the Property to a similar size and (insofar as it is reasonable and practicable) of a similar nature as the original Property. The parties have agreed that the demolition and rebuilding of the original Property is the optimum course of action to be taken by the Manager and the parties present at the hearing have agreed to this direction. The reference to “Property” is to the property as described in paragraph 1(a) of the original Order.
- (b) The Manager has no right or duty under the original Order to carry out any other redevelopment of the site.
- (c) The rights of the Manager set out in paragraph 1.1 of the Schedule of Rights, Functions and Services appended to the said Order (“the Schedule”) give the Manager the right to demand and receive from the leaseholders and from the freeholders of any flats which are not subject to leases contributions in advance to costs which are to be incurred and which shall be reasonably

required, the contributions to be in such reasonable proportions as shall be decided in accordance with clause 3(g) of the Lease with the words "the Manager" substituted for "the Surveyor for the time being of the Lessor").

(d) The Tribunal makes no order under section 20C.

STATEMENT OF REASONS

Background and Application

1. 1-8 Reed Place ("the Property") originally comprised a block of flats and maisonettes with garages. On 11th November 2010, on an application by Denis Healy, a Leasehold Valuation Tribunal made the original Order appointing Bruce Roderick Maunder Taylor ("the Manager") of the Property. The functions and duties of the Manager are set out in paragraph 1 of the Directions attached to the Order ("the Directions") and are to *"secure the rebuilding and repair of the building to restore it to sound structural condition and to the original accommodation. The Manager shall have no general management functions."*
2. At the time of the inspection for that hearing, flats 6, 7 and 8 were still standing, although structurally unsound due to subsidence. Since then, those three flats have been largely demolished, parts of the ground floor structure only remaining, and the whole block has been vacated.
3. The Manager has had consultations with leaseholders and the freeholders and options for the best solution to the structural problems have been discussed. The Manager is considering demolition of the remainder of the block and redevelopment of the site.
4. This Application, under section 24 of the Act, has been made by the Manager to vary paragraph 1 of the original Order. The variation, as drafted changes the functions and duties of the Manager to *"secure the redevelopment of the building"* but in the Grounds for Application, the Manager states "the variation is sought to change the requirement for the Manager to repair and rebuild to one of redevelopment of the whole site".
5. Following discussion at the hearing, we suggested to the Manager, and he accepted, that the application properly falls under section 24(4) as an application for directions to clarify matters contained in the original Order.
6. The details of the leases of the flats and maisonettes were set out in the reasons given for the original Order and we do not propose to repeat them here.

The Law

7. Section 24(4) of the Act provides that, within an order for the appointment of a manager, a Leasehold Valuation Tribunal make provision with respect to –

(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters as the tribunal thinks fit and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

The Applicant's Case

8. In his letter accompanying the application, Mr Maunder Taylor states that a redevelopment option was discussed at a meeting held in January 2011, following which engineers carried out investigations and prepared a report. At a subsequent meeting in January 2012 all of the lessees bar Mr Healy were in agreement that redevelopment was the most appropriate solution. The freeholders (Messrs. Synnot and Rafferty) have reached agreement with three of the remaining leaseholders (Messrs. Chapple, Muller and Dollimore) to buy their leasehold interest. The freeholders would now like to redevelop the whole site and Mr Healy has previously expressed a wish for that also to be the case.
9. Planning permission and building regulation consent will be required, plus an engineer's report regarding special foundations. Preparatory work at significant cost would have to be undertaken either for rebuilding or redevelopment. Mr Maunder Taylor encloses a report by Arthur J Ferryman and Associates, Engineers and Surveyors, dated 20th June 2011. In his opinion, if Flats 6-8 were rebuilt it is unlikely that the retained flats will ever be able to obtain subsidence insurance and will therefore have limited marketability and probably no mortgagability and, in any event, the works would not be confined to flats 6-8 but would extend to parts of the other flats.
10. Mr Maunder Taylor also includes a summary of his involvement with the Property since the original Order was made.
11. Mr Maunder Taylor seeks a variation of the Order, or clarification of it, in order to allow him to collect sums of money in advance of carrying out any inspections or work.
12. He refers to the Court of Appeal decision in *Bruce Roderick Maunder Taylor v Hugh Sean Blaquiére* [2002] EWCA Civ 1633 to support his contention that the Tribunal can order proprietors of the flats to make payments in advance. He says that this decision indicates that the Manager cannot operate outside the terms of the Order but the Order can go beyond the terms of the lease. In this regard, at the hearing, he referred us to the following passages in that decision –

Para. 38 – "Subsection (2)(b)....suggests that the Tribunal is concerned to provide a scheme of management not just a manager of the landlord's obligations."

Paragraph 41 – "The purpose of Part II of the 1987 Act is to provide a scheme for the appointment of a manager who will carry out the functions required by the court."

