

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/21UC/LDC/2005/03

Re: Sussex Mansions, 25-26 Cornfield Terrace, Eastbourne, E. Sussex, BN21 4NS

BETWEEN:

Abbeyfix Limited
(Feldgate Limited)

("The Applicant/Landlord")

and

THE LESSEES

("The Respondent/Tenants")

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

ORDER
OF THE LEASEHOLD VALUATION TRIBUNAL

On Hearing the parties and their representatives IT IS HEREBY ORDERED that the Application 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) to dispense with the requirements of Section 20 of the Act is hereby REFUSED in respect of the proposed sewage pump works at the Premises.

DATED this 16th March 2005



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John B. Tarling MCMI (Chairman)

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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 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.

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. This Application was received at the Tribunal Office on or about 24th February 2005. The matter was reviewed by a Procedural Chairman who, in view of the exceptional circumstances and the urgent nature of the application (as set out in the Applications Form and the supporting papers), made a decision to hold a hearing. Those exceptional circumstances included a possibility of there being a danger to the health and safety of the occupiers due to the failure of the waste sewage pumps serving the Building. The matter appeared to need urgent attention and for these

reasons a decision was made in accordance with regulation 14(4) of the Procedure Regulations to waive the requirement of giving 21 days notice to hold a hearing to decide the Application.

4. Directions were given on 24th February 2005 indicating that the Tribunal may wish to inspect the Building on the day of the hearing and 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 16th March 2005. Those Directions and details of the Hearing were immediately sent to all the Lessees of the Flats affected by the Application and if they wished to object to the applications, they were invited to attend the Hearing, when they would have an opportunity of being heard.

INSPECTION

5. The Tribunal inspected the Building on the morning of the Hearing (16th March 2005). They were accompanied by Mr M. Balmer (Flat 6) and Mr E. Balmer (Flat 9). No-one representing the Landlord attended the Inspection. The Building comprised a former hotel which had been converted into some commercial premises on the ground floor with 14 flats on the upper 5 floors. The Tribunal inspected the front façade of the Building. It appeared to be in a good state of repair and decoration. There were rainwater down-pipes running down each end of the Building but there was no sign of any sewage soil pipes. The Tribunal members then inspected the rear lower ground floor of the Building. They saw the sewage chamber where there appeared to be some pump pipes being used on a temporary basis to pump the sewage from the sewage chamber below lower ground floor level up to the main sewer which was a higher level. There were some soil drains leading down to the sewage chamber from the ground floor, but none could be seen running down the outside of the Building from the Flats on the first floor and above. An internal inspection of one of the second floor flats was carried out to establish the layout and position of any soil pipes, but none could be seen and the position of the main soil pipes serving the Flats was unresolved. One of the complaints from some of the Lessees had been the smell of sewage. At the time of the inspection there did not seem to be any smell of sewage and evidence was given later at the hearing that the area around the sewage chamber had recently been jetted and cleaned.

HEARING

6. A Hearing took place at Eastbourne immediately following the Inspection.. The Landlords were represented by Mr Jacob Rottenberg accompanied by Mr Emir Melstein, both from the Managing Agents, Felgate Limited. No-one from the Landlords, Abbeyfix Limited, attended. The Respondent/tenants were represented by Mr M. Balmer (Flat 6) and Mr E. Balmer (F9) Representatives from the two commercial premises on the Ground Floor of the Building were also in attendance at the Hearing.

7. Both the Applicants and the Respondents had produced Bundles of documents which were before the Tribunal. The Respondents produced a List signed by seven of the 14 Lessees who objected to the Application to dispense with the Section 20 Notice.

8. The Applicants Case

Mr Rottenberg presented the Applicant's case to dispense with the need to serve a Section 20 Notice. He went through the two Bundles of documents and made representations in support of his Application. The Respondents asked Mr Rottenberg a number of questions which he duly answered. Many of the documents produced to the Tribunal referred to matters concerning a long history of complaints about the previous management. Feldgate had only taken over the management in January 2005. Mr Rottenberg said it was easy to blame his company for events that happened a few years ago. When his company had taken over the management in January 2005 he had called a meeting of the Lessees to discuss matters and they had agreed to draw a line under the old problems and start afresh. He had done his best to obtain 3 quotes for the replacement of the sewage pumps. He took the view that the old pump had failed because it was so old and it needed urgent replacement. Hence his Application to dispense with the need for a Section 20 Notice and the delay that this would cause. He had relied on the contractor Drain Doctor, who he had used in the past, to decide what work was needed. He had not obtained any independent expert report as to the cause of the failure of the pumps and what work and equipment was needed to repair or replace the pumps.

