

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Section 20ZA Landlord and Tenant Act 1985

Property : 3, 4, 5 and 6 Hayes Close, Chelmsford,
Essex CM2 0RN

Case reference : CAM/22UF/LDC/2006/0005

Applicant/Landlord : Christopher Merton Read

Applicant's Agents : Johnson Cooper Limited

Respondent(s)/Tenant(s) : Mr and Mrs Mansourpour; Mr Storkey
and Miss Dryden; Mr Reynolds; Mr
Mankee

Members of the Tribunal : M Graham Wilson;
J Raymond Humphrys FRICS;
Richard Marshall FRICS FAAV

1. The Application and the Property

This was an application by the Landlord in respect of 3 Hayes Close ("the flat"), a flat in a block of 4 such flats. By an Order for Directions dated 17th August 2006, the tenant(s) of each flat had been given an opportunity to participate in the application which

was for a determination dispensing with consultation requirements. By the same Order the Tribunal decided that it would determine the application without a hearing or inspection and would rely on written representations

2. **Work in respect of which a dispensation was sought.**

This was the installation of a damp proof course in certain walls of the flat to remedy encroachment of damp.

3. **The Lease**

The flat was held under a lease containing a lessor's covenant to maintain and keep in repair "the main structure" of the block. It was not disputed that walls were part of the main structure.

4. **The Law**

Normally, a Landlord was required to consult over so-called qualifying works, such as here, which were recoverable by the Landlord via the service charge. However, by S20ZA of the 1985 Act

..... the tribunal may make a determination that if satisfied that it is reasonable to dispense with the requirements [to consult]

5. **The Landlord's Case**

This was contained in the Landlord's Agents statement dated 28th September 2006. It suggested that the damp was of such seriousness as to put the flat at risk of becoming uninhabitable. Three quotations had been obtained and the work carried out.

6. **The Tenants' Case**

Two tenants only responded. One, a tenant (one of two) of the flat supported the application. The other, the tenants of Flat 4, objected on the basis that the absence of consultation was unwarranted and raised no health and safety issues for the occupants of Flat 4.

7. **The Decision**

The Tribunal consisted of two surveyor members. Their experience was that rising damp did not normally happen overnight. The Landlord had obtained a defects report. The inspection had taken place on 6th April 2006. The report was "sketchy" but recommended that a specialist be consulted. The report did not refer to urgency. It did not refer either to the likely cause of the problem. One estimate from Prodek Limited was undated but appeared to have been faxed on 13th July 2006. The other, from London Maintenance Company Limited was dated 3rd July 2006. Prodek was instructed to proceed on 14th July 2006. Their invoice was dated 14th August 2006. The Applicant referred the threat of

action by the local authority (though there was no evidence of such) but the experience of the surveyor members was that time would always be given by an authority in which to correct defects such as this. The Committee were not persuaded that the work was urgent in the sense intended by Section 20ZA. To the Committee, "urgent" would suggest there was an immediate risk to life or limb, or to structure (e.g. falling masonry, root damage and so on). This Application did not fall into that character and would be dismissed.

A handwritten signature in black ink, appearing to read 'Graham Wilson', with a stylized, cursive script.

GRAHAM WILSON

26 October 2006