

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**Southern Rent Assessment Panel
Leasehold Valuation Tribunal**

Section 20ZA, Landlord and Tenant Act 1985

Case Number: CHI/45UE/LDC/2009/0020

Property: 23 Hawkins Road, Crawley RH10 5NN

Applicant: Crawley Borough Council

Respondent: Mr.J.W.Smith

Appearances

For the Applicant: Mr.M.Kendall, principal property lawyer of the Applicant's
Legal and Democratic Services Division.

Witness for the Applicant: Mr Smith, of the Applicant's Surveying Division

For the Respondent: The Respondent did not appear.

Date of inspection: 30th July 2009

Date of Hearing: 30th July 2009

Date of Decision: (Delivered orally at the hearing on 30th July 2009 and recorded
18th August 2009)

Members of the Tribunal

C.H.Harrison Chairman
R.Potter FRICS

Background and Law

1. The Applicant, Crawley Borough Council, is the landlord of 23 and 25 Hawkins Road, Crawley which is a post war terraced, two storey corner building.
2. Number 25, which is let to a Council tenant, comprises the first floor of the building with a ground floor entrance. The front door is adjacent to the front door of number 23 which is the ground floor flat, below number 25.
3. Number 23 is let on a lease, for a term of 125 years from 1996, dated 31st May 1996 made between (1) the Applicant and (2) Alexander Christie. The lease is now owned by Mr.J.W.Smith who is the Respondent in this case.
4. The Applicant is obliged, by paragraph 1 of the eighth schedule to the lease:

to keep in good and substantial repair and condition (and whenever necessary rebuild and reinstate and renew and replace all worn or damaged parts) ... the main structure of the Property [meaning numbers 23 and 25] including all foundations thereof all exterior and all party walls and structures and including all roofs and chimneys and every part of the Property above the level of the top floor ceilings.
5. The Respondent is obliged, by clause 3 of the lease, to pay one half of the landlord's expenditure on, among other costs, complying with the obligation referred to in paragraph 4 above. That proportional payment by the Respondent is a service charge for the purposes of sections 18 to 30 of the Landlord and Tenant Act 1985.
6. The effect of section 20 of the 1985 Act in the context of this case is that the Respondent's service charge contribution, towards the cost of any work to the property which exceeds £500, is limited to £250 unless certain consultation requirements have been either complied with by the Applicant or dispensed with by (or on appeal from) a leasehold valuation tribunal.
7. Section 20ZA of the 1985 Act enables a leasehold valuation tribunal to dispense with the need to comply with all or any of the section 20 consultation requirements, but only if it is satisfied that it is reasonable to dispense with them. A common reason which often justifies dispensation is that there is no time for the consultation procedures, which generally take between two and three months, because the work needs to be done urgently.
8. On 16th July 2009, the Applicant applied to the tribunal for its determination to dispense with the need to comply with the section 20 consultation requirements in respect of intended work which involves renewal of tiles, roofing felt, timber roofing battens, valley gutters and necessary flashings. The application stated that rainwater penetration is occurring around the chimney at number 25 Hawkins Road and that the work needs to be completed as soon as possible. The application also pointed out that the Respondent would be required to pay half the cost of the work.

Inspection

9. The tribunal inspected the property during the morning of 30th July 2009 when the weather was dry. The inspection was made in the presence of Mr Kendall, principal property lawyer of the Applicant's Legal and Democratic Services Division, and Mr

Smith, of the Applicant's Surveying Division. The Respondent was not present. The chimney stack is located at the rear corner of the property. The tribunal noted that the roof covering is of concrete interlocking tiles, with pre-cast concrete capping and lead flashings. The tribunal could not detect any sign of build up of moss on the roof or of tiles having cracked or slipped. The tribunal inspected the interior of the number 25 first floor flat. There was some evidence of previous water penetration where a patch of ceiling had recently been repaired and this was close to the chimney breast but the wallpaper to the chimney breast appeared to be unaffected. On inspection, the area was dry despite heavy spells of rain in recent weeks. In the absence of the Respondent, it was not possible for the tribunal to enter the rear of the property to inspect west side of the chimney stack.