9. The Respondents case

The Respondents said they objected to the Application to dispense with the Section 20 Notice. They wanted to have the protection of the statutory provisions of Section 20 and the new Regulations relating to consultation. There was some argument about whether the proposed works came within the Service Charge covenants in the Flat Leases. It was possible that the soil pipes from the Flats drained direct into the main sewer without the use of the sewage pump in the Basement, which was clearly needed for the commercial ground floor premises. They also did not think the matter had been handled very well by Feldgate Limited and no attempt had been made to establish the cause for the failure of the sewage pump. No expert report or specification had been obtained by the Managing Agents against which tenders could have been sought. Further, the Respondents wished to have the opportunity of nominating their own contractors to quote for the work. In reply to a question from the Tribunal the Respondents said that so far as they were concerned, if there were to be a delay in getting the work done it was unlikely to inconvenience many of the Lessees. The smell from the sewage was not sufficiently serious to cause any discomfort to the residents. Seven out of the fourteen flats were sub-let. Two of those flats were owned by the landlord. There was no evidence that the current situation was causing any inconvenience or loss to any sub-tenant.

CONSIDERATION

10. Following the Hearing the Tribunal retired to consider the matter. The Tribunal reminded itself of the statutory provisions. It was important to balance any inconvenience being suffered by some Lessees against the requirements of natural justice. It was concerned that all Lessees should have had the opportunity of commenting on the proposals, to which they may all ultimately have to contribute. The Tribunal was concerned that the general provisions of Section 20 were put in place by Parliament to specifically provide protection for Lessees against the actions of less scrupulous Landlords. In this case seven out of 14 of the Lessees had objected

to the Application. The reasons are set out in Paragraph 9 above. The Tribunal worked through the various arguments on both sides. It appreciated that the Managing Agents had only recently take over management. However the initial Quotation obtained seemed to indicate a possible expenditure of over £10,000. The Tribunal thought it was odd that another Quotation from KGN came to less than £4,000. This seemed a large discrepancy and wondered if the second Quotation was only a provisional one, which might rise to a higher level after further investigation. The Managing Agents had made no attempt to establish exactly what work was needed, nor to prepare a Specification for the proposed works against which Tenders could be obtained, based on the same Specification.


There seemed to be an agreement that some work was needed, but the Lessees had been unable to establish exactly what was needed as their questions to the Managing Agents had not been fully answered. At the time of the inspection there was little smell of sewage and any inconvenience to the Lessees seemed minimal. Certainly if there was a delay in getting the work done, this was preferred by the Lessees to any risk of any repair costs which they might have to pay spiralling out of control. Seven out of fourteen Lessees objected to the Application. This seemed to be a sufficiently high enough number to indicate the strength of feeling about the Application.

From the way in which the Managing Agents had presented their case, the Tribunal were not satisfied that they fully appreciated the reasons for the Section 20 consultation legislation. They seemed to take the view that their Client should be able to proceed with the work immediately without having to go the trouble of the new consultation procedures, and the delay that would occur. The Tribunal took the view that the consultation procedures were also there in part to protect the Landlord in that if the procedures were followed then the Landlord had nothing to fear when he came to collect the Service Charge contributions from the Lessees.

The Tribunal acknowledged that the Managing Agents had only recently taken over the management and that they had initiated the proceedings with the best of motives and had been trying to deal with things expeditiously. However on balance and for the reasons given above the Tribunal decided that the Lessees were entitled to have the advantages of all the protection offered by the Section 20 Notice procedures and accordingly the Application for dispensation with the Section 20 Notice was REFUSED.

11. In making this Decision the Tribunal expresses no views whatsoever about the reasonableness or otherwise of the cost or standard of any proposed works referred to and that the Order now being made does not preclude an Application to the Tribunal by any party under Section 27A of the Landlord and Tenant Act 1985 (Section 155 of the 2002 Act) at some later stage.

Dated this 16th March 2005


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John B. Tarling MCMI
(Chairman)

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