BIR/41UB/LDC/2005/0003

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE MIDLAND LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S20ZA OF THE LANDLORD AND TENANT ACT 1985

Premises: **4, 6, 10, 12, 14 and 36 Carfax, and 34, 36, 38, 46, 50, 52, 54 and 56 Hunter Road, and 10, 32 and 48 Trinity Close, Cannock, Staffordshire WS11**

Applicant: Cannock Chase District Council (landlord)

Respondents: Mr S J Harrell and others (leaseholders)

Date of hearing: 17 August 2005 in Cannock

Appearances: Mr Rick Pepper CAIT, Assistant Housing Property Services Manager, Cannock Chase District Council
Ms Jackie Baker, Leasehold Services Officer, Cannock Chase District Council

for the applicant

Mrs K M Tarbuck (46 Hunter Road)
Mr and Mrs K H Gill (52 Hunter Road)
Ms H Smallman (6 Carfax)
Mrs P Carroll (10 Carfax)

respondents

Members of the leasehold valuation tribunal:

Lady Wilson
Mr N R Thompson FRICS
Miss B Granger

Date of the tribunal's decision: 26 August 2005

Background

1. This is an application by the landlord, Cannock Chase District Council, under section 20ZA of the Landlord and Tenant Act ("the Act) to dispense with the consultation requirements of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations") in connection with works carried out to properties on the Carfax Estate, otherwise known as Estate 25. The Estate is a development of about 28 blocks of flats built in the 1980s and containing 78 flats in all. Most of the flats are occupied by weekly tenants of the Council, but seventeen have been bought on long leases under the Right to Buy scheme, and the leaseholders are the respondents to this application.

2. The leases are in common form. By clause 1 of the Second Schedule, the leaseholder is obliged to pay a service charge of "the attributed proportion" of the cost to the landlord of insuring the demised premises and of: *(ii) making supporting repairing maintaining and cleansing all party walls and fences and gutters sewers and any other things the use of which is common to the demised flat and to other flats within the ... building or near thereto; (iii) making any provision reasonably necessary for the reinstatement repair maintenance and upkeep of the ... building and surrounding landscaped areas communal accesses supply of services heating (if applicable) drainage pipes wires and cables so far as any of the same are not provided or maintained at the public expense; and (iv) such other items as the Landlord may deem fit from time to time.* By clause 2 of the Second Schedule, the annual amount of the service charge payable by the leaseholder is to be calculated by dividing the aggregate of the cost by the aggregate of the flats in the building. The building does not appear to be defined but it is plainly the block in which the flat is situated.

3. In 2003 the Council entered into a long term agreement with Connaught Property Services Limited for the maintenance of all the approximately 6000 properties owned by the Council.

The commencement date of the agreement was 18 August 2003 and the agreement was for an initial term of five years. Because the agreement was entered into before the Regulations came into force on 31 October 2003 it was, by Regulation 3(3), not a qualifying long term agreement within the meaning of the Regulations.

4. In 2004 the Council's Housing Property Services department identified the Carfax Estate as in need of works, and arranged with Connaught Property Services that they should carry out the works in accordance with the agreement. In March 2004, letters were sent to the leaseholders (erroneously dated March 2003) giving them notice of intention to carry out works to their block. Further letters outlining further works were sent in July 2004, and yet further letters giving notice of further works in February 2005. Asserting that the works described in the letters of February 2005 were "emergency works" and that it was not possible for the consultation procedures required by the Regulations to be complied with, the Council on 11 March 2005 issued the present application under section 20ZA of the Act to dispense with the consultation requirements relating to the alleged emergency works. Having seen the evidence filed in support of the application and having read the comments of a number of leaseholders, all of whom opposed the application, the tribunal considered that the adequacy of the consultation undertaken in respect of all the works, namely those described in the letters dated March 2004 and July 2004, as well as in the letters of February 2005, should be considered at a hearing in order to decide whether the Regulations had been complied with in relation to the works and, if not, whether any or all of the consultation requirements should be dispensed with under section 20ZA.

5. Section 20ZA(1) provides:

> *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.

6. It is agreed by the Council that the relevant consultation requirements are contained in Schedule 3 to the Regulations, paragraph 1 of which provides:

(1) The landlord shall give notice in writing of his intention to carry out qualifying works -

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall -

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him in and in connection with the proposed works;

(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;

(e) specify -

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

7. The first document sent to the leaseholders which is relied on as a consultation document is a letter of March 2004 which was sent to each leaseholder by Ms Jackie Baker and said:

Re: External Envelope Programme 2004/05

As the freeholder, the Council has an obligation to maintain the blocks of flats in which your property is situated. Your property is located in a block that is included in this work. Under our statutory responsibilities, the Council is required to give prior notice of such works and invite any comments you may have, If no comment has been received within 28 days of this letter, I will assume that you are happy for the work to commence.

