Residential Property
TRIBUNAL SERVICE

Case Number: CHI/OOHN/LDC/2009/0006

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN LEASEHOLD VALUATION TRIBUNAL

PROPERTY: Zena Court, 9 Adeline Way, Boscombe, Bournemouth, BH5 1EE

Applicant: Zena Court Management Co Ltd

and

Respondents: All Leaseholders in Flats 1, 2, 3, 4 and 5 Zena Court

In The Matter Of

Section 20ZA of the Landlord and Tenant Act 1985

Landlord's application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985

Tribunal
Mr A Cresswell (Chairman)
Mr A J Mellery-Pratt FRICS

Date of Hearing: 14 April 2009
At: De Vere Royal Bath Hotel, Bournemouth

Appearances: Mrs Aileen Catherine Lacey-Payne, and Ms Jenny Smart, both of Napier Management Services Ltd, and Mr David Paul Mitchell, leaseholder of Flat 2, attended on behalf of the Applicant. Also in attendance were Ms Stephanie Bawdon and Ms Muriel Kennedy who were representing the interests of Mr R Burgas, leaseholder of Flats 1 and 4, a Respondent.

DETERMINATION

The Application

1. On 20 February 2009, Napier Management Services Ltd ("Napier"), acting on behalf of Zena Court Management Co Ltd, made an application to the Leasehold Valuation Tribunal for the determination of an application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985 in respect of works to a bay window of Flat 2 at the property.

Inspection and Description of Property

2. The Tribunal inspected the property and one of the flats at the property on 14 April 2009 at 10.00 am. Present at that time were Mrs Aileen Catherine Lacey-Payne, and Ms Jenny Smart, both of Napier Management Services Ltd, and Mr David Paul Mitchell, leaseholder of Flat 2. The property in question consists of a block of 5 self contained flats, the building having been erected at the start of the 20th century and the conversion to Flats having occurred about 20 years ago. The Tribunal saw the completed works to the bay window of Flat 2. There was evidence of movement still showing on the roof of the bay where it met the wall of the front elevation.

Summary Decision

3. This case arises out of the Landlord's application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985 in respect of heating works at Zena Court. Under Section 20ZA of the Landlord and Tenant Act 1985 (as amended), the Tribunal has jurisdiction to make a determination dispensing with all or any of the consultation requirements "if satisfied that it is reasonable to dispense with the requirements." The Tribunal has determined that the landlord has not demonstrated that it is reasonable to dispense with all of the requirements, and for that reason does not make a determination dispensing with all or any of the consultation requirements.

Directions

4. Directions were issued on 24 February 2009.

5. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. Respondents wishing to contest this application were advised to send 4 copies of a written statement setting out

the grounds on which they oppose the application and their reasons for doing so to the Tribunal by Friday 20 March 2009. No such written statements of objection were received by the Tribunal.

6. This determination is made in the light of the documentation submitted with the application in response to those directions and the bundle of documents prepared by Napier on the day, which was shared also with Ms Bawdon and Ms Kennedy, and the oral representations received at the hearing.

The Law

7. The relevant law we took account of in reaching our decision is set out in sections 18, 19, 20 and 20ZA of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

8. Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002:

Section 18 deals with the meaning of "service charge" and "relevant costs"

Section 19 details the limitation of service charges and reasonableness.

Section 20 deals with the limitation of service charges and consultation requirements

20ZA. Consultation requirements: supplementary

(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
(2) In section 20 and this section—
"qualifying works" means works on a building or any other premises, and "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
(5) Regulations may in particular include provision requiring the landlord—
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

Management

9. The property is managed by Napier Management Services Ltd acting on behalf of Zena Court Management Co Ltd.

The Lease

10. The lease before the tribunal is a lease dated 5 November 1992, which was made between Zena Court Management Co Ltd as lessor and Frank Ernest

Abrahams and Iris Margaret Abrahams as the superior lessor and Kenneth John Stanley and Karen Frances Butler as lessee of Flat 2.

