SOUTHERN RENT ASSESSMENT PANEL

SOUTHERN LEASEHOLD VALUATION TRIBUNAL

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

Case No. **CHI/29UQ/LDC/2006/0025**

Re. Kentish Mansions, London Road, Tunbridge Wells, Kent, TN1 1DP ("the premises")

BETWEEN

KENTISH MANSIONS RESIDENTS ASSOCIATION LIMITED

("The Applicants")

and

THE LEASEHOLDERS

("The Respondents")

Date of Application:	9th November 2006
Date of Tribunal's Directions:	13th November 2006
Date of Hearing:	27th November 2006
Appearances:	For the Applicants: Mr. D. Burkinshaw (of Burkinshaw Block Management, Managing Agents) Ms. M. Millar (Director of Applicant Company)
Members of the Tribunal:	J. S. McAllister Esq, FRICS (Chartered Surveyor) T. Wakelin Esq
Date of Interim Decision Issued:	27th November 2006
Date of Final Decision Issued:	4th December 2006

REASONS FOR THE DECISION

BACKGROUND TO THE APPLICATION

1. This application is made under Section 20ZA(1) of the Landlord and Tenant Act 1985 ("the 1985 Act") to dispense with the consultation requirements of Section 20 of the 1985 Act. That subsection was introduced by Section 151 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") which became effective on 31st October 2003. Regulations made under the 2002 Act gave the Leasehold Valuation Tribunal ("The Tribunal") powers to deal with such applications.

These powers are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI No. 2003 No. 1987 ("the Consultation Regulations") which came into force on 31st October 2003.

Briefly, the grounds for the application were stated to be the condition of part of the property, i.e. the urgent need for certain repairs, in particular the treatment of dampness, dry and wet rot fungal attack in timbers inside Flats 12, 9, 7, 5 and 2A.

2. Where there are matters which require urgent attention there are powers under the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (SI No. 2003 No. 2099), ("the Procedure Regulations") which came into force on 31st October 2003, for the Tribunal to deal with matters very quickly. (In particular Regulation 14(4) allows the Tribunal in exceptional circumstances and without the agreement of the parties to give less than 21 days notice of any hearing of an application).

3. The Application was reviewed by a Procedural Chairman and in view of the exceptional circumstances and the urgent nature of the application as set out in the Application Form and the supporting papers, a decision was made to hold a hearing.

4. Directions were issued on 13th November 2006 requesting the production of various documents relevant to the matters contained in the Application Form and the supporting documents. The matter was set down for a hearing on 27th November 2006. Those Directions and details of the hearing were immediately sent to all the Leaseholders of the flats affected by the Application and if they wished to object to the Applications, they were invited to attend a hearing where they would have an opportunity of being heard.

INSPECTION

5. The Tribunal inspected Flats 12, 9, 7, 5 and 2A of the property immediately prior to the hearing. The landlords were represented by D. Burkinshaw Esq, General Manager of the landlord's managing agents, Burkinshaw Block Management, of Tunbridge Wells. Also present were Ms. M. Millar of Flat 2A and Director of the Landlords and Ms. S. Caulfeild-Browne, also from the managing agents.

6. Briefly the property comprised a mid terrace former hotel apparently built in about 1860 and constructed of brick, stone and render elevations under a slate roof. It was converted to 13 flats some time ago and there are several retail units comprising the ground floor of the building.

The Tribunal were shown localised areas of damp penetration, and fungal attack to the walls, ceilings, floors, etc. in the five flats they inspected. The damp etc. had occurred mainly in the front left corner of the building as viewed from the road. It appeared to be caused by a roof leak and/or defective rainwater goods and parapet gutters penetrating down from above Flat 12 and into the four other flats below.

No Leaseholders, apart from Ms. Millar attended the inspection.

HEARING

7. The hearing took place after the inspection at Merevale House, Tunbridge Wells. Those in attendance were as noted above. Ms. Millar was the only Leaseholder to attend.

APPLICANT'S CASE

8. The Landlords, who are a wholly owned tenant company, were represented by Mr. Daniel Burkinshaw, the managing agent. He referred to his written submission, already submitted to the Tribunal, being a letter dated the 17th November 2006 with supporting documentation. In the covering letter Mr. Burkinshaw confirmed that copies of his written representations were sent to all the residents by first class post on the same date, i.e. the 17th November 2006. Included in the written submissions were a notice of intention to carry out work, dated the 10th November 2006, sent to all the Leaseholders of Kentish Mansions, a supporting statement from Moira Millar dated the 16th November 2006, a supporting statement dated the 15th November 2006 from another Director of the applicant company, Sinead McCurry, a report dated the 8th November 2006 from Gulliver Timber Treatment Ltd. In fact this document was headed 'estimate' but it appeared to the Tribunal that in fact it was an interim report as to the fungal attack. This company had, in their summary, recommended that initially all actual and potential sources of moisture ingress are rectified, they referred also to the evidence of localised dry rot outbreaks and indicated that more extensive exposure works would be necessary to ascertain the full extent of the fungal attack. They also stated that due to the nature of the exposure works that would be required that they would recommend that a main building contractor be appointed. They had also referred to wet rot decay in several of the flats, and they offered to return to the property to provide more detailed specifications, costings, etc. for the necessary remedial works once another contractor had completed the necessary exposure works. Also submitted in the applicant's statement etc. was an estimate from M. J. Cawley, building contractors, dated the 9th November 2006, for the erection of scaffolding to the front elevation of the building, there was also an estimate from Messrs. Siteseal, a specialist company, and this estimate related to replacing drainage channels through parapets, replacing rainwater goods, hopper heads, etc. This was in effect

