

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00LC/LDC/2007/0017

Property: Linden House
Silverweed Road
Chatham
Kent
ME5 0TD

Applicant: M H S Homes Limited

Respondents: Mr. I. Neilson
Mrs. P. Mullins

Date of Hearing: 6th July 2007

Members of the Tribunal: Mr. R. Norman (Chairman)
Mr. R. Athow FRICS MIRPM
Ms. L. Farrier

Date decision issued:

RE: LINDEN HOUSE, SILVERWEED ROAD, CHATHAM, KENT, ME5 0TD

Background

1. M H S Homes Limited (“the Applicant”) is the freeholder of Linden House (“the subject property”) which is a purpose built block of 12 flats. Mr. Neilson and Mrs. Mullins (“the Respondents”) are the lessees of Nos. 10 and 11 Linden House respectively. The remaining flats are occupied by tenants of the Applicant.
2. The Applicant has made an application under Section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for dispensation of consultation requirements contained in Section 20 of the Act.
3. From the papers supplied to us we understood that on 14th May 2007 there was a fire in the bin store at the subject property and that the fire had also affected the fencing and one of the gates. Residents at the subject property had requested that rather than repairing the existing damaged gate or replacing it with a similar model, that the gates and fencing be replaced with a more secure type. They had concerns over the number of times non-residents had gained access; there had been times when the gates were not working and often this had

not been reported to the Applicant and the gates had also been wedged open by non-residents. The security of the subject property was jeopardised.

4. The damage caused by the fire was the subject of an insurance claim but the installation of improved gates would mean that the Respondents would be liable for additional charges as part of the service charges they have a duty to pay.

5. The works would require compliance with Section 20 of the Act and if the consultation process were undertaken it would delay the carrying out of the works. The Applicant therefore applied to the Tribunal for a determination to dispense with the consultation requirements.

6. The Respondents were made aware that the likely cost of the works would be £15,040.90 and that the contribution of each of them would be 8.34% of that sum. However, the insurers agreed to pay for the cost of one of the gates and as a result the total cost was reduced to £9,703.73 and the contribution of each of the Respondents to £809.29.

7. There had been a certain amount of consultation with the Respondents but not sufficient to comply with the Act.

Inspection

8. Before the hearing we attended the subject property and inspected the gates and fencing in place.

9. Present at the inspection were the Respondents and on behalf of the Applicant: Mr. J. Donovan, Leasehold Manager, Mr R. Wilder, Senior Legal Administrator and Mr. S. Stratford, Building Surveyor. Mr. Neilson stated that he would not be able to attend the hearing. Therefore, as the remainder of those present would be at the hearing and it was extremely unlikely that anyone else would be attending the hearing, we gave Mr. Neilson the opportunity to give any evidence he wished to give and to ask any questions of the representatives of the Applicant at the inspection.

10. Mr. Neilson and Mrs. Mullins agreed that the position was as stated in the papers prepared by the Applicant for the hearing. They told us that a large part of the problem was caused by residents of nearby premises taking a short cut through the grounds of the subject property. They agreed that there had been consultation with them and the other residents of the subject property; that Mr. Neilson in particular had made suggestions about how security could be improved and that some of his suggestions had been incorporated in the works. We were told by the representatives of the Applicant that the existing gates could be pushed in from outside, that they could be climbed over and that it was possible to reach over them and operate the opening button. With these matters in mind, the new gates would open outwards; they would have stronger magnetic locks; they could not be climbed over as the new gates would be higher and therefore not leave a space between the top of the gates and the underside of the canopy through which a person could climb and the exit button would be out of reach from outside.

11. Mr. Neilson and Mrs. Mullins also stated that there was a lack of security caused by residents at the subject property leaving gates open. The existing gates are not self closing but

we were told by the representatives of the Applicant that the new gates will be and this may help to deal with this problem and that there will also be buffers on the gates to prevent excessive noise from the self closing of the gates.

