



**LONDON RENT ASSESSMENT PANEL**

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

**Case Reference:** LON 00BE/LDC/2012/0025

**Premises:** 1-26 Tanner House Tanner Street London SE1 3LL

<b>Applicant: Represented by</b>	The London Borough of Southwark Home Ownership Unit  Carla Blair Capital Works Manager Mr P Hopper Emergency Repairs and Planning Manager	
<b>Respondents:  Represented by</b>	Leaseholders of Flats 1-26 Tanner House Tanner Street London SE1 3LL see attached list	
<b>Date of receipt of Application:</b>	14 <sup>th</sup> March 2012	
<b>Tribunal</b>	P L Leighton LLB Mr I Holdsworth FRICS	
<b>Date of Directions:</b>	19 <sup>th</sup> March 2012 and 1 <sup>st</sup> May 2012	
<b>Date of Decision</b>	30 <sup>th</sup> May 2012	

**DECISION**

- 1 The Applicant seeks dispensation from the Tribunal under section 20ZA of the Landlord and Tenant Act 1985 in respect of repairs to chimney stacks at Tanner House Tanner Street London SE1 3LL
- 2 Directions were given on 19 March 2012 as a result of which one leaseholder Ms Lara Stacey of Flat 5 wrote in expressing support and one objection was received from Mr Tony Furber of Flat 21
- 3 On 1<sup>st</sup> May the Tribunal gave an interim decision which was provisional in nature as the matter had been presented as a paper determination and a number of objections had been raised which if sustained were likely to prove fatal to the success of the application. The Tribunal therefore gave further directions to enable the Applicant to deal with the objections raised and for the

objector Mr Furber to make any further representations and fixed a hearing date on 30<sup>th</sup> May 2012

- 4 On 11<sup>th</sup> May 2012 the Applicant submitted further representations in support of the application in writing but nothing further was received in writing from Mr Furber.
- 5 At the hearing on 30<sup>th</sup> May 2012 the Applicant appeared and was represented by Ms Carla Blair at the Capital Projects Manager and Mr P Hopper the Emergency Repairs and Planning Manager . None of the Respondents appeared.

### **The Facts**

- 6 The building was taken over by a tenants management organisation in 1994 and they arranged for a Building Surveyor to inspect the property and prepare a General Survey Report. This indicated that one of the chimneys at least was defective with cracking visible which required attention
- 7 There is some doubt as to whether a number of complaints were made regarding the safety of this chimney between 1994 and 2011 but there is no doubt that in September 2011 the issue was raised with the Tenant Liaison officer that priority should be given to the repair of this chimney . The matter was referred back to the council who decided in the light of its other priorities that these chimneys should not be replaced at that time but should feature in a later programme in 2015/16
- 8 Unfortunately on 4th January 2012 one of the chimneys came down and the consequences could have been very serious indeed fortunately Mister Hopper who arrived shortly after arranged for scaffolding to be placed around the chimneys. The scaffolding works took a period of approximately 4 weeks and estimates were obtained from the Council's direct works department to carry out the work for a figure of £32,749.76 plus vat. The work commenced in early March 2012 . On 15<sup>th</sup> March the Council wrote to the leaseholders informing them of the works and inviting them to make any observations with regard to the estimated cost within 30 days however the only objection received was from Mr Furber . We are now told that the works are completed and the scaffolding removed
- 9 Following the interim decision made by the tribunal a further estimate was obtained from Mr Mark Smith of A and E Elkins who are contractors regularly used by the council to undertake works of this kind . They produced an estimate in the sum of £34,775 plus vat. It is not the function of the tribunal in this particular application to determine the reasonableness or otherwise of the cost of the works but it is helpful to discover what another contractor would have charged as the actual cost incurred for the emergency works as there was no consultation regarding alternative contractors
- 10 The Applicant in its written submissions acknowledged the contents of the report and in particular that the report noted the flaunching to at least one of the chimneys was cracked and recommended that it be repaired. However the Council did not consider it was a priority in late 2011 when preparing a planned maintenance programme for all managed units in the Borough.
- 11 The submissions indicate that the Council had no record of representations regarding the chimney at the earlier stage suggested by Mr Furber but that the Tenant Management Organisation ("TMO") asked the Council to re evaluate its priorities and for the work to be carried out .The TMO met with the

Council's officer in September 2011 when discussion took place about the timing of the work but although the officer liaised with the Council the work was not given any heightened priority and the date for the works was unchanged at 2015/6. At that time the Council did not consider these works urgent.

