

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

The Property : **139 Northbrooks
Harlow
Essex CM19 4DG**

Applicant(s) : **Harlow District Council**

Respondent(s) : **Mr. M. Wooldridge**

Case number : **CAM/22UJ/LDC/2004/0006**

Tribunal: : **Mr. Bruce Edgington (lawyer chair)
Miss. Marina Krisko BSc (EST MAN) FRICS
Mr. Frank James FRICS**

Date of Inspection : **5th January 2005**

DECISION

Introduction

1. This is an application by Harlow District Council seeking dispensation from the strict consultation requirements set out in Section 20ZA of the **Landlord and Tenant Act 1985** ("the 1885 Act"). This section would require, in this case, the Applicant to comply with stages of consultation with the Respondent when works are due to be undertaken to the block known as 134-139 Northbrooks which would result in his contribution to the cost of such works being more than £250.
2. The application refers to the fact that only one leaseholder in this block is affected by these works. It appears that in about November 2004 water came through the living room ceiling of the property which is held by the Respondent under a long lease. The Applicant says that scaffolding was erected to effect a temporary repair. However, the Applicant goes on to say that in order to avoid further scaffolding costs, the Applicant, in verbal

consultation with the Respondent, proceeded with a complete repair to the roof. It is said that the cost of the repair is £5,454.44 and a copy invoice from Apollo London Ltd. to Harlow Council was seen by the Tribunal.

3. The wording in the application is important and states (without corrections for spelling and grammar):-

“Emergency roofing works – felt had deteriorated causing water ingress which in turn caused internal ceilings to collapse – health + safety risk ceiling taken down – scaffold need to make roof safe – due to nature of work + extent of deterioration of felt deemed it necessary to replace felt over the whole roof area this could not wait this could not wait without risk of further leaks/internal damage”

“Discussions with sole leaseholder on the consultation procedures revealed that the leaseholder was anxious for the work to proceed and unhappy that consultation would only be held with him and that he would obviously have no objection to the work, was willing to pay his charges and the consultation delay in works would leave his flat vulnerable for this time”

“The main internal damage is in the sole leaseholder, of this blocks, flat. The leak had left him with a collapsed + now vacant living room ceiling, he expressed a wish for us to proceed with the works. No temporary repair could be carried out due to the scaffold required and would have added £100’s to final costs. Thus due to nature/emergency works + leaseholder consent works were undertaken”

4. Neither party wished to have a hearing and agreed that the Tribunal should consider this application and decide the matter on the written representations of the parties.

The Lease

5. A copy of the lease dated 28th March 1988 has been supplied and clause 7 (a) requires the Applicant to maintain and keep in repair the structure and exterior of the flat and the property which would include the roof.

The Property

6. The Tribunal inspected the property in the presence of the Respondent. On commencing the inspection they were told that a representative of the Applicant had telephoned some time earlier to say that he was leaving his office to attend. His office was said to be not far away from the property.

The Tribunal did wait until after 10.15 am i.e. over 15 minutes after the time fixed for the inspection, but no-one did in fact turn up from Harlow Council.

7. The block is described as being 134-139 Northbrooks which consists of 6 flats. However the block shares a party wall with number 140. It is part of an estate built about 50 or so years ago close to the centre of Harlow New Town. It is of brick construction under concrete interlocking tiles. On looking at adjoining properties, it was seen that the roof tiles of each roof except one still appeared to be good condition as one would expect for properties of this age. The one exception was number 144 where the roof appeared to have been renewed. It should also be said that one or two tiles had obviously been replaced in some of the other roofs particularly close to chimneys.
8. When looking at the roof of the block in which the property is situated, it was clear that an area of tiles had been replaced on the front elevation and a similar area had been replaced on the rear. The Tribunal would estimate that 5/6 metres of tiles had been replaced in total. It also appeared that the ridge tiles had been replaced at some time.
9. On internal inspection, it was clear that the ceiling of the living room in the property had not 'collapsed' as stated in the application. A relatively small section of the ceiling had come down and is now securely boarded up. If the leak had been permanently cured or temporarily stopped, the property was certainly habitable.
10. The Tribunal did not carry out a full inspection of the roof void but there was a ladder and the 2 surveyor members were able to see through the hatch and noted that the roof felt appeared to have been installed many years after the original construction, although they did not see the felt immediately behind the new tiles on the front elevation because of the position of the chimney.