12. Both Mr. Neilson and Mrs. Mullins accepted their liability to pay their proportion of the cost of the works and stated that they would not have suggested any other contractors from whom estimates for the works could have been obtained. They were content that the works proceed.

13. Mr. Neilson was concerned that the works had not yet been completed in accordance with a timescale given by the Applicant. Mr. Stratford explained that the unusually heavy rainfall in June had delayed the completion of the brickwork in the bin store and he stated that he would keep the Respondents informed of progress.

14. Mr. Neilson certainly did not want any further delay but wanted to be sure that the works would cure the problem. It was explained to all those present that the application before the Tribunal was purely for dispensation with the consultation requirements and an outline of those requirements was given. If a lessee wished to challenge whether the costs of the works was reasonably incurred or the standard of workmanship then application could be made to the Tribunal to determine such matters. Mr. Neilson was given information about how to apply and the fees.

15. Neither Mr. Neilson nor Mrs. Mullins objected to the application.

16. Mrs. Mullins explained that the existing gates had been installed about 4 or 5 years ago and that before that time a pathway had existed which was away from the entrances to the subject property and went across the front of the stores. In that way residents of other properties had been able to use a short cut but the pathway was away from the windows and doors of the subject property and therefore was less of a problem. She accepted that nobody could say whether a return to that situation would produce a better solution than increased security but she considered that the increased security made the subject property look like a prison and the gates and fencing were regarded by children not as a deterrent to entering but as a challenge to be overcome.

The hearing

17. The hearing was attended by all those present at the inspection with the exception of Mr. Neilson.

18. The matters dealt with at the inspection were confirmed.

19. In relation to the quotations received it was clarified that the part of the quotation from Independent Security Design Ltd in respect of the lighting was not within the scope of this application as the sum was not being charged to the Respondents.

20. Evidence was given as to the fencing which had been in place before the existing gates had been installed.

21. Mr. Stratford stated that he had visited the subject property and had been approached by Mr. Neilson and some of the tenants. Mr. Stratford had written a letter to all the residents inviting suggestions and he showed the Tribunal Mr. Neilson's reply. Some of Mr. Neilson's suggestions had been incorporated but Mr. Neilson had not had a reply informing him which suggestions had been included. The original letter had been in relation to the locked gates but Mr. Neilson and others had brought in wider issues.

22. The possibility of enclosing the area next to the bin store as a porch was canvassed and Mrs. Mullins told us that when the gates were first put in her preferred option had been to enclose with porches. With hindsight this might have been a better option but she realises now that it would be very costly to change from what is there now.

23. Mrs. Mullins was concerned that costs would spiral out of control and that every 4 or 5 years there would be another bill for gates.

Determination

24. We were asked to make a determination to dispense with all the consultation requirements in relation to the replacement of the security gates and fencing and the operating system for the gates at the subject property. Section 20ZA of the Act provides that we may make the determination if satisfied that it is reasonable to dispense with the requirements.

25. On considering the evidence we found that although the Applicant had not completely followed the consultation requirements, there had been consultation and in practical terms in relation to this particular work most of the requirements had been met. The Respondents were happy with the choice of contractors and there was no suggestion that other contractors should have been approached. In reply to Mr. Neilson's letter, the Applicant could have explained that not all his suggestions were being incorporated but only a partial answer was given. However, Mr. Neilson did state that he was happy with the proposed work and was happy to pay although he was concerned about the delay and had some reservations as to whether the works would cure the problem.

26. We had to consider whether the consultation procedure should be carried out fully but neither of the Respondents asked us to insist on this. Indeed, neither of the Respondents objected to the application.

27. We came to the conclusion that it would be unlikely that any advantage would be gained by the Respondents from the full consultation procedure. To insist on it now would not be in the interests of the security of the subject property and it would cause delay that the Respondents did not want.

28. In all the circumstances of this application we determined that we were satisfied that it was reasonable to dispense with the consultation requirements in respect of these works.



R. Norman
Chairman