SOUTHERN LEASEHOLD VALUATION TRIBUNAL

In the matter of section 20 of the Landlord & Tenant Act 1985 (as amended) and in the matter of Barkshire Court, Hulse Road, Southampton.

Case number:

BETWEEN:

Bananabliss Limited — Applicant

and

The lessees of Barkshire Court — Respondents

Hearing: 10th July 2007

Appearances:

Mr Paul Denford of Messrs Denford's Property Management appeared on behalf of the parties other than Mr Osborne and Ms Kemish
Mrs Judd and Mr Dixon of flat 5
The lessee of flat 8
Mr Osborne and Ms Kemish of Flat 4

Statement of the tribunal's decision and reasons

Date of Issue: 20th July 2007

Tribunal:

Mr R P Long LLB
Mr D M Nesbit FRICS FIArb

Decision

1. The Tribunal has determined for the reasons set out below that the applicant, Bananabliss Limited, shall be granted a dispensation from complying with the requirements of Section 20 of the Landlord & Tenant Act 1985 (as amended) ("the Act") in the following terms, namely that the dispensation is granted in respect of:

> Re-roofing work required at Barkshire Court as set out in the estimate form Botley Roofing dated 30th May 2007, and any ancillary work to boards and/or battens or otherwise that is found reasonably to be necessary properly to complete that work.

Reasons

2. On 28th June 2007 an application was made by Messrs Denfords Property Management to the Tribunal for dispensation from the requirements of section 20 of the Act in respect of work to re-roof Barkshire Court. The application was expressed to have been made on behalf of the lessees, but in directions issued on 2nd July 2007 the Tribunal directed that the application should in the circumstances described in it be treated as having been made on behalf of Bananabliss Limited.

3. The application indicated that there was special reason for urgency because water had penetrated the roof at Barkshire Court and damaged two of the flats there. Hampshire Fire Brigade had expressed concern because the water penetration presented a fire risk as a result of interaction between the water and the electrical installation in the block. Accordingly the Tribunal directed that the matter be heard as a matter of urgency on 10th July 2007 because it took the view that the circumstances were exceptional and warranted short notice of the hearing in accordance with the terms of regulation 14(4) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (as amended) (SI 2003/2099).

4. The Tribunal inspected Barkshire Court prior to the hearing in the presence of Mr Denford, Mrs Judd, Mr Dixon, and the tenant of flat 8, whose name it does not have. It saw a three storey brick block said to have been built in 1968 or 1969 beneath a flat felted roof. There are three flats on each floor. Flat 8 is a top floor flat and flat 5 is on the first floor immediately beneath it. There was evidence of extensive recent water penetration into the bedroom of each of those flats that had rendered the rooms presently incapable of use. The tribunal was informed during the inspection that the lights in both of those rooms had been isolated because of the danger of the water penetrating the electrical circuits and causing fire.

5. At the hearing Mr Denford said that his firm had only taken over the management of the block in May 2006. In the circumstances described in paragraph 2 above he was in effect appearing on behalf of all the parties other than Mr Osborne and Ms Kemish. His firm had become aware after their appointment from a bill forwarded to them by the previous managers that

some work had been carried out to the roof of the block in December 2004. They had established that the roof had last been recovered in 1989, and that the work in 2004 was to replace 12 square metres of board, and thirty square metres of felt. The remaining area of the roof was some one hundred and fifty square metres. In May 2007 the tenant of flat 8 reported leaks. Builders had been called in to effect repairs to the roof and had managed to carry out a temporary repair to the leak over the hall in that flat, but had failed to cure the leak over the bedroom. They had reported to his firm that they considered that the only permanent cure would be to re-roof the majority of the block. Mr Denford then sought estimates from two firms of roofers, and his firm gave notice of intention to carry out roof repair works on 4 June 2007.

6. The estimates received were very similar, and neither allowed for any replacement of boards or battens since it would become apparent whether and to what extent this would be required only when the roof covering was removed. If such work proved necessary there would be a further cost. One was from Willow Roofing in the sum of some £7600 and the other from Botley Roofing in the sum of £7485. Both were exclusive of VAT.

7. Mr Denford produced a blank print of the leases used on the disposal of the flats at Barkshire Court in 1969 and said that as far as he was aware and was material the leases were all in similar form. Mrs Judd confirmed that the print appeared to be in the same form as her lease. The service charge provisions as revealed by that print are rather sparse by present day standards but they are sufficient to show that the lessees are collectively responsible for paying the cost of re roofing Barkshire Court as part of their respective service charge and that the landlord is responsible for seeing that that work is done.

8. Mr Denford said that his firm were anxious to proceed with the work urgently on the basis of the estimate given by Botley Roofing. He had received a letter that he produced in support from Mountfield Estates, the lessees of flat 1, who were nonetheless concerned that the previous agents had let the building deteriorate to this extent. In order to do that they needed a dispensation to avoid the need for going through the rest of the section 20 procedure. Botley Roofing were able to proceed with the work next Tuesday 17 July, and his partner who was a building surveyor would supervise it without additional cost to the lessees.

9. Mrs Judd said that she strongly supported the application. Her bedroom was not habitable and would not become so until the work was done.

10. Mr Osborne and Miss Kemish expressed concern in a written statement that they produced to the Tribunal about the circumstances that led up to the need for the work to be done, and the effect on them as recent purchasers of those circumstances. The Tribunal explained that many of the matters that concerned them were not before it for the purposes of the present application, which is very specific and limited in its scope. They said that they agreed that the work needed to be done in the interests of all the lessees.

11. The combined effect of Section 20 of the Act and of the provisions of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1988) in the circumstances of this case is to requires a landlord who intends to carry out work to a property whose cost is to be recovered as a part of a service charge, and will exceed £250 per flat, first to go through a specified process of notification and consultation. If that requirement is not met the landlord may recover no more than £250 per flat by way of service charge unless he has been granted dispensation from such compliance by the Tribunal pursuant to the provisions of section 20ZA (1). The Tribunal may grant such dispensation in respect of all or any of the requirements if it is satisfied that it is reasonable so to do.

12. The Tribunal is satisfied in this case that it is reasonable to grant the dispensation sought. In arriving at that decision it bore in mind first that parts of two flats are already uninhabitable as a result of recent water penetration, and secondly that the Hampshire Fire Brigade is concerned that the present situation presents a potential fire hazard. It is therefore important that the work should be carried out as soon as possible, and if the remaining requirements of the Act under section 20 were to be followed it would be some weeks before that could be done. It understands that the lessees have already been made aware of the two estimates that have been received and have not raised objection to them.

13. On balance therefore there is little more to be gained by way of protection for the lessees if the remainder of the statutory procedure is followed, but a considerable amount to be lost in terms of continuing water penetration and possible damage to the building, as well as the continuing risk of fire damage. The Tribunal therefore determined to grant the dispensation sought in the terms set out in paragraph 1 above.

14. The Tribunal was however concerned that as they stand the estimates leave considerable scope for potential additional cost for work to be done to replace boards or battens that would be charged at the cost of materials plus an hourly labour rate. That could give rise to a very material additional cost to the lessees. It recommends therefore, as a matter of good management practice, that Mr Denford obtains a further estimate, perhaps on the basis of a cost per square metre, at this stage in the hope of establishing, and if possible containing, any potential additional cost.

15. The Tribunal emphasises that this decision is given for the purposes of the application made under section 20ZA of the Act only. It implies no other determination by the Tribunal. For the avoidance of doubt, it does not express any view upon any of the matters that might be the subject of an application to the Tribunal concerning service charges under section 27A of the Act.

Robert Long
Chairman
20th July 2007