The Evidence

11. The written evidence supplied to the Tribunal by the Applicant seems to indicate that all the tiles on the roof over the property have been taken off, the felt has been renewed, most of the tiles have been replaced and some new tiles have been used during this process as referred to above. Additionally, there have been repairs to the flashing around the chimney. The cost of £5,454.44 would seem to indicate this amount of work. However, there were a number of matters which concerned the Tribunal and serious consideration was given to adjourning the application. On balance, and in view of the reasons stated below, the decision was made to continue with the application and make a final decision.
12. The matters of concern included the following, in no particular order:-
 - The Applicant's internal purchase requisition and purchase order refer to an 'agreed specification/price'. This was not produced and it is therefore impossible for the Tribunal to know exactly what work was contracted for.
 - In the only breakdown of the price supplied, it is said that the cost of scaffolding was £993.68 plus profit and VAT. Although there was a pile of rubbish at the front of the property covering the soil, it was not at all clear to the Tribunal that any scaffolding had been used. This was particularly true of the rear of the block where one would have expected to see marks in the concrete path area.
 - Although it is perfectly possible that the contractors could have taken great care to remove each tile and then replace it in exactly the same position, this would be unusual. The parts of the roof where there were no new tiles did not appear to have been disturbed within the last few months. For example, moss hardly grows during the winter months and yet the moss patterns across the tiles did not appear to have been disturbed at all.
 - Apart from the matter of the alleged collapsed ceiling, the application is inaccurate in another way. It is said that the damage, and, hence, the emergency works, were needed because the roofing felt was leaking. This cannot be right. Roofing felt is not intended to be a waterproof membrane. It is the roof tiles themselves and any flashing which are

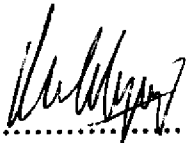
intended to be weatherproof. The ingress of water through the Respondent's ceiling could only have realistically been caused by a defective roof tile or tiles, defective flashing, some fracture caused by major movement in the roof structure or, indeed, from a leak or overflow of the internal water system. It was noted that there is a large water tank very close to the damaged ceiling.

- In their written representations, Harlow Council says that *"The remainder of the roof will require repairs of a similar nature. The Council will follow the traditional Section 20 route and program these works in, and consult with the residents about these future proposals"*. It is difficult to understand what is meant by 'a similar nature'. The works needed to the property were allegedly emergency repairs which, if the Applicant's stated actions were correct, can only have been caused by damaged/defective flashing and/or tiles. And yet there is no obvious evidence that the Applicant is undertaking any urgent survey to see whether similar emergency repairs are needed to the other roof or, indeed, to any other similar roof on this estate of which there are many.
- If there were defects found in the roofing tiles, then why were tiles replaced only in 2 relatively small localised areas? If the tiles are of defective construction or are coming to the end of their working lives, then surely it would have been much more cost effective to replace all of them?
- Why was the invoice for the works (£4,642.08 excluding VAT) so much more than the works listed (£3,936.19 excluding VAT)

Decision

13. The Tribunal's decision is that the application to dispense with the requirement to consult in this case is refused.
14. The Tribunal is satisfied that there was water coming through the ceiling of the living room of the Respondent's flat in about November 2004. It is satisfied that the Applicant attended the property and inspected the damage.

15. However, the lack of evidence as to what work was actually carried out to this roof or any report of the condition of the roof, together with the points referred to above and the evidence seen on inspection, leads the Tribunal to one clear conclusion. If all the tiles were removed, all the roofing felt replaced, some tiles renewed and the remainder fitted back into their original positions with appropriate repairs to flashing, then this was a complete over-reaction to the position faced by the Applicant. For this reason the Tribunal decided not to adjourn this application.
16. It is the Tribunal's view that a reasonable landlord would have arranged for an access tower to be obtained. Temporary repairs should have been effected by replacing damaged tiles and/or flashing. Alternatively, a tarpaulin or the like should have been put over the roof pending a proper consultation. It is accepted that this may have had to be in position for 2/3 months but this is not an unusual occurrence. The cost of either would have been less than £500. As it is clear that the cost of this repair would have to be shared between the Applicant and the Respondent, the cost to the Respondent would have been less than the £250 limit and no consultation would have been required.
17. The Applicant could well say that it only undertook the works because the Respondent agreed. However, this landlord should have known that the consultation process is an important protection for tenants and its primary responsibility is to act reasonably particularly when it is asked to undertake works by a tenant where the evidence would not appear to warrant such large expenditure without further investigation.
18. As a final point, the Tribunal raise an additional issue. Some tiles have been replaced. If, as would seem the case, the tiles generally are not defective or coming to the end of their useful lives, then specific damage to specific tiles could have been caused by a storm or some other insurable event. As there is a requirement on the Applicant to insure the premises against such risks, the Tribunal wonders whether the question of recovering the cost of repairs from insurers was investigated.



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Bruce Edgington

Chair

07/01/05