The work involves communal redecoration, facia replacement, external painting and pre-paint repairs [in some cases communal redecoration and/or pre-paint repairs are omitted] *which is estimated to cost approximately £x* [the estimated cost of the individual leaseholder's contribution]. *The contract for undertaking the work has been subject to competitive tendering and payment will be collected through the annual service charge.*

If you have any comments or require any further information regarding the above works please contact Rick Pepper on 464214.

8. The works commenced in April 2004. While they were under way, further letters were sent by Ms Baker to the leaseholders dated 30 July 2004. The letters said:

Re: Major Works 2004/05

....

A recent survey has revealed the necessity to add to the works previously stated. Please find below details of the additional work to be undertaken, together with an estimate of the cost.

Scaffolding

Pointing to chimneys

Pointing to ridges [omitted in some cases]

Pointing to DPC

Estimated cost £x (per property)

The contract for undertaking this work has been subject to competitive tendering and payment will be collected through the annual service charge.

If no comment has been received within 28 days of this letter, I will assume that you are happy for the work to commence. Should you require any further information please contact Rick Pepper on 01543 464214.

9. Finally, in February 2005, a third batch of letters was sent out which said:

Re: Major Works 2004/05 - Estate 25

As you are aware, the above works have commenced on your estate. Unfortunately, when scaffolding was erected to carry out high level works, it became apparent that the following , additional emergency remedial work, needed to be undertaken.

Render repairs/render painting [in some cases; and/or]
Felt roof } *£x (per property*

As it was not possible to consult with you prior to this work being carried out we have written to the Leasehold Valuation Tribunal requesting permission to dispense with s20 consultation requirements. Should the LVT agree to our request, it is proposed that

payment for the work will be collected through the annual service charge.

Should you wish to discuss the above or require any further details please contact Rick Pepper on 01543 464214.

The hearing

10. Before the hearing the tribunal, unaccompanied, made a brief visit to the estate in order to get a general picture of its layout and design.

11. The hearing was attended by Mr Rick Pepper CAIT, the Council's Assistant Housing Property Services Manager, and Ms Jackie Baker, its Leasehold Services Officer, on behalf of the Council, and by Mrs K M Tarbuck, the leaseholder of 46 Hunter Road, Mr and Mrs K H Gill, the leaseholder of 52 Hunter Road, Ms H Smallman, the leaseholder of 6 Carfax, and Mrs P Carroll, the leaseholder of 10 Carfax. Other leaseholders, Mrs C J Charlesworth (50 Hunter Road), Mr E J Cribb (56 Hunter Road), Mr P Silvester (12 Carfax), Mr S J Harrell (4 Carfax), Mr D Greaney (10 Trinity Close),Mr and Mrs Wood (32 Trinity Close), Mrs M Emery (34 Hunter Road) and Mr J Edisbury (54 Hunter Road), had also written to the tribunal opposing the application, and we took their comments into account.

12. When he was invited by the tribunal to consider the specific requirements of Schedule 3 to the Regulations, Mr Pepper conceded:

i. that all the works were part of one contract for works to the Carfax Estate;

ii. that the consultation failed to comply with the Schedule 3 in, at least, the following respects:

a. no notice was given to the recognised tenants' association, a breach of paragraph 1(1)(b);

b. the notices did not state the landlord's reasons for considering it necessary to carry out the proposed works, a breach of paragraph 1(2)(b);

c. the notices did not contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by it on and in connection with the proposed works, a breach of paragraph 1(2)(c);

d. the notices did not invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure, a breach of paragraph 1(2)(d);

e. the notice did not specify the date when the relevant period ended, a breach of paragraph 1(2)(e)(iii).

13. Mr Pepper said that he had not been aware of the precise consultation requirements of Schedule 3. Some of the breaches were, he said, technical breaches which he asked us to waive. He agreed that the failure to contain a statement of the total amount of the expenditure to be incurred by the landlord was more than a technical breach, but considered that giving them the total amount might have confused the leaseholders. He agreed that neither the leaseholders nor the tenants' association had received any informal information in the form of newsletters, meetings etc, about the proposed works.

14. Of the alleged emergency works, Mr Pepper said that problems with the felt roofs over outbuildings to the blocks had not been picked up on any previous survey, although conspicuous vegetation such as small birch trees had been growing on some of these roofs. The problems with the rendering could, he said, not have been seen until the scaffolding was erected. It then became apparent that some of the rendering was likely to fall off and might be dangerous, and it was necessary to act quickly in the interests of public safety. He produced a piece of rendering which showed that the metal bars beneath had corroded.

