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19 FEB 2013

**HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property 5-7 Penleys Grove Street, York, YO31 7PN

Applicant Penleys Grove Street Flat Management Company Limited

Respondents Mr V K Roberts
Miss H Tanimoto
Ms H J Hawkridge
Ms C A & E J Horner
Mr & Mrs R Henton
Mr & Mrs P G Walters
Ms M Greig
Mrs J Bollen-McCarthy
Mr & Mrs D Wilde

Case number MAN/00FF/LDC/2012/0026

Date of Application 21 November 2012

Type of Application Application under s20ZA of Landlord and Tenant Act 1985

The Tribunal K M Southby (Chair)
C Evans FRICS

Date of decision 7 January 2013

DECISION

1. The Tribunal's decision is to grant the Applicant dispensation from the s20ZA consultation requirements.

REASONS

2. This is an application for a determination under s20ZA of the Landlord and Tenant Act 1985 ("the Act") that the consultation requirements contained in s20 of the Act and in the Service Charges (Consultation Requirements) (England) Regulations 2003 should be dispensed with in relation to works which the Landlord proposes to carry out.
3. The application which is dated 21 November 2012, relates to the renewal or repair of the roof of 5 -7 Penleys Grove Street, which comprises a pair of three storey early Victorian c1830 Town Houses situated in a residential area to the East of the City Centre and close to York St John University. The properties have been converted into 9 self contained flats. The property is constructed in 9" solid brickwork under a pitched concrete tiled main roof. The property is built 'back of pavement' and has a car park to the rear. All the flats in the block are held on long leases. The property is managed on behalf of the Landlord by a firm of managing agents.

4. The roof work in this property is said to be urgent because there is said to be water penetration through the roof and internal ceilings each time there is rainfall. The ceilings are stated to be lath and plaster and are described as being at risk of falling down.
5. Two quotations for roof work have been obtained by the Applicant and provided to the Tribunal. These range in value from £4,250 to £30,000 for either repair or full replacement of the roof. All of the quotes obtained are over the consultation limit for the block.
6. The landlord's managing agents have indicated in the application that the landlord would be content with a determination without an oral hearing under regulation 13 of the Leasehold Valuation (Procedure) (England) Regulations 2003 (the Regulations). The Tribunal agreed that such a form of proceeding was appropriate and made directions on that basis. Accordingly an inspection and determination was arranged for 7 January 2013 – subsequent to the 28 day time period required under s 13 (1) (a) of the Regulations.

THE INSPECTION

7. There was no attendance by any of the parties and the Tribunal were not able to access the inside of the Property. However from an external inspection the Tribunal were able to observe unevenness in the roof slope. The Tribunal also observed that the tile joints were in line rather than staggered making the roof more likely to suffer rainwater penetration. Two plastic pipes were visible at the ridge of the roof and are referred to in one of the roofing quotations as a possible site for water penetration.
8. Section 20ZA of the Act provides:

Where an application is made to a leasehold valuation tribunal for a determination to dispense with any or all of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
9. The Tribunal considered the evidence provided to it with the Application, the evidence obtained upon inspection and its own knowledge and expertise in coming to its determination. The Tribunal is satisfied that it is reasonable to dispense with consultation requirements. The Tribunal accepts the evidence provided to it from the roofing contractors that this is an urgent matter as there is a risk of collapse of the internal ceilings. No objections were received from the tenants. The works have been tendered and it appears that they are to be properly managed.
10. The Tribunal's decision is therefore to grant the Applicant dispensation from the s20ZA consultation requirements as it is satisfied that it is reasonable to do so.

11. The Tribunal notes that it has only considered whether or not it is reasonable to dispense with the consultation requirements and that this decision does not give or imply any judgment about the reasonableness of the works or the costs when they are in due course placed upon the service charge.

K M Southby
Chairman

19 FEB 2013

MAN/00BY/LBC/2012/0016

HM COURTS & TRIBUNALS SERVICE

In the Matter of 18 Pinewood Avenue, West Derby, Liverpool, L12 0JB

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION UNDER SECTION 168(4) COMMONHOLD and LEASEHOLD REFORM ACT 2002.

Applicant: Freehold Portfolios GR Limited

Property: 18, Pinewood Avenue, West Derby, Liverpool, L12 0JB

Respondent: Mr Robert Joseph Kidd

Application: 31 October 2012

Inspection/Determination: 31 January 2013

Lease: A Lease made 31 July 2008 between Broseley Estates Limited (1) and the Respondent (2)

Members of the Leasehold Valuation Tribunal: Mr. P. W. J. Millward LL.B. (Chairman)
Mr. T Roberts FRICS.

