

**SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/45UD/LDC/2005/0013

**BETWEEN:**

**Grange Management Limited**

**Applicant/Landlord**

- and -

**The Lessees of Spring Meadows, New Road, Midhurst**

**Respondents/Tenants**

**The Property:**      **Spring Meadows, New Road, Midhurst, West Sussex**

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**ORDER AND REASONS**

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**1.      Introduction**

1.1      This is an application made by the Landlord of Spring Meadows, New Road, Midhurst, West Sussex ("the Premises") for an order under Section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") as inserted into the 1985 Act by the Commonhold and Leasehold Reform Act 2002 ("CLARA").

1.2      Under this application the Landlord seeks an order that the consultation procedure, required by Section 20 of the said Act before expenditure in excess of £250 per flat is made if the Landlord seeks to recover the same from tenants under a service charge, may be dispensed with. The expenditure the Landlord seeks to incur is the cost of a feasibility study as to what needs to be done to prevent the movement of the soil at the Premises thought to be due to the activity of a nearby stream and also to dispense with consultation in respect of the works found to be necessary to cure the problem.

**2.      The Inspection**

2.1      The Tribunal inspected the Premises prior to the hearing on 6<sup>th</sup> September 2005.

- 2.2 Spring Meadows is a development of 22 flats and houses. The first phase of flats was built in about 1989. The second phase of four houses was built in 1998.
- 2.3 The whole development is situated very close to a stream. The main stream flows down the Eastern boundary of the development. There is also a tributary which flows along the Northern boundary.
- 2.4 The Tribunal noticed that the car park and roads at the Premises were uneven and the surface dipped away near to the surface water drains. In the properties nearest to the steep bank which led to the main stream, drainpipes had been pulled out of the perpendicular, seemingly due to the movement of the ground beneath the drains into which the drainpipes ran. Also, the porches of two of the blocks had come away from the walls of the properties. Steps into the gardens of some of the properties had come away from the walls to which they had once been attached and patios were beginning to slope away from the buildings.
- 2.5 Gabion baskets forming part of the bank above the Eastern stream were in danger of falling into the stream. One gabion basket had fallen into the Northern tributary already.
- 2.6 The Tribunal walked along the path on the other side of the stream to the Property. The path and that bank of the stream belongs to the local authority. It was noted that there was a lot of water lying on the flood plain amongst the undergrowth on that side of the stream notwithstanding that there had been little rain recently.

### **3. The Law**

- 3.1 Section 20ZA of the 1985 Act states as follows:-

"(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 Section 20 and this section -

'qualifying works' means works on a building or any other premises ...."

- 3.2 The consultation provisions are contained in The Service Charges (Consultation Requirements) (England) Regulations 2003. These are detailed and comprehensive and it is not proposed to reproduce them in these reasons.

#### **4. The Hearing**

- 4.1 This took place at The Strong Suite, Grange Centre, Midhurst, on 6<sup>th</sup> September 2005. Present were: Mr Twinley and Mr McCullam, Technical Services Director and Chief Executive respectively of the Landlord company, Miss Tricker (Flat 8) representing the Residents' Association and either the tenants or their representatives on behalf of all the flats and cottages at the Premises save for No 21.

#### **5. The Evidence**

- 5.1 Mr Michael Twinley, Technical Services Director of Grange Management Ltd, had made a witness statement which formed the basis of his oral evidence to the Tribunal. This set out a history of the problem with regard to soil erosion at the Premises and the various reports as to what needed to be done to investigate the problem and the cost.

- 5.2 The Landlord wished to employ Cain Consulting to carry out a feasibility study. This would involve:-

- (a) contacting statutory authorities and landowners to assess the feasibility of diverting the main stream away from the Premises.
- (b) land clearance of the vegetation on both banks of the stream.
- (c) surveying the site and providing scale drawings.
- (d) outlining design proposals.
- (e) site visits with statutory bodies.
- (f) production of a feasibility report and plans.
- (g) negotiations with statutory bodies.

- (h) preparation of a planning application.
- (i) negotiations with the planning authority.

This would cost £8,329.74 plus VAT plus an estimated £4,200 plus VAT for those items above which were not fixed price, namely items (e), (g) and (i).

Cain Consulting would also commission a CCTV survey, report and recommendations with regard to the problem with the subsiding drainage system for £1,080 plus VAT.

