

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

Case Number: CHI/00MW/LDC/2007/0021

**RE: BRIGSTOCKE TERRACE, ST THOMAS STREET,
RYDE, ISLE OF WIGHT**

THE PARTIES

Brigstocke Terrace Management Ltd - The Applicants

&

The Leaseholders of Flats at
Brigstocke Terrace - The Respondents

Date of application: 11th July 2007
Date of Hearing: 3rd September 2007
& determination:
Date of Reasons: 18th September 2007

DECISION: The application for dispensation of
consultation requirements was granted.

Members of the Tribunal

Mr D M Nesbit JP FRICS FCI Arb – Chairman
Mr D Lintott FRICS

RE: BRIGSTOCKE TERRACE, RYDE, ISLE OF WIGHT

Introduction

1. This is an application made by Brigstocke Terrace Management Limited under Section 20 ZA, Landlord & Tenant Act 1985 as amended for the dispensation of consultation requirements contained in Section 20 of the Act. The application was made by Mr C M Burns, then a Board member of the Management Company and dated 11th July 2007.
2. Directions were issued by the Panel Office dated 1st August 2007 with arrangements for the Hearing, held at Ryde Town Hall on 3rd September 2007.
3. Prior to the Hearing and as required by Regulations, the Panel Office circulated copies of the application to the leaseholders noted in a schedule of owners provided by the applicant. Numerous written replies were received from various lessees, to which we later refer.

Inspection

4. Prior to the Hearing, the Tribunal made an informal external inspection of the property, which is a well known and significant Ryde landmark building, being a late Georgian block of 54 flats in the Regency style with rendered external elevations, balconies and canopies. The building constructed on ground and four upper floors is located between St Thomas Street and Church Lane, with a north/south aspect directly overlooking Spithead and with views to the mainland. There was a front car park and rear gardens. The majority of the building was clad in scaffolding for the purposes of an external redecoration contract in hand.

Hearing

5. The Hearing was attended by six lessees and by the father of the owner of Flat 35 on his son's behalf. Names were recorded on an attendance list. The applicants were not represented and Mr C M Burns was not present. There was no representative from the Managing Agents.

6. The Tribunal had the benefit of considering the various written representations that had been received, from which it was clear there was a lack of understanding as to the reasons for the application and several references that the Management Company was taking the lessees to Court.
7. The Tribunal, therefore, outlined the requirements upon those responsible for the management of buildings such as Brigstocke Terrace, including the Management Company and appointed Managing Agents, to undertake formal consultation procedures as set out in Section 20 of the Act, and the reasons for such consultation where the payment in service charges arising would exceed a threshold figure of £250 per flat.
8. The Tribunal was informed by the lessees that at the recent Annual General Meeting of the Management Company, Mr C M Burns was not re-elected as a Director. Further, various lessees had decided to boycott the Tribunal's Hearing. However, Mrs M Watson, the lessee of Flat 14, was present, who was a Director of the Management Company.
9. The Tribunal explained to Mrs Watson the procedure now required whereby for major works contracts Parliament had set out in legislation procedures that were to be followed in order to protect lessees' interests. The Tribunal also explained that if such procedures had not been correctly followed, that those giving instructions for contractors, the Management Company in this instance, would only be enabled to recover costs up to the current threshold figure of £250 per flat.
10. The Tribunal noted that Mr Burns for the application had made an enquiry of LEASE, an independent advisory service that gives guidance to parties to residential leases who had advised that the lack of consultation situation should be regularised by applying for dispensation. It appeared that following meetings attended by some, but not all, lessees that the Managing Agent had outlined the forthcoming external redecoration contract and costings, and a meeting had approved that such works be put in hand and the Managing Agent had been instructed to inform all leaseholders.

11. The Tribunal indicated to the lessees present that the Section 20 procedure existed, and those responsible for property management should be aware of those procedures and should have advised the Management Company accordingly. The Tribunal also indicated that the enquiry by Mr Burns to LEASE was appropriate and the advice he had received was correct, and that it was in the interests of all lessees of Brigstocke Terrace that the matter be regularised to avoid potential serious issues arising.
12. The Tribunal explained that service charges were payable in accordance with the standard lease for the building and were sums of money payable by a lessee for the costs of services, repairs, improvements and maintenance and the insurance of the building.
13. The Leasehold Valuation Tribunal had power to decide about all aspects of the liability for any service charges, but such charges were only payable to the extent they were reasonable and it was for the Tribunal to decide whether service charge costs were reasonably incurred.
14. The Tribunal outlined the law requiring landlords to consult with lessees before incurring expenses for works where costs exceeded prescribed limits. The detailed consultation requirements are contained in Section 20, Landlord & Tenant Act 1985 and associated Regulations. Applications could be made to the Tribunal to dispense with all or any of the requirements and could be made to dispense with or modify consultations before, during or after, works had been carried out.
15. The Tribunal can only make a determination to dispense with consultation requirements if it is reasonable to do so.
16. The Tribunal invited and dealt with questions from the lessees present.

Consideration


17. It was very clear to the Tribunal in their consideration of the case papers, which includes written representations received from lessees, the comments of lessees present at the Hearing, that there was a fundamental misunderstanding, not only as to the application itself,

but specifically an absence of knowledge of the provisions of Section 20 and the consultation requirements.

18. The Section 20 procedures, requiring circulation of estimates and detailed information for forthcoming major works had not been followed. The current external redecoration contract was at least £59,500, and related to a five yearly redecoration programme. Whilst some lessees who had attended meetings were aware of those works and the costs, not all lessees had been present. However, the necessary consultation process had not been complied with to enable all lessees to be properly informed and to be aware of costs. Further, five yearly external redecoration should follow current requirements.
19. The Tribunal had commented in detail at the Hearing, and as recorded in these Reasons, the application was properly made and the Tribunal had no difficulty in agreeing with the application and it was appropriate and reasonable to do so. Accordingly, the Tribunal informed the lessees present of their decision in view of the advanced stage of the redecoration contract it was appropriate that there should be the minimum of delay.
20. In making this decision, the Tribunal makes no judgements as to the extent of works and the quality of the works or their cost. The Tribunal's decision relates only to the grant of dispensation for the consultation requirements that should have taken place prior to the current external redecoration contract being started.

Determination

21. The application for the dispensation of consultation requirements in accordance with Section 20 ZA, Landlord & Tenant Act 1985 is granted.


D M NESBIT JP FRICS FCI Arb
Chairman