SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

In the matter of section 20 and section 20ZA of the Landlord & Tenant Act 1985 (as amended) ("the Act")

Case Number:	CHI/29UD/LDC/2006/0029
Re:	Royal Court, 29 Hursley Road, Chandlers Ford Eastleigh, Hampshire ("the property")

Between:

Killean Limited	Applicant
and	
The leaseholders of the flats at 1-8 Royal Court	Respondents

The matter was dealt with on short notice following consideration of the papers and an inspection on 22nd December 2006

Decision issued 28th December 2006

Tribunal:

Mr R P Long (Chairman)
Mr D Lintott FRICS

Decision

1. The Applicant, Killean Limited, applied to the Tribunal under section 20ZA of the Act for a determination to dispense with the consultation requirements imposed by section 20 of the Act and by the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the statutory provisions") in respect of works that it wished to carry out at the property.

2. For the reasons set out below, the Tribunal has determined that it may dispense with the consultation requirements imposed on the Applicant by the statutory provisions in respect of such remaining investigations as may be necessary and the works required to remedy the water ingress into flat 3 at Royal Court. For the reasons explained in paragraphs 11-13 below, the Tribunal's decision has effect to such extent as is necessary to enable the freeholder to recover such of the costs of that work as are otherwise properly payable as service charges in accordance with terms of the leases of the flats at Royal Court.

Reasons

3. Royal Court is a fairly modern three-storey block constructed of brick under a tiled roof. The copy leases before the Tribunal suggest that it was built in or shortly before 1993, and the nature of the property appears to bear that out. The Tribunal understands from the application that there are eight flats in the block.

4. The Tribunal was informed from the application that was lodged with it on 18 December 2006 that work was urgently required to deal with severe water penetration into flat 3 that occurs each time it rains. Accordingly it gave notice, as regulation 14(4) of the Leasehold Valuation Tribunals (Procedure) England) Regulations 2003 (SI 2003/1998) empowers it to do, that it proposed to deal with the matter on the afternoon of 22nd December in the hope that this may assist the freeholder and the leaseholders to deal with the matter before further damage occurred.

5. The Tribunal specified that the urgency necessitating less than the usual twenty-one days notice arose from the existence of the water ingress. No hearing place was specified in the notice, but any lessee who wished to comment upon the matter was invited either to telephone the Tribunal's office to notify it of the fact or to attend the inspection. No calls were received from any of the leaseholders. Ms Dymott from flat 6 attended the inspection and provided the Tribunal with access to flat 3 as well as to flat 6. Mr C Beamish of DMA Chartered Surveyors, the freeholder's managing agents, who had made the application on the freeholder's behalf, also attended the inspection. None of the other leaseholders attended.

6. In flat 3 the Tribunal was able to see that a part of the ceiling in the living room of about a square metre in area had come down, exposing concrete beams forming the floor of flat 6 above. The collapsed area was some eight or

nine feet back into the room from the french windows, which in turn are immediately beneath the balcony of flat 6.

7. Mr Beamish and Ms Dymott said that the ceiling had collapsed work had been done to investigate bowing that had appeared in the area of the ceiling in question. It was found that the bowing was due to an accumulation of water in the cavity between the floors. The edges of the collapse had been cut away to tidy up the damaged area.

8. Mr Beamish told the tribunal that water penetration was still occurring each time that it rains. A dehumidifier was running in the room when the Tribunal saw it. He said that a builder who had examined the property considered that the water penetration emanated from the balcony of flat 6 above.

9. Miss Dymott kindly allowed the Tribunal to see that balcony. There was no obvious indication on an examination of the surface of the balcony of any point where water penetration may have occurred. It was however apparent on subsequent exterior inspection of the brickwork immediately beneath the balcony and above the french window of flat 3 that work of some sort had been done there in the past because the two courses of bricks immediately beneath the balcony had been inexpertly re-pointed at some time. It appeared to the Tribunal likely that further investigation may be needed to ensure that the source of the penetration is clearly located with a view to establishing and carrying out whatever work as is needed to cure it.

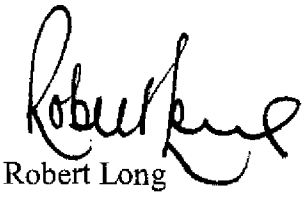
10. The Tribunal was satisfied from all that it saw that work is urgently required to deal with the matter of the water penetration to flat 3, for that flat is scarcely habitable as matters stand. The Tribunal was satisfied that it would be quite unreasonable for the parties to have to wait to go through the procedures required by section 20 of the Act before such further investigations as may be necessary to pinpoint the problem can be undertaken so that the necessary work can then be carried out.

11. The Tribunal saw copies of three sample leases of flats in the block. They were in the same form for all purposes material to the matters presently before the Tribunal. The leases were not entirely clear in their descriptions of the property comprised in the demise of each flat. In particular the ownership of the windows (which for these purposes includes the french windows) was made less clear than it might have been. This led in turn to some lack of clarity as to the extent to which the cost of the matters before the Tribunal might be the subject of service charges.

12. That was borne out by the letters from the managing agents to the leaseholders dated respectively 7th and 14th December. When they wrote the first of those letters, the agents were apparently under the impression that a part at least of the cost of the works might not fall within the service charge regime. Before they wrote the latter, however, they had taken what they described as informal legal advice that suggested that the costs did fall within it.

13. That possible lack of clarity is not relevant to the Tribunal's present function except in one particular. That is that it has thought it appropriate to make plain in the terms of the decision set out in paragraph 2 above that the decision applies to such extent as the works that are found to be required fall within the service charge regime and are recoverable from the leaseholders as service charges in due course.

14. In accordance with its invariable practice in matters of this nature the Tribunal makes it plain that the determination it has made relates solely to the grant of the dispensation sought from the statutory requirements. It does not in any way constitute a determination about the reasonableness of the cost of any works that may be done or their standard, nor upon the matter of payability. Those are matters that may or may not become the subject of a subsequent application to it, but none of them are determined by the present decision.



Robert Long
Chairman
28th December 2006