- 5.3 There was a lot of evidence before the Tribunal in the form of letters from various residents, some of whom were in favour of the Landlord's plan to instruct Cain Consulting as above and some of whom were against. Miss Tricker thought that about 60% of the residents were in favour of the Landlord's plans and 40% against. It was, however, difficult to judge because opinions changed from time to time. What was clear, however, from the correspondence and the oral representations on behalf of the tenants at the hearing, was that there was a consensus that something had to be done and done quickly. This problem had been identified over two years ago. There was also a consensus that the drainage needed to be investigated urgently. As for the Cain Consulting feasibility study, there was concern about the cost of this and that there was no certainty that the expenditure of this money would result in a scheme that would cure the problem. Some thought that there seems to have been an assumption that diversion of the stream was the only answer whereas there had been no report as to whether other, cheaper means of remedying the problem (such as the planting of willow trees into the bank) could work. There was also no indication as to whether the local authority who owned the far bank would agree to the diversion of the stream onto its land, whether planning permission would be granted or whether any of the other statutory bodies might object. There was concern that the whole project would cost far more than the residents, who are in the main elderly, would be likely to be able to afford.
- 5.4 Mr Twinley pointed out that the local authority concerned, Chichester District Council, had recently written reserving their position until they had been able to assess the implications of the scheme proposed after the feasibility study.
- 5.5 In answer to questions from the Tribunal, Mr Twinley said that he had not considered whether the feasibility study came within the definition of "qualifying works" laid down in the Act, namely "works on a building or other premises". He also conceded that it was

unlikely that the feasibility study could now be carried out before the winter weather set in. He confirmed that the work to repair the gabions could be carried out now at a cost of less than £5,500 (ie 22 x £250). He also confirmed that he had not made enquiries to ascertain whether there were other firms who could be approached to provide a competitive tender to compare with Cain Consulting.

- 5.6 Various residents or their representatives addressed the Tribunal and it was evident that there was a range of views as to what should be done and a general concern about the cost. It was suggested that Cain could borrow the money required to rectify the problem and the loan could be repaid over the length of term of the leases to the 22 units at the Premises. Thus, the burden of the cost would be spread out over the lifetime of the leases and the current Lessees would not have to shoulder the burden of the expenditure which would benefit not only themselves but their successors in title. This was not something which was within the jurisdiction of the Tribunal and such discussions would need to take place between the Landlord and Tenants when the cost was ascertained.

## **6. The Decision**

- 6.1 The Tribunal decided that neither the work to be done to investigate the problem with the drainage nor the feasibility study to deal with the problem of soil erosion could be described as “works on a building or other premises”. With the possible exception of the ground clearance none of the other work involved “work on a building or other premises”. Consequently, those were not “qualifying works” within the meaning laid down in the statute. They were not therefore subject to the consultation provisions and the Landlord could go ahead with the feasibility study without having to consult with the Tenants. The only item on the list of things that Cain Consulting were proposing to do which might be regarded as “works on a building or other premises” was the clearance of the site but this was regarded by the Tribunal as merely being part of the preparatory work for the feasibility study to go ahead. In any event the cost of this work was less than £250 per unit. The Tribunal gathered from the papers submitted to it and from the evidence of Mr Twinley that what the Landlord really wanted from the Tribunal, in the face of a divided force of tenants, was some comfort that what they were proposing to do had the approval of the Tribunal. This, however, is not the purpose of a Section 20ZA application which is solely to seek dispensation from the consultation process. If the Landlord was looking for some comfort that what it was intending to do and spend was reasonable, it needed to consider making an application under Section 27A of the 1985 Act for a determination

in advance of expenditure that the expenditure would be reasonable. However, no such application was before the Tribunal and so the Tribunal could not consider such matters.

6.2 The exploratory works with regard to the drainage were not "qualifying works" either, for the same reason.

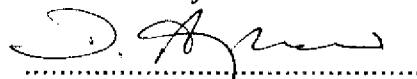
6.3 There was nothing to prevent the Landlord from proceeding straight away with repairing the gabions at a cost of less than £250 per unit, proceeding with the drainage report (which was not "qualifying works") or indeed with the proposed feasibility study without further consultation with the tenants. If they did proceed with any of these works it would be possible for any tenant to apply to the Tribunal under Section 27A of the 1985 Act for a determination as to whether the expenditure was reasonably incurred or whether the works had been done to a reasonable standard, as in the case of any expenditure by a landlord which it seeks to recover from a tenant by way of a service charge.

## 7. Conclusion and Order

7.1 The Tribunal therefore refuses the Landlord's application under Section 20ZA to dispense with consultation because the proposed expenditure is not on "qualifying works" and therefore the consultation provisions do not apply.

Dated this *21st* day of *September* 2005

Signed:



D. Agnew LLB, LLM  
Chairman, appointed by the Lord Chancellor