RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

S.20ZA & S.20C Landlord & Tenant Act 1985

Residential Property
TRIBUNAL SERVICE

DECISION & REASONS

Case Number:	CHI/21UD/LDC/2009/00017
Property:	Caple Court Albany Road St Leonards-on-Sea East Sussex TN38 0LL
Applicant:	Caple Court Residents Association Ltd and other lessees listed in the application
Represented by:	Mr D Eglington (Director), Mr B Wiggins (Director) and Mrs L Humphreys (Company Secretary & Director)
Respondent::	Mrs R Pooley, Mrs A Lyons and Mrs B Still (appearing in person) and other lessees listed in the application
In Attendance:	Various Lessees including Mr G Matassa, Mrs Scrivener, Mrs B Carr, Mr & Mrs N Hicks, Mrs O Peddlesden, Mr & Mrs Herbert, Miss J Bowie, Miss J Davis, Mr B McClelland
Observers:	Mr Trent and Mr Okines
Date of Application:	1 July 2009
Date of Hearing:	17 August 2009
Date of Decision:	4 September 2009
Tribunal Members:	Mr B H R Simms FRICS MCIArb (Chairman) Mr J B Tarling MCMI (Legal Member) Miss C D Barton BSc MRICS (Valuer Member)

DECISION AND ORDER

1. Section 20ZA The Tribunal determines not to dispense with all or any of the consultation requirements in relation to the qualifying work, the subject of this application.

2. Section 20C The Tribunal **ORDERS** that to such extent as they may otherwise be recoverable, the Applicant's costs, if any, in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent or other tenant of a flat forming part of the property.

REASONS

INTRODUCTION

3. This is an application by the Landlord Caple Court Residents Association Ltd in accordance with S.20ZA of the Landlord & Tenant Act 1985 for dispensation of all or any of the consultation requirements in respect of qualifying works. The qualifying works in the application related to the refurbishing of floor covering in two of the five entrance halls and stairway areas serving the various flats in the block. By consent of the parties and the Tribunal, the application was amended during the course of the hearing to include the refurbishment and replacement of the floor covering of all five of these entrance halls and stairwells.

4. As part of representations in writing made by one of the Respondents, Mrs R Pooley, she stated that she did not agree that the cost of [this] application should be paid out of the service charge. By consent of the parties and the Tribunal during the course of the hearing, this statement was taken to be an application under S.20C of the 1985 Act to request the Tribunal to make an Order limiting the Applicant's costs so they are not to be regarded as relevant costs in calculating the service charge.

THE LAW

5. The statutory provisions primarily relevant to these applications are to be found in S.20C and S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.

6. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.

7. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.

8. In order for the specified consultation requirements to be required, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by regulation and at the date of the application is £250 per lessee.

9. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements)(England) Regulations 2003, SI2003/1987. These requirements include amongst other things a formal notice procedure obtaining complete estimates and/or the provision whereby a lessee may make comments about the work and nominate a contractor.

10. S.20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

11. S.20C relates to the costs of proceedings. The lease may allow the landlord to recover certain costs by way of a service charge. S.20C provides for a Leasehold Valuation Tribunal to determine that all or any of the costs incurred or to be incurred by the landlord in connection with proceedings should not be regarded as relevant costs to be taken into account when the service charge is calculated.

12. For S.20C the Tribunal may make an order if it considers that it is just and equitable to make such a determination (subsection (3)).

THE LEASE

13. The Tribunal was provided with a copy of a lease dated 4 August 1971 between Goldkey Properties Ltd (the lessor), Caple Court Residents Association Ltd (the company) and George Griffiths Hirst and his wife (the lessee).

14. Although the Tribunal had regard to the full lease, little turned on its interpretation during the course of representations made prior to and during the hearing.

15. There is a provision under Clause (19) of the lease for the lessee to pay to the Company a fixed amount of £24 towards the cost of the lessee's contribution to a service charge each year. In addition there is an obligation for the lessee to pay separately a percentage (in this case most lessees pay 4.2%) of all monies expended by the Company in complying with its general repairing and decorating covenants, the cost of insuring the property and a fixed management fee, together with any interest or late payment. The details are set out within the lease.