Evidence

10. Mr Smith gave evidence on the Applicant's behalf. He stated that in his opinion the roof of the property was at the end of its life, as were many of the roofs on the Applicant's estate in the area.
11. The tribunal expressed some doubt about that opinion concerning the property's roof because there was no evidence of moss or tile deterioration. It appeared to the tribunal that the condition of the tiles indicated that life is still left in the roof. It appeared to the tribunal that there is a particular problem being either defective flashing (which may be unlikely because of the concrete stack slab) or flashing failure or defective pointing to the stack itself.
12. The tribunal also put to Mr Smith that it is rare for there to be a sudden problem with roof condition and asked him when the water penetration was first noticed. Mr Smith confirmed the problem had first been reported in April 2009 when the Applicant had sought two quotations for repair work. One, for £2,170 plus VAT from Feastmain Roofing Contractors Limited related to intended work of scaffolding provision, including a protective scaffold over a rear conservatory, replacing lead flashing and rear gutter with allowances for reflashings the stack crown and further inspections. The quotation also drew attention to possible differing reasons for the roof leak. Mr Smith stated that the second quotation had been received from the Mears Group, which is the Applicant's partnering contractor used for general maintenance, but was for a higher amount. The tribunal noted the Feastmain estimate, a copy of which was produced by Mr Smith on the tribunal's request, contemplated the possibility for further work being required the tribunal therefore asked for a copy of the Mears quotation. Mr Smith was unable to do so. He also told the tribunal that an order for the work had been placed with Feastmain on 28th April.
13. The tribunal noted with surprise that the Feastmain quotation was dated 21st April 2009. There was no evidence about when, if at all, it or the Mears quotation had been copied to the Respondent. After an adjournment of the hearing, the Applicant produced a copy of the Applicant's letter to the Respondent dated as recently as 14th July. That letter:
 - a) stated the water penetration is due to defective flashings and pointing to the chimney stack (but did not refer to the other possible causes referred to in the Feastmain quotation);
 - b) did not enclose a copy of either quotation;
 - c) stated the projected cost of £2,170 plus VAT, of which the Respondent would be required to pay one half and that there was a possibility of further work being required which might involve extra cost; and

d) stated that the Applicant was seeking dispensation from the section 20 consultation requirements due to the urgency of the matter. The letter to the Respondent did not state that the quotation had been obtained as long ago as April.

14. The tribunal asked the Applicant to explain the delay since April when the damage had been noted and when an order for the work had been placed following receipt of quotations, only one of which had been notified but not copied to the Respondent and not until 14th July. Mr Kendall told the tribunal that unfortunately the matter had been allowed to slip through the Applicant's administrative net.

The Tribunal's determination

15. What the tribunal has to determine is whether it is reasonable to dispense with the consultation requirements, and the reasonableness of dispensation is to be judged in the light of the purpose for which the consultation requirements were imposed. The material consideration is most likely to be the degree of prejudice that would be suffered by the Respondent in respect of his ability to respond to the consultation. That is because the primary purpose of the statutory consultation is to give some measure of protection tenants.

16. The tribunal finds that there is considerable scope of prejudice to the Respondent in this case. He was not given a copy of the quotation which the Applicant had already accepted. Nor was he given a copy of the Mears quotation which might have provided the Respondent with some comparison. He was not therefore alerted to the differing possible causes of the problem. The Respondent was not given any opportunity of seeking advice either on the need for or scope or cost of the work, including the need for scaffolding. The Respondent was potentially prejudiced by a delay of some three months during which he could have investigated these matters. Instead, the Respondent was presented with a position which had already been decided by the Applicant, subject to the outcome of this application.

17. In those circumstances (and as the tribunal stated at the end of the hearing), the tribunal determines that it would not be reasonable to dispense with the section 20 consultation requirements in respect of the works referred to in this decision. Consequently if, as Mr Smith had confirmed to the tribunal, the work had been commissioned and ordered, the Respondent's service charge contribution to the cost of the work would be limited to £250.

Dated 18th August 2009



C.H. Harrison Chairman