an interim estimate based on a roof level and ground level inspection, the company having indicated that they would be able to make a more detailed report and estimate after the erection of the scaffolding, which would enable a more complete inspection to take place. There was also a further estimate from M. J. Cawley dated the 16th November 2006 for remedial works to the rainwater goods, rendering, broken slates, if any etc. The final document submitted was headed 'notes in support of Kentish Mansions Residents Association Limited's application' (to the Tribunal) which was undated.

In his oral evidence to the Tribunal, Mr. Burkinshaw indicated that in view of the nature of the problem, it was essential to eradicate the damp and dry rot, etc. as quickly as possible in order to minimise the spread of the damp and fungal attack and the cost to the Leaseholders. Furthermore the building was of such a height that the only safe means of inspection of the roof and rainwater goods externally was via scaffolding. He also indicated to the Tribunal that he felt that the redecoration works necessary after the completion of the repair work should be the responsibility of the landlords as, notwithstanding the relevant covenants in the lease, the need for redecoration etc. was caused by disrepair for which the landlords were responsible under the respective leases.

He also indicated to the Tribunal that the leaseholders had felt that it was too expensive to appoint a Chartered Building Surveyor to advise them as to the best course of treatment, but he did not rule out the possibility of such an appointment in due course.

He also indicated that too date he had received no response whatsoever from anyone other than the two leaseholders referred to above (Ms. Millar and Ms. S. McCurry). He also indicated that to all intents and purposes the repairing covenants of all 13 residential leases were the same.

When asked by the Tribunal as to the specific nature of the works for which he was seeking dispensation, Mr. Burkinshaw indicated that it was difficult at this particular stage to be entirely specific. This could only take place, in his view, once a thorough inspection had taken place after the erection of the scaffolding. However, in his notice of intention to carry out work, referred to above, he had indicated to the leaseholders that the following works were necessary:-

1. Replacement of rainwater goods to the left hand side of the property. Any other remedial work required to prevent the ingress of water.

2. Redecoration of the affected areas within flats 12, 9, 7, 5 and 2A.

3. Attending to the issues raised within the report from Gulliver Timber Treatments Ltd.

In Mr. Burkinshaw's statement 'Grounds for seeking dispensation', submitted with his application to the Tribunal, he stated that the premises were six storeys tall and that at that time the scope of the works were as then unknown. It was believed that the water ingress was caused by a defective rainwater goods, the property was situated in a Conservation Area, and he believed that the local authority would require the rainwater goods to be reinstated to match the existing. He also stated that the situation started with what was believed to be dry rot, that his clients were seeking dispensation because of the timescales involved, the delay to the remedial works and the likelihood that damage being caused will increase and so would the requisite costs of rectification. He also informed the Tribunal that the damage has been caused by uninsured risk and that the leaseholders will have to fund the repairs from the service charge accounts.

Ms. Millar stated in her capacity as Director of the applicant company, that she wanted the work to be carried out as quickly as possible for the same reasons as Mr. Burkinshaw indicated above.

In summary Mr. Burkinshaw stressed that the nature of the rot was such that it is likely to spread extremely quickly given the right conditions. Consequently it was of the benefit to the landlords and all the affected leaseholders to treat it as soon as possible to limit the spread and minimise the spread of the cost of the remedial works.

RESPONDENTS

9. Apart from Ms. Millar and Ms. McCurry above, no other leaseholder had written to the Tribunal in response to the Directions dated the 13th November 2006, and no leaseholder, with the exception of Ms. Millar, attended the hearing.

CONSIDERATION

10. Following the hearing the Tribunal considered all the written and oral evidence submitted at both the inspection and the hearing. It was satisfied that it had sufficient evidence before it on which it could make a decision.

11. The Tribunal then considered the copy lease sent with the application, being a copy lease of flat 2. It was dated the 23rd March 1976 granted by Snowmead Property Ltd to Alan Kenyon Green. The Respondents' liaibility to pay service charges are under clause 7 of the lease. Each leaseholder's contribution to the service charge (described in the lease as a maintenance charge) is an annual sum equal to a proportion which the gross area of the demised premises (flat) bears to the aggregate of the gross areas of all the flats within the building. The leaseholder's covenant as far as the repair and decoration of the indoors of the flats is concerned is contained in clause 3 (i) of the lease of flat 2.