Paragraph 43 – "...it must be possible for the manager to obtain funds necessary to manage the property..."

The Respondents' Case

13. Richard Muller has written to the Tribunal stating that in his opinion - "a total new development of the property would be the best solution. This would involve the whole of 1-8 Reed Place being demolished and a new build on the site. I think that if only part of the building was to be repaired, this may give rise to future mortgage and insurance problems on other properties including my own. This would not therefore be a satisfactory way forward. This would of course be subject to me receiving another property of similar value on the site which Mr Synott and Mr Rafferty have assured me that they will be able to offer."
14. Mr Chapple has written to the Tribunal stating that, "I fully support the application to demolish the current buildings and in favour of the proposed development of the site 1-8 Reed Place. In my opinion the sensible way forward is a complete demolition of the existing buildings and they be replaced by a new development....The development would of course provide me with much needed additional housing facilities."
15. Denise Dollimore has written to the Tribunal stating, "We support the tribunal to proceed with the application. Although we have submitted a contract to D A Synnott it has not yet been signed and exchanged. We hope that the tribunal will be able to make a favourable decision to support the demolition of this building, for rebuild, and most importantly to ensure that contracts that are set in place will be honoured. We would like confirmation that no work can be progressed until our property has been purchased by D A Synnott."
16. Mr Healy has written several letters to the Tribunal. Many of the concerns that he expresses are in relation to the conduct of the Manager and the fees demanded by him and we explained to him at the hearing that these are not matters that can be dealt with on this occasion. This hearing is to determine the application by the Manager and will only deal with that issue.
17. On matters relevant to this application, Mr Healy refers to the intention of the freeholders to redevelop the whole site and seeking to involve the LVT in a case where there are no tenants.
18. He says that the proposed development of 6, 7 and 8 Reed Place is not viable because it would cost more with subterranean support and piles than the properties would be worth. There is already a solid foundation for 1 Reed Place and the only viable solution is to remove the made up ground down to a solid foundation.
19. Mr Healy makes an application under section 20C "that none of these proceedings or charges connected with it not be added to future service charges billed to Mr Denis Healy".

The Hearing

20. Present at the hearing were Mr Maunder Taylor (the Manager) supported by Michael Maunder Taylor, also Denis Healy, John Rafferty and David Synott.
21. The Tribunal asked Mr Maunder Taylor why he considers that a variation is necessary in view of the current provisions of paragraph 1 of the Directions. He said that the meeting in January 2011 had explored the possibilities for the Property and

all were in favour of redevelopment of the whole site, not in the same form as it was. He was unable to get a decision from Mr Healy as to what he wants and what he would contribute towards. It will cost £50,000 to prepare for redevelopment or, if just the three flats are to be rebuilt, £30,000 for planning fees. The variation is needed to enable him to get fees up front. He has been unable to recover from Mr Healy fees already spent.

22. After some discussion, Mr Maunder Taylor accepted that the Tribunal does not have the power to authorise redevelopment of the whole site so as to create a completely different property, only the repair or replacement of the existing building. He stated that there is some contention about whether paragraph 1 of the Directions permits demolition and reconstruction of the existing building. He would be content if we were able to clarify that it does.
23. The Report by Arthur J Ferryman & Associates, dated 20th June 2011, contains significant details about the building and its condition. It concludes that there has been quite severe progressive subsidence and recommends that consideration is given to demolition by specialist contractors of the end maisonettes back to the party wall enclosing unit 5, dynamic probing of the substrata and reconstruction on a new reinforced, piled raft foundation..
24. Mr Maunder Taylor also wanted clarification as to his authority to demand up front fees from the flat owners. He referred to the *Maunder Taylor v Blaquiére* case, as set out above. He was seeking authority to obtain advance contributions to the costs set out in the Harrison Consulting letter of 15th August (pages 68-70 of the bundle), maximum £50,000, plus professional fees and VAT.
25. We drew his attention to paragraph 1.1 of the Schedule, which provides –

The Manager shall have the right to demand and receive from the Tenants as the proprietors of any flats in the Property and their successors in title to any flats in the property, contributions to the cost of performance of this functions and duties in such reasonable and proper proportions to be determined by the Manager in accordance with clause 3(g) of the Lease, to include payments in advance which shall be reasonably required.

Mr Maunder Taylor was not sure whether this covered advance payment of contributions towards the costs of preparing for redevelopment and wanted clarification of that point. He pointed out that even with that clarification, he would be bound by section 20 of the Landlord and Tenant Act 1985 to carry out the relevant consultation procedure which would give all of the flat owners the opportunity to make representations and nominate contractors from whom quotations must be sought.