11. *THE SECOND SCHEDULE*

The Reserved Property

... and SECONDLY ALL THOSE the main structural parts of the buildings (excluding the garages) forming part of the property including the roofs foundations and external parts thereof (but not any patio forming part of any flat nor the airspace thereover up to the level of the height of such flat no (sic) the glass of the windows or doors of the flats) and the land on which the said flats and garages stand and all cisterns tanks sewers drains pipes wires ducts and conduits not used solely for the purpose of one flat

THE SEVENTH SCHEDULE

Part I (Definitions)

"Maintenance expenses" means the costs charges and expenses incurred by the Lessor in respect of the property in carrying out all or any of its obligations under Part I of the Eighth Schedule to this Lease and any amount charged to the maintenance fund by the exercise by the Lessor of its powers under Part II of the Eighth Schedule

Part II

1. The Lessee shall in respect of every accounting period not expired before the date of execution pay the maintenance charge as hereinbefore defined and in the manner and subject as hereinafter mentioned

THE EIGHTH SCHEDULE

Part I

3. The Lessor shall keep the reserved property ..... in a good and substantial state of repair decoration and condition including the renewal and replacement of all worn or damaged parts

(h) Power to charge all expenses fees and costs incurred in or connected with the exercise of the powers herein referred to and all legal accountancy and other fees incurred in the operation of the Lessor company (including fees for matters which an officer of the Lessor company could have performed personally) to the maintenance fund

The Applicant's Case

12. Ms Smart explained in the application that in May 2008, the leaseholder of Flat 2 was carrying out a major refurbishment of his flat, when the builder discovered that the bay window was structurally unsafe. The window was leaning away from the property, the bay was damaged and the floor had dropped. She said in the application that the leaseholder was advised that consultation would be required in accordance with section 20 of the 1985 Act, but that the reason for dispensing with consultation was that the leaseholder felt he needed to carry on with refurbishment as his property was in the middle of its works.

13. In evidence, we heard first from Mr Mitchell, who gave us the history of the works. He was taking possession of Flat 2 after its occupation by tenants and, in May 2008, work was underway to refurbish the flat. There was work to the ceiling to reduce noise and work to install wooden flooring. When the builder removed the architrave at the bay as part of the ceiling work, it was noticed that the UPVC bay had not had proper support installed and that there had been movement as a result. When the floor was opened up, the builder observed that the floor had settled as the joists had perished and there was downward movement towards the bay. Further examination revealed damage also to the bay's supporting wall. Acroprops were installed to effect a measure of interim safety.

14. Mr Mitchell contacted Napier and contact was made with the insurance company, Allianz. Loss adjusters, GAB Robins made an inspection, but they declared that the loss was not insured because it resulted from a failure to ensure proper support for the bay when the UPVC had been installed long before they became insurer. This communication did not reach Napier until about 10 June 2008 as the letter was sent to the premises. Mrs Lacey-Payne told us that she had been a loss adjuster, but that her best efforts to find a mechanism for an insurance payment were not successful, and because Napier were not the original managing agents, she did not have complete insurance records going back as far as when the UPVC bay was installed.

15. Napier advised Mr Mitchell that there would need to be consultation on the works. However, Mr Mitchell was in his ground floor flat, the front window of which abutted a car's length from the street, and the front window of which was held up by props and was boarded up. The builders had removed the windows for safety reasons when the glass started to crack. Mr Mitchell felt that the work was essential and necessary at that time, not later. He obtained two estimates, he said, and proceeded with the lower of the two. Whether the cost was reasonable is not for us to determine, but we did believe that the cost involved was on the high side, and we will have further comments to make in relation to the cost later.

16. Mrs Lacey-Payne told us that she asked a contractor to attend the premises, but Mr Mitchell had already authorised his builder to go ahead. This was in the first or second week of July 2008. It was decided that the applicant would meet the costs and reclaim it in portions from the leaseholders; in the interim, Mr Mitchell had taken out a loan. The issue was discussed at the applicant's annual general meeting in September 2008; it was not an item on the agenda, but was flagged up in a letter to leaseholders, but the cost was not included. In the event, the meeting was attended by only two of the four leaseholders, Mr Mitchell and Mr Powell of Flat 5 and by Mrs Lacey-Payne. That meeting decided that this application should be submitted. It was the belief of Mrs Lacey-Payne that the works were emergency works, the builder sent by Napier had seen the problem also.