- 12 The Council indicates that it did not comply with Schedule 4 Part 2 of the Service Charge Consultation Requirements Regulations because of the potential delay involved in the two stage process which would have required at least 60 days delay and that the work was urgent.
- 13 With regard to the rates charged the Council maintains that this was based on competitively tendered rates in 2002 which were increased in accordance with inflation and that no additional costs arose because of the emergency nature of the work .
- 14 The Council further maintains that because of the urgency it was not appropriate to put the work out for further quote but that the emergency repairs officer Mr Hopper took the view that the works were good value for money and tested this by later obtaining a quote from A E Elkins a building contractor who quoted the sum of £34,775 plus Vat to carry out the work to the chimney stacks
- 15 In paragraph 19 of the further submissions the Council maintain that they attempted consultation regarding the scheme on 15<sup>th</sup> March 2012 but received no observations that the works should not be undertaken or that a more lengthy tendering process should be undertaken

#### **The Tribunal's Decision.**

- 16 Having received the further evidence from the Council the Tribunal has decided that dispensation should be granted under section 20ZA for the following reasons :
- 17 Ms Blair honestly admitted that she had not made previous enquiries and perhaps had not appreciated the significance of the matters which had been raised by Mr Furber until she saw his submission. However it is to be hoped that in all future cases where an emergency arises that the applicants will make background enquiries to see whether this was a true emergency or whether this was a situation which has been ongoing and in respect of which there may have been previous complaints as those matters are plainly relevant for the Tribunal to consider.
- 18 Ms Blair in her submissions stated that it must be a question for the local authority to determine the priority which it gives to various aspects of the repairs which need to be carried out. Southwark is a very large housing authority with a large number of elderly properties many of which are in need of repair and maintenance. Public funds are clearly limited and sometimes difficult decisions have to be made as to the order of priorities which are given to respective repairs.
- 19 What the Tribunal has to consider is how the Council responded to the situation with which it was confronted in January 2012 in exercising its discretion
- 20 In particular the tribunal has to consider whether or not the leaseholders in question were prejudiced as a result of the actions which were taken and the fact that it was not possible to provide formal consultation.

- 21 The Tribunal accepts that the local authority did attempt to consult on those matters on which it was reasonable to consult in the time available but accepts that it was not possible to obtain an alternative contractor
- 22 In the interim decision the Tribunal considered that it was possible that the leaseholders had been prejudiced by virtue of the fact that emergency repairs had to be undertaken by the direct works department and the costs were not market tested. Having heard Mr Hoppers explanation and having seen the alternative estimate from A and E Elkins the Tribunal is of the opinion that in the final analysis the leaseholders were not prejudiced as a result of the non-compliance with Schedule 2 Part 4 of the 2003 regulations
- 23 In the final analysis the Tribunal takes the view that the leaseholders not having been prejudiced, it would be wrong to refuse to grant dispensation in this case. The object of the regulations is not to penalise the landlord but to ensure good practice and to give protection to the interests of leaseholders. We are satisfied that purpose of the regulations was satisfied in this case although earlier repair of the chimney and other defects would have been preferable. We understand that there may well have been reasons why that this could not occurred.
- 24 In the circumstances dispensation under section 20ZA will be granted
- 25 The Tribunal will make the following general observation. Many of these applications come before the Tribunal as paper determinations with a view to saving cost and that is in itself perfectly commendable. However it is important that where an applicant seeks dispensation under section 20ZA the full facts should be placed before the Tribunal so that they can make a reasonable determination of the question.

Chairman Peter Leighton

Date 30<sup>th</sup> May 2012

