

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

In the matter of Surrey Lodge, Surrey Road, Bournemouth (“the block”)

Case Number CHI/00HN/LDC/2007/0007

BETWEEN

Surrey Lodge Residents Association Limited

Applicant

And

The lessees of the flats at Surrey Lodge

Respondents

Hearing 23rd February 2007

Appearances: Mr and Mrs Daisley for the Applicants

Mrs Jones, Miss Clifton and Mrs Skevington (three of the Respondents)

DECISION

Issued: 6th March 2007

Tribunal

Mr R P Long LLB (Chairman)
Mr J Reichel BSc MRICS

Decision

1. The Tribunal grants the Applicant dispensation from complying with, or from completing compliance with, the following works:
 - a. Cleaning covering and making safe the header tanks on the roof of the block, and investigating the steps necessary to ensure their long term viability, such investigation to include the possibility and viability of alternative provision for carrying out their function; and
 - b. Obtaining a report on the condition of the whole of the roof of the block, to include advice upon the work necessary to replace the roof or otherwise to put it into good condition, from a qualified building surveyor.

It is a condition of the dispensations mentioned above that copies of the reports obtained are circulated to the owners of each of the flats in the Block.

2. To such extent as any dispensation may now be necessary to enable the construction of a retaining wall at the rear of the property to support the drainage work that is necessary there, that dispensation is granted subject to the pre-condition that within three weeks after the date of issue of this decision the Applicants obtain formal written confirmation from the insurers that they will not continue cover at the property without the construction of such a wall, and circulate a copy of it to the owners of each of the flats in the block.

Reasons

3. The application in this matter was made by the directors of Surrey Lodge Residents Association Limited on behalf of that company for various dispensations from compliance with the requirements of section 20 of the Landlord & Tenant Act 1985 ("the Act"). The application also purported to include an application for variation of the leases at Surrey Lodge, but it was pointed out at the hearing that such an application would have to be the subject of a separate application, and that this Tribunal was unable to deal with it in the form in which it had been made.
4. The items in respect of which dispensations were sought were:
 - a. work to repair the drains at the rear of the property and to build a retaining wall there to avoid damage, said at the hearing to be root damage and slippage of the rear bank, to the repaired drains from any lack of support to them that may otherwise arise. This work was stated to be very urgent because there was seepage of sewage from the drains;
 - b. work to repair storm damage to the header tanks on the roof;
 - c. replacement of the flat roofs;
 - d. construction of a retaining wall at the side of the block where the access road to the adjoining property had been formed when it was built;
 - e. reinstatement of the car park; and
 - f. reinstatement of the lifts.

Inspection

5. The Tribunal inspected the block before the hearing in the presence of Mr Daisley. It saw two three-storey blocks consisting of a total of twelve flats, possibly erected either shortly before or shortly after the Second World War, of rendered brick under flat roofs. Separate entrances, with a staircase and a lift serve each of the two blocks of six flats. Mr Daisley said that the lifts no longer work.
6. The roofs appeared to consist of layers of roofing felt, probably laid over battens. They had been patched in a number of places and parts of both were under a layer of water. Mr Daisley showed the Tribunal where the dampness from the roof was penetrating into the walls of his flat and of the neighbouring flat on the top floor of the western block, and in to the wall above the stairs in the same area. The cover of header tanks on the eastern roof had been damaged recently in storms, and parts had fallen into the tanks. The header tanks appear to be responsible for providing drinking water to the block, so that there appeared to be a potential health risk whilst this state of affairs continues. Some of the pipe work serving them is corroded.
7. At the rear of the block the land falls away to the upper part of Bournemouth gardens, and to the Bourne. There was evidence of cracking in the tarmac path that runs along the rear of the block which Mr Daisley said was essentially occasioned by the damage to the drains. He showed the Tribunal the post and sheeting retaining structure at the bottom of a bank below the line of very large (but relatively recently heavily trimmed) laurel plants whose roots he said had damaged the drains.
8. At the eastern side of the block the Tribunal was able to see where the access way to the adjoining block of flats had been formed. This apparently had been done when that block was erected in or about the 1960's, and the land had been cut away in such a way that a retaining wall was necessary to support that side of the block. A retaining wall had not been erected at or since the building of the adjoining flats.
9. At the front (south) of the block is a grass area several feet below the level of the road. Evergreen trees grow adjacent to the road and one of them has recently fallen. Mr Daisley said that the grass area had originally been a car park and that the leases gave residents a right to park there. It had been grassed to form an amenity many years ago when parking was readily available in the road, but now that yellow lines had appeared preventing parking in much of Surrey Road it was important to restore the parking area. The Tribunal saw a notice on a lamppost outside the block advertising a planning application that had been made for the car park to be constructed.