16. At Clause 5 the Company's covenant relating to the common ways, maintenance and repair of the building, cleaning and other usual management functions are set out in detail.

17. Suffice to say that there is an arrangement within the lease for the management company to recover by way of a service charge its expenditure on matters which are detailed in the lease which it covenants to undertake.

18. There were no matters raised by any of the parties in respect of the interpretation of the lease.

BACKGROUND

19. On 8 July 2009 the Tribunal issued directions for the conduct of the case. In view of the urgency expressed in the application, the matter was listed to be dealt with on the fast track and a hearing date set for 17 August 2009.

20. Various matters including the preparation of a bundle of documents and a timetable for the presentation of representations and statements was set out in the Directions.

21. It was allowed that any Respondent should attend the hearing and if they wished to produce any documents then these should be brought with them to the hearing.

22. Following the issue of the directions, various bundles of documents were produced and on 29 July 2009 the company secretary of Caple Court Residents Association Ltd wrote to the Tribunal office. A previous request to dispense with the hearing had been refused and this letter repeated the request for dispensation of the hearing. This was not granted.

23. The 29 July letter also identified various changes to the estimates received which it believed may remove the work from the definition of qualifying work and thereby remove the need for formal consultation altogether. The Company also requested that the Tribunal direct that fees payable for the application should be met from the service charge account.

24. A further letter dated 6 August made similar points. The case officer responded to the Company on 7 August indicating that the hearing would proceed and repeated earlier comments that the Company could obtain detailed advice.

25. As far as the Tribunal could tell, none of the letters to it had been copied to the Respondents who were therefore not aware of any of the details of the correspondence. In view of the matters raised it was felt that the best way to resolve any outstanding issues would be to proceed with the hearing.

INSPECTION

26. The Tribunal members inspected the property prior to the hearing on 17 September 2009. Mr Eglington showed the members around the building and various other directors and at least one Respondent was present during the inspection.

27. The Chairman explained that the purpose of the visit was to inspect the property and to identify the subject matter that would be referred to at the hearing later. Mr Eglington, however, did provide information during the course of the inspection but all of the matters identified were easily visible to the Tribunal members.

28. The property comprises a three storey, purpose-built block of flats, having a mixture of rendered plain brick and tile hung elevations under a pitched roof covered with tiles. There are, in effect, two separate parts and the buildings are laid out in an L shape.

29. The Tribunal started by inspecting the common ways to flats 1 to 6 which consisted of a ground floor area which was carpeted. Beneath the staircase and adjoining the glazed area to the front, the carpet was quite badly stained and beginning to bubble up. The Tribunal thought that the carpeting would have originally been stuck down and that the adhesive had failed in these areas. Mr Eglington indicated that at one time there had been some plants standing in this area. The remainder of the staircase and landing areas were covered with thermoplastic tiles and the nosings to the stair treads were of a rubberised material. A large number of the nosings had cracked or split and many were beginning to come away from the substrate. Several of the tiles, particularly on the landing, had shrunk leaving gaps between the tiles and some of the corners had begun to lift.

30. The Tribunal then inspected the remaining four common areas identified as leading to Flat 7 to 12, 13 & 14, 15 to 20, and 21 to 26. Similar problems were noted in these further common areas. In some of them the staircase nosings were in poorer condition and in others, particularly 13 & 14, 15 to 20 and 21 to 26 the carpet was not so bad.

31. The Tribunal particularly noted the poor state of the nosings on the stairs leading to flats 7 to 12, 15 to 20 and 21 to 26.

32. The Tribunal also made a general inspection of the exterior but did not inspect the interior of any flat.

HEARING

33. Prior to the start of the hearing the Tribunal was notified that the Respondent's had, in accordance with the directions, presented their written representations. Copies were made available to the Tribunal and to the Applicants. The start of the hearing was delayed to allow for the Tribunal to consider the paperwork and for the Applicants to have a similar opportunity.