15. All the tenants asked us to refuse the landlord's application. They said that they felt very strongly that they should have been properly consulted, and that they should have been told, at the outset, the total costs which the landlord proposed to incur in respect of the block in which their flat was situated.

Decision

16. We are satisfied that the cracked rendering could not have been discovered until scaffolding was erected, that it could have endangered the public and was a genuine emergency which required immediate action. We are therefore satisfied that it is reasonable to dispense with the consultation requirements in relation to this work.

17. However, it is quite clear to us that none of the other works could be classed as emergency works. We saw at our inspection that a considerable number of the felt roofs are easily visible from the ground or from a surveyor's ladder, and the works carried out to them cannot possibly be classed as emergency works which could not have been the subject of proper consultation.

18. We agree with Mr Pepper that some of the breaches of the Regulations are relatively minor and technical. For example, the failure to give reasons for considering it necessary to carry out the works could perhaps be regarded in that light, as could the failure to invite observations "in writing" or to specify the date on which the relevant period for making such observations ended. However, the failure to consult the tenants' association and, particularly, the failure to state the total amount of expenditure likely to be incurred by the landlord, are serious breaches in that they reduce the tenants' opportunities for discussion and consideration of the proposals. Moreover, we consider it relevant to our decision that the works were, in our opinion, very poorly planned, apparently because of different surveys having been carried out for different

purposes by different surveyors and at different times. It is simply not satisfactory from the leaseholders' point of view that the works were announced in three stages when, as is clear to us, they should all, with the exception of the emergency works to the rendering, have been planned and consulted on before any of the works began. We have also taken into account that there appears to have been no informal consultation about the proposed works.

19. This is a large scale landlord with its own legal department, and it ought to be aware of the Regulations, which have been widely publicised.

20. In all the circumstances we refuse to dispense with the consultation requirements save in relation to the works to the rendering. The effect of this decision is that the maximum amount which can be recovered from each of the leaseholders for all the works which are the subject of the letters of March 2004, July 2004 and February 2005, with the exception of the works to the rendering is, by virtue of section 20(3) of the Act and Regulation 6, such sum as results in the relevant contribution of any leaseholder being £250. We emphasise that this decision does not determine whether such an amount is payable, but merely deals with the consultation requirements and places a ceiling on the recoverable amounts.

CHAIRMAN.....

DATE.....

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2. The leases are in common form. By clause 1 of the Second Schedule, the leaseholder is obliged to pay a service charge of "the attributed proportion" of the cost to the landlord of insuring the demised premises and of: *(ii) making supporting repairing maintaining and cleansing all party walls and fences and gutters sewers and any other things the use of which is common to the demised flat and to other flats within the ... building or near thereto; (iii) making any provision reasonably necessary for the reinstatement repair maintenance and upkeep of the ... building and surrounding landscaped areas communal accesses supply of services heating (if applicable) drainage pipes wires and cables so far as any of the same are not provided or maintained at the public expense; and (iv) such other items as the Landlord may deem fit from time to time.* By clause 2 of the Second Schedule, the annual amount of the service charge payable by the leaseholder is to be calculated by dividing the aggregate of the cost by the aggregate of the flats in the building. The building does not appear to be defined but it is plainly the block in which the flat is situated.

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The hearing

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11. The hearing was attended by Mr Rick Pepper CAIT, the Council's Assistant Housing Property Services Manager, and Ms Jackie Baker, its Leasehold Services Officer, on behalf of the Council, and by Mrs K M Tarbuck, the leaseholder of 46 Hunter Road, Mr and Mrs K H Gill, the leaseholder of 52 Hunter Road, Ms H Smallman, the leaseholder of 6 Carfax, and Mrs P Carroll, the leaseholder of 10 Carfax. Other leaseholders, Mrs C J Charlesworth (50 Hunter Road), Mr E J Cribb (56 Hunter Road), Mr P Silvester (12 Carfax), Mr S J Harrell (4 Carfax), Mr D Greaney (10 Trinity Close),Mr and Mrs Wood (32 Trinity Close), Mrs M Emery (34 Hunter Road) and Mr J Edisbury (54 Hunter Road), had also written to the tribunal opposing the application, and we took their comments into account.

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Decision

16. We are satisfied that the cracked rendering could not have been discovered until scaffolding was erected, that it could have endangered the public and was a genuine emergency which required immediate action. We are therefore satisfied that it is reasonable to dispense with the consultation requirements in relation to this work.

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CHAIRMAN.....

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