

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/43UE/LDC/2009/0016

Re: Flats: 6, 13, 16, 17, 18, 19, 20, 21, 24, 27, 28, 30, 31, 34, 46, 49, 54, 55, 56, 58, 59, 60,
61, 62, 74, 76, 78, 81 and 83 Brookers Close, Ashstead, Surrey RH4 1TF

Between:

Mole Valley Housing Association Limited
("the Applicant")

and

The lessees of the above properties

("the Respondents")

**IN THE MATTER OF AN APPLICATION UNDER
SECTION 20ZA OF THE LANDLORD & TENANT ACT 1985**

I certify that there was a clerical error in paragraph 4.4 of the Reasons for the determination of this Application. It should have stated that the additional cost is in the order of £1000 per flat and not per block as stated. The reasons are therefore amended accordingly.

This amendment is made under paragraph 18(7) of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003.

Dated 24th September 2000

D. Agnew BA, LLB, LLM

(Signed) 

A member of the Southern Leasehold Valuation Tribunal
appointed by the Lord Chancellor

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Case No: CHI/43UE/LDC/2009/0016

Re: Flats 6, 13, 16, 17, 18, 19, 20, 21, 24, 27, 28, 30, 31, 34,, 46,49, 54, 55, 56, 58,
59, 60, 61, 62, 74, 76, 78, 81 and 83 Brookers Close, Ashted, Surrey RH4 1TF (the
Premises)

BETWEEN

MOLE VALLEY HOUSING ASSOCIATION LIMITED

(Applicant/Landlord)

and

THE LESSEES OF THE ABOVE PROPERTIES

(Respondents)

TRIBUNAL: Mr D Agnew BA LLB LLM (Chairman)
Mr D Lintott FRICS
Miss J Dalal

DETERMINATION AND REASONS

DETERMINATION

The Tribunal determines that the consultation requirements in respect of the works being carried out to the roof verges of the premises under Section 20 of the Landlord and Tenant Act 1985 ("the Act") shall be dispensed with under Section 20ZA of the Act.

REASONS

1. The Application
 - 1.1 On 30 June 2009 the Applicant applied to the Tribunal for an order under Section 20ZA of the Act dispensing with the consultation requirements set out in Section 20 of the Act in respect of works being carried out to the roof

verges of the six blocks of flats making up the Brookers Close development in respect of which the Applicant is the Landlord.

1.2 Directions were given on 2 July 2009 requiring the Applicant to file and serve its Statement of Case by 25 August 2009 and for the Respondents either jointly or individually who wished to oppose the application to file and serve their reasons for opposing the application within 21 days thereafter.

1.3 The Applicant duly filed its witness statements and supporting documents.

Responses were received from the Respondents as follows:-

a) A letter from Hyden Bartlett, lessee of 28 Brookers Close not objecting to the application.

b) A telephone call was received from Mrs Chapel of Flat 46 Brookers Close not objecting to the application.

c) A letter from Mrs Bromley and Miss Haynes of 17 Brookers Close saying that if the work was necessary on safety grounds they did not object to the application.

d) A letter from Mr Shane Packham opposing the application on the grounds that the work incurred unnecessary expenditure which he could not afford and that the amount he was required to pay was excessive as the work could have been carried out at a fraction of the cost, and

e) A letter from IA and WS Shilbli lessees of 13 Brookers Close which they sub-let objecting on the grounds that when the work was first costed a detailed examination should have been undertaken and the cost of the extra work included in the estimate. They also objected that as non-occupiers they were being required for the works in one lump sum in advance whereas occupiers were being allowed to pay in instalments.

2. The Inspection

2.1 The Tribunal inspected the premises immediately before the hearing on 25 August 2009. They comprise six blocks of flats totalling 56 flats in all 29 of which are long leaseholds acquired under the right to buy legislation. The remainder are let by the housing association on assured tenancies. The flats were built in the 1970s. The buildings are two storey blocks of brick construction under a shallow pitched concrete tiled roof covering cut timber rafters and substructure. The Tribunal noticed that the work to replace the soffits fascias and roof verges had been completed. The work to one block was almost completed but the Tribunal was able to see the exposed verges of one block where work was in progress and the verges were uncovered.

3. The Hearing

3.1 This took place at the Leatherhead Institute on 25 August 2009. Those present for the Applicant were Mr N Chowdhury of Counsel, Mr Ken Lee, the property manager of Mole Valley Housing Association, Mr Christopher Finch, building surveyor with WCJ Limited and Mr Philip Deerman also a surveyor with WCJ Limited a company which advises Mole Valley Housing Association with regard to property matters on a day to day basis. Also present were Ms Linda Witherden, housing manager with Mole Valley Housing Association and Ms Kim Henderson in house surveyor with Mole Valley Housing Association. Finally, Ms Petra Stoneman, legal executive with Mole Valley Housing Association was in attendance. The only lessee who attended was Mrs Yussuff of 78 Brookers Close who wished only to observe and not take part in the proceedings.