34. The hearing commenced at about 11.30 and all parties indicated that they had been given sufficient time to consider the new material.

35. The Chairman identified the details of the application and indicated the documents that were available to the Tribunal.

36. The Applicants confirmed that the application was as stated in the original form which related to the floor coverings of the entrances of Flats 1 to 6 and Flats 7 to 12 which had been identified as being in much worse condition than the others and the Fire Safety Assessment indicated that they should be refurbished within 10 days. It became clear, however, during the course of the opening remarks, that the Applicants had expected their letter dated 29 July 2009 to have amended the application to include all the entrances and common ways. An estimate dated 22 July 2009 from Kiley's Contract Flooring Ltd was in respect of all the entrance areas, at a total cost of £5,900. Although this had been mentioned in a letter to the Tribunal office it was certainly not clear to the Tribunal members that the application had been amended in this way. The Respondents were consulted and were satisfied that the hearing could proceed on the amended basis.

37. From the written representations it would appear that the Respondents had been made aware of the alternative quotation from Kiley's as described but it had not been made clear that the application had been amended to seek dispensation from the S.20 consultation requirements in respect of all the carpeting work rather than for common ways 1 to 6 and 7 to 12 only.

38. The Tribunal agreed to accept the amendment to the application and the Chairman then questioned the Applicants regarding the grounds for seeking dispensation. The Applicants explained that the new estimate would result in the tenant of only one flat, namely Miss Joyce Davis of Flat 17, having to pay more than £250 as her share. This was because the flats were of varying sizes and varying percentages were used in the calculation of the service charge. Miss Davis indicated in a letter to the Tribunal Office dated 26 July 2009 that she had no objection to paying the slight excess, which in fact is £3.70, and she was happy to proceed without full statutory consultation.

39. The initial ground, set out in the application, that the work was urgent because of the Fire Risk Assessment report was no longer relevant. The Applicants were now relying on the fact that only one flat had to pay an amount that exceeded the statutory limit for S.20 consultation. No other grounds were offered in support of the S.20ZA application.

40. One further anomaly was that in the Fire Risk Assessment carried out by Safety First Associates the two urgent matters were a) removing stored items from the protected fire escape area in blocks 1 to 20 and b) replacing the carpets in the entrance areas to flats 1 to 6 and 13 & 14 as water ingress at ground floor level had created a potential trip hazard on carpets. The application related to entrances to flats 1 to 6 and 7 to 12, and not 13 & 14. The Applicants explained that the Safety First report had a typographical error but no documentation correcting this alleged mistake was provided to the Tribunal.

EVIDENCE

The Applicant's Case

41. The case stated in the application related to the urgency of replacing the carpeting in the entrances to flats 1 to 6 and flats 7 to 12 as identified in the Fire Risk Assessment. The report referred only to the ground floor carpeting but the Applicants indicated that the stairways and landings needed refurbishment at the same time because some of the thermoplastic tiles are

lifting at the corners which is an additional hazard. The Applicants could not explain why this additional hazard was not mentioned in the Safety First report.

42. An Extraordinary General Meeting of the company had been held on 16 July 2009 to consider the revised budgets for 2009 and 2010. The Applicants were concerned that they would be accused of deliberately splitting the major work into separate components in order to avoid carrying out the statutory consultation procedure, hence the need for the S.20ZA application.

43. At the time of the application it was suggested that the work to the floor coverings of entrances flats 1 to 6 and 7 to 12 should be regarded as a one-off job which would not require dispensation. In the accompanying supporting documentation the Applicants sought advice from the Tribunal rather than dispensation. The request gave alternatives regarding the splitting of the work and asking for the Tribunal's assistance and direction.