The Application

1. By the Application the Applicant seeks a determination under section 168(4) of The Commonhold and Leasehold Reform Act 2002 (the Act) that there has been a breach of covenant by the Respondent in relation to the Property.
2. Pursuant to the Application a Chairman of the Leasehold Valuation Tribunal (the Tribunal) issued an Order for Directions (the Directions) to the parties on 9 November 2012 requiring (inter alia) the Applicant to prepare, file and serve a bundle of documents including the various matters set out therein within 21 days from the date thereof and for the Respondent to file his own bundle of documents within 21 days of receipt of the Applicant's bundle, each bundle to be regarded as the relevant party's case.
3. The Applicant complied with the directions but the Respondent did not, and thereafter the matter was set down for determination without a hearing on 31 January 2013.

The Lease

4. The term of 999 years from 31 July 2008 granted by the Lease remains vested in the Respondent.
5. The reversion of the said term is now vested in the Applicant.
6. Clause 2 of the Lease includes (inter alia) covenants by the lessee to:-
 - 6.1 to execute and do at the expense of the lessee all such works and things whatever as may now or at any time during the term thereby granted be directed or required by any

- national or local or other public authority to be executed or done upon or in respect of the land demised by the Lease or any part thereof or by the owner or occupier thereofand will pay the reasonable fees costs and charges of the Solicitor and the Surveyor for the time being of (the Lessor) and to keep (the Lessor) indemnified in respect of any breach or non-observance thereof (clause 2.3) and
- 6.2 at all times during the term to well and substantially repair cleanse and maintain amend and keep in repair the messuage and buildings on the land demised and every part thereof and all other messuages or other buildings which at any time (thereafter) be erected thereon and all walls fences and other appurtenances thereto belonging or appertaining (clause 2.6)

The Law

7. Section 168(1) of the Act provides (inter alia) that a landlord may not serve a notice under section 146(1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in a lease unless it has been finally determined on an application under subsection (4) that a breach has occurred.

8. Under subsection (4) a landlord under a long lease of a dwelling may make an application to a Leasehold Valuation Tribunal for such a determination.

The Inspection

9. The Tribunal inspected the Property externally on the morning of 31 January 2013. The Property is a modern semi-detached house in a development of similar properties. The front entrance door and all ground floor windows were boarded up. The first floor windows to the front of the Property were broken leaving the upper floor open to the elements. The Tribunal were unable to access to the inside or the rear of the Property.

10. The Tribunal was notified by a neighbour that the Property had been damaged in a house fire approximately 2 years ago. She said that she had seen the owner (ie the Respondent) on only one occasion since and did not know where he was living.

The Submissions of the parties

11. The Applicant's bundle of documents includes (inter alia) the following:-
- 11.1 a copy of the application form
 - 11.2 a copy of the Directions
 - 11.3 a copy of the Lease
 - 11.4 a copy of the registered leasehold title
 - 11.5 a copy of the Schedule of Dilapidations
 - 11.6 a copy of a letter dated 11 May 2012 sent to the Respondent at the Property
 - 11.7 copies of notices dated 14 August 2012 and 20 August 2012 served upon it by the local authority and
 - 11.8 the Applicant's Statement of Case.
12. The Applicant later provided the Tribunal with a copy of the registered freehold title.
12. The Respondent did not serve any documentation or provide any Statement of Case.

The Hearing

13. Neither party requested a hearing.

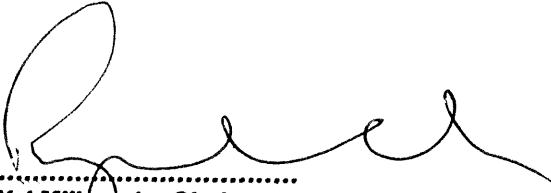
The Tribunal's determination

14. The Tribunal considered very carefully the evidence provided by the Applicant. The registered titles provided confirmed that the Applicant was the freeholder and therefore able to enforce the covenants contained in the Lease and to bring the Application and that the Respondent was the owner of the leasehold interest in the Property and therefore subject to the said covenants.

15. The Applicant did not provide any evidence that the Respondent was aware of the notices served by the local authority or even that the Applicant had attempted to serve copies of the notices upon the Respondent. The Tribunal was therefore unable to determine that there had been a breach of the covenant contained in paragraph 2(3) of the Lease as the Respondent must be aware of the notices issued to be in breach of the covenant.

16. No notices are required to be served in relation to the covenant contained in paragraph 2(6) of the Lease and the condition of the Property is such that it is evident that the Respondent has not complied with his obligation to substantially maintain and keep in repair the Property as he is required to do under the covenant in that paragraph of the Lease.

17. Tribunal therefore determined that there has been a breach of covenant by the Respondent


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P W J Millward – Chairman

31st January 2013