4. The Applicant's case

- 4.1 Mr Chowdhury presented in evidence the witness statements of Ms Witherden, Mr Deerman, Mr Finch and Ms Henderson. All the evidence was as to the following:-
- a) The original work contemplated was only to replace the soffits and fascias on each of the blocks. These had come into a state of disrepair and in some instances they were coming away from the building. The Applicant went through the Section 20 consultation procedure in respect of this work. Tenders were received and the lowest tender, from Associated Roofing was accepted.
 - b) As the work was about to start and scaffolding was being erected it was noticed at a point remote from where the scaffolding was being erected that some masonry was falling from the verges of one of the blocks of flats.
 - c) Once the scaffolding was erected this enabled a closer inspection of the roof verges which were found to be in a dangerous condition with crumbling concrete and masonry resulting from substandard original construction..
 - d) It was clear that repair work was necessary to be carried out to the verges as it was not going to be possible to patch them or attach the soffits and fascias to uneven and crumbling masonry.
 - e) The falling masonry constituted a hazard to residents and members of the public. Action was therefore required to be taken urgently.
- 4.2 The Applicant was faced with the following options:-
- i) Do nothing. This was considered unacceptable due to the risk posed to the public by further falling masonry.
 - ii) To continue with the existing contract and deal with the remedial work to the verges later. This would have been the preferred choice if it had been

feasible as it would have allowed the Section 20 consultation procedure to be effected. The contractor could not guarantee, however, that the roof would remain weather-tight. This would also be a more expensive option as there would be two lots of set up costs.

iii) Complete the work on the block already started and carry out remedial work on that block but to omit work to the blocks where the work had not started. This was rejected as the risk from falling masonry would remain until the consultation period had lapsed. There was also the risk that the contractor would make a claim for losses incurred as a result of curtailing the contract. It was also likely that there would be rises in prices making the final cost higher.

iv) To proceed with the remedial work for all blocks reconstructing the roof verges.

4.3 The Applicants went out to tender again. Associated Roofing were asked to tender as were the other companies who tendered for the original contract. Again Associated Roofing produced the lowest tender.

4.4 Associated Roofing were therefore asked to carry out the complete works to fascias soffits and verges. The additional cost for work to the verges is of the order of £1000 per block. This varies slightly from block to block depending upon the amount of work involved.

4.5 Following receipt of the tenders the Applicant called a meeting of residents to explain the situation to them and provided them with an information pack. The leaseholders who attended the meeting agreed that the work needed to be carried out urgently and that Associated Roofing had provided the most competitive price. The leaseholders were in favour of the applicant

proceeding with the work and applying to the Tribunal for a dispensation from the consultation procedure.

- 4.6 Mr Chowdhury submitted that the two letters that had expressed objection to the Application had contained in the main comments which were not relevant to the Tribunal's task in determining whether or not it is reasonable to dispense with the consultation requirements. The comments may be relevant as to the reasonableness of the service charges which will ultimately be levied and therefore relevant to an application under Section 27A of the Landlord and Tenant Act 1985 rather than an application to dispense with the consultation requirements.

5. The Law

- 5.1 By Section 20ZA of the Act it is provided that a Leasehold Valuation Tribunal may make a determination to dispense with consultation requirements in relation to any qualifying works "if satisfied that it is reasonable" so to do.

6. The Determination

- 6.1 The Tribunal did consider that it was reasonable to dispense with the consultation requirements in this case.
- 6.2 There was some risk of injury to leaseholders or the public should this masonry fall to the ground and the Tribunal found that it made sense and it would be less costly in the long run to the lessees for the work to be done straight away and with the contractor already engaged to carry out the work for which a Section 20 consultation had been carried out rather than having to wait for the consultation period to have elapsed before putting the work in hand. There would be a saving in set up costs as scaffolding was already in place.

6.3 The Tribunal is satisfied that the Applicant acted openly and reasonably in consulting with the lessees as much as possible to advise them of the problems which had been discovered, of informing them of the options that were available and of re-tendering for the work to ascertain as much as possible that the additional cost was competitive.

6.4 The Tribunal took into account the fact that there were in effect only two letters of objection to the application. The Tribunal understands the lessees concern that they are going to be asked to contribute an additional amount to cover the extra work required to the verges over and above the planned work to the soffits and fascias. The Tribunal also understands that these are difficult economic times. However such considerations are not really relevant to the question that the Tribunal has to decide. The sole question that it is concerned with is whether or not the Applicants were right to press ahead with the work without having undergone the consultation procedure. The work would still have been necessary even if the consultation procedure had been carried out and the Tribunal is satisfied that had the Applicants waited and gone through that procedure it is likely that the lessees would have been faced with an even higher bill to pay. With regard to Mr Packham's point that the amount is excessive, that is a matter that he can take up if he so wishes under an application under Section 27A of the Landlord and Tenant Act 1985 for the Tribunal to consider the reasonableness of service charges once those charges have been levied but it is not something for the Tribunal to consider under the Section 20ZA application.

6.5 With regard to IA and WS Shilbli's objections, in so far as they relate to the reasonableness of the cost and whether or not the work to the verges should

have been included in the costing of the original works then that again is a matter which may be relevant under Section 27A of the Act and an application can be made at the appropriate time for the Tribunal to consider the reasonableness of service charges once they are levied. The point as to whether non-occupiers should or should not have been given the same concession as occupiers in being able to pay the cost in instalments is not a matter that is within the Tribunal's jurisdiction to deal with.

7 Conclusion

In all the circumstances the Tribunal was satisfied that it was reasonable to dispense with the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 in respect of the works being carried out to the verges at the premises and so determines.

Dated this 28th day of August 2009



D Agnew BA LLB LLM
Chairman