The drains and the wall at the rear

10. The Tribunal had ordered a hearing of this matter at short notice because the application referred to leaking sewage from the damaged drains, and it perceived that there was a health risk as a result. It was told at the hearing that

this occurs intermittently and that the last occurrence was some two weeks before the hearing. It appeared that the drains had been in their damaged state for some time. The urgency was in fact perhaps rather less than had appeared from the application.

11. Mr Daisley told the Tribunal that the necessary consultations pursuant to section 20 had been carried out so far as the work to the drains and retaining wall at the rear of the property was concerned. There has been penetration of the drains by the roots of laurels at the rear of the Block over the years that had led to blockage of the drains. Leakage from the drains had led to some slippage behind the block, and a retaining structure of wooded posts and sheeting had been installed. He produced a copy of a letter written by Mr Willis, a consulting engineer, on 21 September 2006 which he said was evidence of the fact that the insurers, who the Tribunal was told would pay the cost of repairing the drains but not of the wall, would require the wall to be installed in order to maintain cover in future.
12. On behalf of the residents present, Mrs Jones said that the letter did not in fact say that. It expressed Mr Willis's opinion that it would be important to build the wall. Some £3000 had been spent on the earlier retaining bank structure and those residents felt that it may not be reasonable to incur further substantial expenditure so soon afterwards. The tribunal pointed out that the present proceedings were not concerned under this application with that aspect, which would have to be the subject of yet a further application, this time under section 27A of the Act, if any of the lessees wished to pursue it. However, said Mrs Jones, if the insurers required the wall to be built as Mr Daisley said then the residents would like to see specific confirmation of the point. If a letter of confirmation were available, as Mr Daisley said it would be, then they would have to accept that the wall must be built.
13. The Tribunal was left in some doubt whether it had any jurisdiction over the matter because Mr Daisley told it that the consultation was complete. If that is so then no order is required from it. However the fact that the application was made must indicate that there is some doubt. It was satisfied that there is animus between the present directors and the lessees present. The position of the other lessees who did not attend was not addressed by any of those present. The difficulties of the lessees who were present appeared to be caused primarily by a lack of consultation in the form of meetings to discuss intended work. They complained of arbitrary demands for payment without adequate explanation.
14. Consequently the tribunal concluded that, to the extent that any dispensation was required from it, that dispensation might be granted, bearing in mind the necessity to get the work done, but that it was appropriate as a pre condition of the dispensation at the present time that the Company should first obtain and circulate copies to the lessees of a letter from the insurers confirming their position that the retaining wall must be built as a condition of the continuance of cover at the Block. Mr Daisley says that can readily be done, and it is therefore not unreasonable to require that such a letter be obtained and circulated within twenty-one days after the issue of this decision.

15. In the event that the copy letter is not produced and circulated in that period, the parties have leave to make further application to the Tribunal to consider the matter, but the Tribunal makes the point that if it is indeed the case that the consultation has been fully and properly carried out (it has not presently been shown all the documentation that it believes may relate to that consultation) with regard to both the drains and the wall then it would have no jurisdiction to entertain that aspect of the matter further since dispensation would be unnecessary.

The Header Tanks

16. The parties present accept that work to the header tanks is urgently required in order to ensure that they are covered and that any immediate health risk is minimised. Mr Daisley said that it is intended to move the tanks to the boiler room if practicable in order better to protect them and to deal with the corroding pipe work. No professional investigation of this possibility has yet been undertaken to the extent that a report is available to the directors and to the residents to enable them to consider the matter.
17. The Tribunal therefore concluded that it is appropriate for it to grant a dispensation from the requirements of section 20 of the Act to enable the work of cleaning covering and making safe the header tanks on the roofs of the blocks to be undertaken at once in the interests of the health of all the residents. That will be sufficient to deal with the immediate problem.
18. Since such work may conveniently be undertaken at the same time, it determined that such dispensation should be extended to cover the cost of investigating the steps necessary to ensure the long term viability of the tanks, such investigation to include the possibility and viability of alternative provision (for example by repositioning them in the boiler room if that is appropriate) for carrying out their function. Again the existence of such a report will enable a properly informed decision about the long term work in respect of the tanks to be taken and appropriate consultation to be held because the issue will be less urgent once the immediate problem is resolved. Nonetheless, it will need to be addressed fairly shortly because of the apparent need for work to the roofs.