12. The Tribunal reminded itself of the statutory provisions. Section 20ZA(1) provides that:-

> 1. Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any 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.
>
> 2. In reaching a decision the L.V.T. will take into account all the relevant circumstances including:-
>
> (a) whether the health, safety or welfare of any occupier of the subject or adjoining property will be prejudiced by delay; and
>
> (b) the requirements of natural justice - in particular:
>
> the duty of L.V.T. to give notice of the application to any respondent and any person who is likely to be significantly affected by the application under regulation 5 of the procedural regulations; and
>
> whether any respondent will have sufficient opportunity to prepare and/or present their case where a hearing is convened as a matter of urgency, the L.V.T. may consider that it is appropriate to make an interim determination in the first instance. It may also be necessary to make separate determinations about those parts of an application that are urgent and at a later stage, those that are not.

It was important to balance any inconvenience likely to be caused to the Leaseholders against the requirements of natural justice. It noted that all the Leaseholders have had the opportunity of commenting on the proposals, the cost of which they would all ultimately have to contribute to. The Tribunal noted that the general provisions of Section 20 were put in place by Parliament to specifically provide protection for Leaseholders against the actions of unscrupulous Landlords. The Tribunal reviewed the evidence and was satisfied that the Leaseholders had been made well aware of the details and estimated costs of the proposed works to date. It was satisfied that from the evidence given, that so far no Leaseholders had objected to the proposed works either in writing or verbally at the inspection and hearing. The Tribunal's function in dealing with the current Application was to consider only if the consultation requirements should be dispensed with and nothing else.

DECISION

13. The Tribunal were satisfied that some of the proposed works were "qualifying works" within the meaning of S.20 and S. 20ZA of the Landlord and Tenant Act 1985.

After fully assessing all the evidence before it, the Tribunal decided that it was reasonable to make a determination to dispense with the Service Charge consultation requirements, i.e. it granted the Application. This decision would enable the specified works to commence as soon as possible. The Tribunal gave the interim decision verbally to the Applicants after the hearing having regard to the need for the repairs to be carried out as a matter of urgency.

In arriving at the decision the Tribunal expresses no opinion whatsoever about the reasonableness or otherwise of the estimates or the standard of the proposed repair works. This dispensation, however, relates to the following works:-

(a) The eradication of the damp penetration, i.e. the repair and/or renewal of the rainwater goods, parapet gutters, roof coverings and flashings where necessary. This work to include the erection of the necessary scaffolding to afford safe access to the exterior of the building and the roof slopes.

(b) The eradication of the fungal attack (dry rot and wet rot) where necessary within the affected flats together with the associated making good to the walls, ceilings, floors etc. where necessary.

Furthermore the Tribunal's decision does not make any determination as to the responsibility of the cost of the works between the Landlords and Leaseholders having regard to the repairing covenants in the lease.

Accordingly this decision would not prevent any party in the future making an Application to the Tribunal under Section 27A of the 1985 Act (Section 155 of the 2002 Act) with regard to the reasonableness of Service Charge costs and/or whether the standard of any works for which the costs are charged is reasonable.

Accordingly the Tribunal makes the Order attached.

J. S. McAllister, F.R.I.C.S.
('Chairman)

Dated this 4th day of December 2006.

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Re. *Kentish Mansions, London Road, Tunbridge Wells, Kent, TN1 1DP ("the premises")*

BETWEEN

KENTISH MANSIONS RESIDENTS ASSOCIATION LIMITED

("The Applicants")

and

THE LEASEHOLDERS

("The Respondents")

IN THE MATTER OF AN APPLICATION UNDER SECTION 20ZA LANDLORD & TENANT ACT (1985)

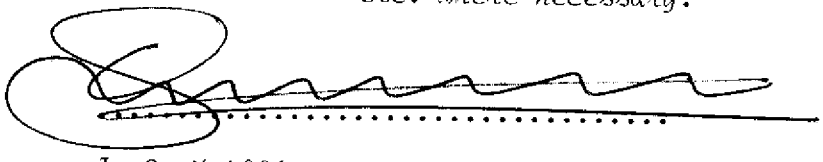
O R D E R

OF THE LEASEHOLD VALUATION TRIBUNAL

On Hearing the Applicants' Managing Agents, IT IS HEREBY ORDERED under Section 20ZA(1) of the Landlord & Tenant Act 1985 (The Act) (as amended by Section 151 of the Commonhold and Leasehold Reform Act 2002) that dispensation to comply with the requirements of Section 20 of the Act is hereby granted in respect of the following proposed works to the Premises:-

(a) *The eradication of the damp penetration, i.e. the repair and/or renewal of the rainwater goods, parapet gutters, roof coverings and flashings where necessary. This work to include the erection of the necessary scaffolding to afford safe access to the exterior of the building and the roof slopes.*

(b) *The eradication of the fungal attack (dry rot and wet rot) where necessary within the affected flats together with the associated making good to the walls, ceilings, floors etc. where necessary.*



J. S. McAllister, F.R.I.C.S. (Chairman)

Dated the 4th day of December 2006