44. In the past fire risk assessments had been carried out by two retired fire officers who happened to live in the building but the company decided that an external contractor, namely Safety First Associates Ltd, should now be used to carry out a formal Fire Risk Assessment. This company also dealt with a Health & Safety Inspection and an Asbestos Report. Only part of the Risk Assessment report was in the bundle of documents and, although a copy of the full report was available, the Tribunal decided that as this copy had not been available to all relevant parties it could not accept it in evidence.

45. The significant findings page in the report referred also to other matters in connection with the installation of emergency lighting, the upgrading of fire detection, and other general improvements to the protection of the building. Some of this work had already been completed.

The Respondent's Case

46. Initially the Tribunal was addressed by Mrs Pooley who had produced a well reasoned brief written statement. She felt that it was important that there

should be a formal consultation which would enable the lessees to consider the total cost of the work to the common entrances and not just the replacement of the floor coverings.

47. Mrs Pooley does not accept that the excuse for proceeding has somehow become urgent in light of a Health & Safety Fire Risk Assessment.

48. Mrs Pooley had not been provided with a copy of the Fire Risk Assessment report although she had requested one. It was pointed out by the Applicants that she was given an opportunity of viewing the report at a specific location. She also did not receive a specification of the proposed work.

49. As she had not seen a copy of the report she found it hard to imagine that such a report would not recommend the installation of emergency lighting, smoke detection, etc., and the upgrading of doors to comply with half hour fire resistance. Having now seen a copy of the report that was provided with the documentation for the hearing she sees that at least some of these items are mentioned but she is still concerned that proper standards are not being maintained.

50. Emergency lighting has been installed in the common ways.

51. Mrs Pooley emphasised that her main reason for opposing the current application for dispensation is that she believes that the replacing of the carpets are not urgent. If there was an unsafe trip hazard there could have been steps taken during the consultation period to eliminate the immediate danger. The work should include in addition to any floor covering alteration the further work such as redecoration that have already been allowed for in the annual budget, the emergency lighting work, and other matters which together would well exceed the costs limit for S.20 consultation. She therefore submits that all the work should be considered as part of the same project and requires formal S.20 consultation.

52. Because of this she also believes that the S.20ZA application is frivolous and a waste of the Tribunal's time. She does not agree that the cost of the application should be paid out of service charges.

53. In her oral evidence Mrs Pooley emphasised her contention that all the work to the common ways was a single project and that it was quite reasonable to expect to be consulted as a lessee, whether or not some of the members of the company had agreed to do the work at an EGM of the company. The carpeting is not a hazard and even if it was it would be relatively simple and cheap to rectify the problem.

54. The leaseholders had all been sent a letter by the Applicant dated 13 August 2009 identifying additional work required to the common parts in accordance with the Fire Safety Report. This work includes intumescent strips on all front doors and cupboard doors opening onto the hallways. This is further evidence that the full works include a great deal more than just replacement floor coverings.

55. Mrs Lyons also submitted a brief statement covering very similar points but she was equally concerned that all the work was a single project and simply to add the cost of the redecoration to the cost of the carpeting would bring the price well over the statutory limit for consultation.

56. She believed that the company has a poor understanding of the service provided by the Leasehold Valuation Tribunal and it is wasting the Tribunal's time.

57. Mrs Lyons was given the opportunity of addressing the Tribunal verbally and simply confirmed the matters previously raised.

S.20C

58. Mrs Pooley addressed the Tribunal and explained that the application was unnecessary and wrong and the whole thing was muddled. Consultation had broken down and it was particularly important that the lessees were formally consulted in view of the previous history of the actions of the company.

59. The Applicants said that the redecoration work would be done at a separate time and that they had to bring the S.20ZA application in order to clarify their position. They will expect to be able to charge the cost of the application and the hearing to the service charge.

CONSIDERATION

60. This is a muddled application with the company having little understanding of the statutes or their obligations under the terms of the lease or the relevant codes of practice.

61. It became clear during the course of the proceedings that a previous Decision of the Leasehold Valuation Tribunal had identified shortcomings in the company's procedure but even so the Applicants had not taken advice in this case in spite of suggestions to that effect being proposed at various times in correspondence from the Tribunal Office.