17. The sequence of events was, therefore, that the problem was discovered on 20 May 2008, when insurers became involved. By 10 June 2008, the applicant was aware that there was no insurance cover. Mr Mitchell had an estimate from his builder, but this was not shared with us; the other estimate is not dated. By the first or second week of July 2008, the works were

underway. By 15 August 2008, the work was the subject of an invoice. In September 2008, the applicant held its AGM and decided to make this application which was dated 20th February 2009. On 14 April 2009, at the hearing, the costs were shown to those representing one of the leaseholders; it may well be that the fourth leaseholder still does not know the cost.

The Respondent's Case

18. Ms Bawdon and Ms Kennedy attended to represent the interests of Mr Burgas, Ms Bawdon being his daughter. They raised questions with the two witnesses, but there was no objection raised to the application and they had no submissions to make.

Consideration and Determination

19. The Tribunal finds it clear from its examination of the papers and the oral evidence that the works to the bay window were works which were required rather than desired. Mr Mitchell was living in his flat at the time, and the windows had to be removed and the bay propped for safety reasons; there was a need for some urgency. This was a substantial problem, as we saw from the photographs that it was necessary to remove the supporting wall below the bay window and renew also the footings below. We had regard also to the fact that a delay would have led to an intolerable position for Mr Mitchell and the real possibility that he would have had to be rehoused in the interim at further cost to the leaseholders. However, we find that it is not reasonable to dispense with some of the consultation requirements.

20. The Tribunal noted that this was a relatively small property, with only four leaseholders; even though the panoply of the Section 20 requirements may have been impractical, we could see no reason why the other three leaseholders could not have been kept abreast of the intention to do the work, the seeking of estimates and the costings which ensued; we note that the costs were not revealed even in the documentation for the September AGM, by when the works were finished, and were only made known to Ms Bawdon and Ms Kennedy on the day of this hearing. There was no evidence before us, written or oral, to suggest that Mr Burgas or Miss Barr (Flat 3) have ever been made aware of the costs of this work. The estimate and invoice themselves are sparse in their detail, and should, in our view, have been far more detailed so that leaseholders could have a greater understanding of the make up of the total costs and thereby be better informed to give their own views. Had they been shared at the time, the other leaseholders may well have wanted to ask for an alternative estimate. We were only shown one estimate.

21. We were also concerned that Mr Mitchell gave the "go-ahead" to his own builder before the structural engineer being sent by Napiers had a chance to make a proper inspection, which would have provided the leaseholders with better information and enabled them to take a more informed view as to whether the costs were at all reasonable. Mrs Lacey-Payne told us that Napiers wrote to Mr Mitchell and explained the Section 20 procedure and said that they would like to appoint a structural engineer, but that Mr Mitchell had already decided to go ahead. We were not presented with any expert

evidence to the effect that there was a real safety issue which needed to be addressed by urgent work. The work was clearly necessary and not elective, but was there an urgency for safety reasons as opposed to inconvenience? We do appreciate that the applicant had not been asked to present a bundle of documents for the hearing, but even if they had been so asked, the simple fact is that there is no such report in existence because only builders had looked at the problem.

22. We were not asked to adjourn the case to enable the provision of any further documentation. We were satisfied that we did not need to see the minutes of the AGM, and that there was sufficient documentation available to us, including the bundle presented to us by the applicant prior to the hearing, to make our decision. We were also satisfied that we gave the applicant a proper opportunity to present its case and say to us everything that it thought relevant to our considerations.

23. The Tribunal noted a matter, which did not affect our decision, but which the parties may wish to take note of. There are items on the final account which may not be recoverable in any event, such as the glass, which is not covered by the charging clauses in the lease.

Andrew Cresswell (Chairman) **Date 23 April 2009**
A member of the Southern Leasehold Valuation Tribunal
Appointed by the Lord Chancellor