The roofs

19. It appears that work is necessary to the roofs. Mr Daisley said that it is important to proceed at once to re-cover them because of the problems of damp penetration noted on the inspection. Although the roofs had been done some ten years ago, and a guarantee had been given, the company that did the work had either disappeared or perhaps ceased entirely to exist so that it had not been possible to make a claim on the guarantee it had given.
20. However, he agreed that the directors had had no investigation made to establish just what needed to be done. They had taken the view that they would simply ask a reputable company who would give an insurance-backed guarantee in respect of their work to do what was necessary. He agreed that he had not considered whether further work, for example to battens or timbers

that may be damaged or otherwise in respect of the construction of the roofs may be necessary.

21. Mr Daisley further accepted that such an investigation should be made by a properly qualified building surveyor, and that such a person may be able at least to indicate the likely cost of any work that he concluded was required. The Tribunal determined that it would be appropriate for it to grant a waiver from conforming with the requirements of section 20 of the Act to the extent necessary to enable the Company to obtain a report on the condition of the whole of the roofs of each block, to include advice upon the work necessary to replace the roof or otherwise to put them into good condition, from a qualified building surveyor.
22. The Tribunal observes that it may very well be that the cost of the work for which it has granted a dispensation in respect of the header tanks and the cost of the work for which it has granted a dispensation in respect of the roofs may each fall below the recoverable limit that would otherwise apply as a result of the provisions of section 20 of the Act. It is simply anxious that that work, and those enquiries and reports may be put in hand promptly, and that there is then an opportunity for consultation.
23. The directors have, in many ways very commendably, sought to get a grip on a number of areas of work that are plainly necessary at the blocks in the relatively near future, but it does appear that in their anxiety so to do they may have neglected in some ways the important management function of consultation with the residents.
24. The residents in turn however, must realise that (at least upon the very superficial inspection that the Tribunal was able to make before the hearing) that there do appear to be a number of problems at the blocks that require urgent attention for whose proper cost they will be responsible through their service charges in the fairly near future; the cost of these matters that each of them must meet is likely to be substantial. It will, in the Tribunal's settled view, be very much to the advantage of all of the parties if, bearing in mind those points, they are able to seek to repress their obvious antipathies in the interest of making sure that the blocks in which they all have such a major interest are properly repaired.

The side retaining wall

25. Mr Daisley said that no formal engineering report has been obtained about this to date. He was however advised that it would be very much cheaper to carry out the work if the wall could be built, at least in part, on land belonging to the adjoining block. There was to be a meeting with that block in early March at which the matter was due for consideration. At the present time neither the precise nature nor the extent of the necessary work had been formulated, nor was it clear until the matter had been discussed with the residents of the adjoining block just how or whether the expense would be shared.
26. In view of the very early stage that the matter had reached it was agreed that it was not appropriate at this stage for the tribunal to make a determination upon

this aspect of the application. However, this aspect of the matter may be treated as adjourned upon the basis that it is open to the parties or any of them upon written application made before the expiration of three months after the date of issue of this decision to bring the matter of the side retaining wall back before the Tribunal with a view to its determination. If that application is made, the Tribunal will expect to see a proper report from a suitably qualified person, indicating just what is to be done and giving some indication of its possible cost. If the matter is further delayed then of course it is perfectly possible for it to be the subject of a new application at a later date.

The Car Park

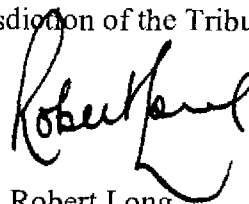
27. The matter of the car park is still the subject of a planning application, and until that application is granted and the matter is further investigated it is not possible to deal with it in any realistic way. The Tribunal therefore determined that it is unable to make an order for dispensation in respect of the car park at this time. That aspect of the matter is thus determined and, for the avoidance of any doubt, is not adjourned. It may, however, of course be the subject of a new application at a future date if that is appropriate.

The Lifts

28. The matter of the lifts is similarly at a very early stage. Mr Daisley had sought to incorporate an application for variation of all the leases in order to remove the obligation upon the company to provide lifts in future as indicated earlier in this decision. He will make a separate application in respect of that aspect of the matter and until it is determined it is not practical for the Tribunal to grant a dispensation, for there is nothing before it upon which it could reasonably do so. That aspect is therefore similarly determined in that fashion and will require a fresh application if it comes back before the Tribunal.

General

29. The dispensations granted in respect of the works to the header tanks and the roofs are granted for the purposes of section 20 and section 20ZA of the Act and for no other purpose. In particular they express no determination as to the cost or the standard or reasonableness of the work to which the dispensations relate, and do not in any way limit the ability of any party to make an application in respect of those costs or that work under section 27A of the Act or, indeed relating to the application of any other relevant jurisdiction of the Tribunal.



Robert Long
Chairman

2nd March 2007