62. The definition of qualifying works is set out quite clearly in the statute. If one of the lessees has to pay £250 or more then the works fall within the definition of qualifying works. The Tribunal has no power to vary the statute or regulations. If the Applicants wish to interpret it differently then so be it.

63. Several times during the course of the proceedings the Applicants emphasised that they were not trying to avoid the need for consultation by splitting up the work into various parcels so as to reduce the cost below the statutory limit. By emphasising that this was not what they were trying to do the Tribunal feels that they in fact made the opposite point.

64. It was quite clear from the Fire Safety Risk Assessment that there was a long list of work that was needed in addition to the identified urgent work to repair the two small areas of carpeting in the ground floor of entrances 1 to 6 and 7 to 12. These carpet areas could have been replaced for a modest sum which would have come nowhere near the statutory limit for consultation.

65. During the Tribunal's inspection it was clear to all the members that the remainder of the staircases, particularly the tiled areas and the nosings, were in a very poor state of repair. The Tribunal cannot understand why this more obvious trip hazard was not mentioned in the Fire Risk Assessment report. The Tribunal in fact found it difficult to understand how a bubbled carpet beneath a staircase could be regarded as a trip hazard. There were no edges to cause someone to trip. The solution could easily have been to identify the dangerous area and put up some temporary bollards or similar identification to keep persons away from the alleged dangerous area.

66. A substantial amount of money needs to be spent in these common way areas to bring them up to a reasonable standard. As a matter of good practice we would expect the company to consult with the lessees and get a series of estimates based upon a detailed schedule of work so that the lessees could understand how their funds were being spent. The Respondent's indicated that in their view this would be a good idea in any case whether or not there was a statutory obligation to consult.

67. The statutory consultation procedure also includes an option for the lessees to nominate a contractor. It may be that someone is known to one of the occupiers who might provide a more competitive quotation for the work, particularly if all the works were carried out at the same time. Indeed at the Hearing the Respondents indicated that they might wish to nominate their own contractor and unless they received a formal Section 20 Notice they feared they would not have an opportunity to do so.

68. Certainly the installation of emergency lighting and new fire call points would necessarily affect the decorations in the common areas. Any redecoration work is clearly part of the same project that would include the replacement of the floor covering.

69. The Applicants did not persuade the Tribunal that there were sufficient grounds to grant dispensation. By its own admission the specified ground that the work was urgent because of the alleged identified trip hazard only applied to a small part of the work.

70. The remaining work was to renew the carpeting and replace old tiles, and although of some benefit, there was no expert evidence that this work was urgent enough to avoid the need for statutory consultation.

71. The work had been split into several packages in an attempt to bring it outside the statutory requirements for consultation. The application was muddled and caused the Tribunal some concern about the way in which the building was being managed.

72. Apart from the Safety First report there would appear to have been no professional assistance obtained in respect of the management of the property and the Tribunal was not impressed with the quality of the report from Safety First. A basic error was made in the identification of the carpet trip hazard and the other more obvious trip hazards were not mentioned. Although the Tribunal was only provided with part of the report it would seem that several fire risks or hazards were not identified. The author of the report was not called to give evidence to the Tribunal and could not therefore be questioned on these apparent omissions.

73. For the reasons stated the Tribunal could not consider granting dispensation and the formal Decision is set out at the beginning of this document.

74. Turning now to the request for a S.20C Order. The Tribunal agrees with the Respondents that the application was muddled and unnecessary and there is no reason therefore why the cost should fall upon the service charge. The Tribunal makes the appropriate Order which is detailed at the beginning of this document.

75. Merely for the sake of clarification the Tribunal reminds the parties that either the landlord or any lessee may make an application to the Tribunal under section 27A of the 1985 Act for a determination as to the reasonableness of service charges either before or after any proposed works. The decision given in this document does not prevent any future application under section 27A of the 1985 Act.

Dated 4 September 2009

Brandon H R Simms FRICS MCIArb
Chairman