26. Mr Healy would not initially say whether or not he agrees to demolition and rebuilding of the whole because he needs legal advice on that. Neither would he say whether or not he accepted liability for one third of the cost of rebuilding flats 6, 7 and 8 if that was carried out. He accepted that he was at the meeting in January 2011 and that there has been correspondence between himself and the Manager since then.
27. Asked what he thought should be done with the Property, he said it was obvious when you went on site. "Flat 1 is on a solid base, you need to excavate down to that base". He then agreed with the proposal to demolish and rebuild the whole building in principle but not the detail of how that could be done.

28. We asked Mr Healy if he accepted that an LVT has the power to order advance payments. He could not say without taking legal advice. He would object to a requirement to make any advance payment without all of the costs being known.
29. Mr Synnott stated that he and Mr Rafferty had purchased the freehold because the previous freeholders refused to carry out repairs. Mr Healy bought his flat in the knowledge that it had structural damage, as a speculative buy. If Mr Healy wants a new flat he must pay towards it.
30. Mr Synnott agreed that demolition and rebuild is the way forward. He said that the county court and the technology and construction court have ruled that they can redevelop. He has offered to buy out Mr Healy or he can come on board and pay his money. Mr Healy's flat is not one eighth of the total floor area as the maisonettes are bigger. Any costs apportionment should be based on floor areas.
31. He said that Mr Maunder Taylor has acted professionally and has assisted the leaseholders to take on the complex issues arising in this case but he has had difficulty in obtaining payment of his fees. The Tribunal explained that it does not have enforcement powers but if the rights and duties were clarified in the way Mr Maunder Taylor now requested, that would provide a basis of recovery of such payments. Mr Synnott expressed satisfaction with clarification on that basis.

Findings and Conclusion

32. The original Order was made in circumstances where the demolition and rebuilding of at least part of the Property was envisaged. Paragraph 1 of the Directions clearly includes rebuilding as one of the functions and duties of the manager.
33. It is common ground between all of the parties that demolition and rebuilding of the whole building is the best way forward to secure the sound structural condition of the Property. The Tribunal finds that paragraph 1 of the Directions does include in the functions and duties of the Manager the demolition and rebuilding of the Property provided that the new Property is of similar size, with similar accommodation and, insofar as it is possible and practicable, of a similar nature to the original Property. There will clearly be some changes in order to comply with current building regulations and practices.
34. With regard to advance payment of costs to be incurred, we note section 24(4) gives it wide powers to make provision for *such matters relating to the exercise by the manager of his functions under the order and such incidental or ancillary matters as the tribunal thinks fit*. It acknowledges that it must concern itself with providing a scheme of management under which the manager is able to carry out his management functions and to obtain funds for doing so.
35. Paragraph 1.1. of the Schedule gives the Manager the right to demand and receive payment of contributions to the cost of carrying out his functions and duties *including payments in advance that are reasonably required*. It is clear from the Harrison Consulting letter of 15th August that there are investigations and pre-contract enabling works which will be required before demolition and rebuilding can proceed. We find that it is reasonable for the Manager to require payment in advance of the cost of those items before incurring that cost and that he is empowered to do so by paragraph 1.1.

36. We do not accept Mr Healy's contention that no advance costs should be incurred without the final cost being known. Until matters such as the asbestos survey and topographic survey have been undertaken, it cannot be ascertained precisely what works will be required. We sympathise with the point that commissioning those preliminary works would be something of a step into the unknown but that is the nature of this type of situation. There is protection afforded to the flat owners under the 1985 Act against being charged costs which are unreasonable or not reasonably incurred.
37. We do not consider it appropriate to require that no work can be progressed until Ms Dollimore's property has been purchased by D A Synnott. Any arrangement between her and the freeholders is outwith the original Order and is not a matter with which this Tribunal can properly concern itself. It would not be appropriate to fetter the ability of the Manager to move matters forward by such a requirement.
38. With regard to Mr Healy's application for an order under section 20C, we do not consider it just and equitable to make such an order. We accept that the meaning of words "*to secure the rebuilding and repair of the building to restore it to sound structural condition*" in paragraph 1 of the Directions do not make it unequivocally clear that demolition and rebuilding of the whole is authorised and that the words "*to be determined by the Manager in accordance with clause 3(g) of the lease*" might be construed (incorrectly in our view) as limiting recovery of advance payments to those matters set out in clause 3(g). We therefore find that it was not unreasonable for Mr Maunder Taylor to require clarification of his rights and duties in respect of the proposed demolition and rebuilding, especially in view of the objections raised by Mr Healy.
39. It is, in any event, open to Mr Healy to challenge any of Mr Maunder Taylor's costs connected with these proceedings under s.27A of the 1984 Act.

IMPORTANT NOTE

40. This decision deals with the clarification of paragraph 1 of the Directions and paragraph 1.1 of the Schedule and the extent to which they give authority to the Manager. We have not considered and make no determination as to the reasonableness of proposed works or of any costs quoted in respect of them.

Signed:

Date: 5th July 2012

D S Brown FRICS MCI Arb (Chair)