

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

**Case No:** CHI/00HB/LDC/2010/0010

**In the matter of** an application under Section 20ZA of the Landlord and Tenant Act 1985 (as amended)

**And in the matter of** Royal Parade, 2-7 Elmdale Road, Bristol, BS8 1SY

**Between:**

**Elmdale Management Limited**

Applicant

and

**The Lessees of Royal Parade**

Respondents

Date of application: 13 March 2010

Date of hearing: 18 March 2010

Members of the Tribunal: Mr. J G Orme (Lawyer chairman)  
Mr. M J Ayres FRICS (Valuer member)  
Mr. S Hodges FRICS (Valuer member)

Date of decision: 19 March 2010

**Decision of the Leasehold Valuation Tribunal**

1. For the reasons set out below the Tribunal dispenses with all of the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (as amended) in respect of qualifying work to secure the roof slates on the mansard roof facing Queen's Road and to install a snowguard at the property known as Royal Parade, 2-7 Elmdale Road, Bristol, BS8 1SY.
2. The Tribunal directs that a copy of the application with all supporting documents and this decision is to be sent to all the Respondents by 1<sup>st</sup> class pre-paid mail. If any Respondent objects to the decision at paragraph 1 above, he or she may apply to the Tribunal in writing for the decision to be reviewed, such application to be received by the Tribunal no later than 4pm on Monday 29 March 2010.
3. The decision set out at paragraph 1 above will take effect from 4pm on Monday 29 March 2010 unless before that time the Tribunal receives an objection pursuant to paragraph 2 above.

## Reasons

### The Application

1. On 13 March 2010, the Applicant, Elmdale Management Limited, applied to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for the dispensation of all of the consultation requirements set out in Section 20 of the Act and in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations") in relation to qualifying works to secure the roof slates on the mansard roof facing Queens Road at Royal Parade, 2-7 Elmdale Road, Bristol, BS8 1SY ("the Property"). The Respondents to the application are the leasehold owners of the 88 residential flats at the Property. Their names and addresses are set out in a schedule to the application.
2. In view of the urgency of the matter, the Tribunal had not, by the time of the hearing, served a copy of the application on the Respondents as required by paragraph 5 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 ("the Procedure Regulations"). The Tribunal listed the application for hearing on 18 March 2010. The Tribunal gave notice of the hearing to the Respondents by way of a letter dated 16 March 2010 addressed to the Respondents which was fixed to a notice board at the Property.
3. The application was heard by the Tribunal on 18 March.

### The Law

4. Subsection 1 of Section 20 of the Act as amended provides:  
*Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either –*  
*(a) complied with in relation to the works or agreement, or*  
*(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.*
5. Qualifying works are defined by Section 20ZA (2) of the Act as works on a building or any other premises.
6. The effect of subsections 2 and 6 of Section 20 and the Consultation Regulations is that the consultation requirements apply where the contribution which any tenant has to pay towards the cost of qualifying works by way of service charge exceeds £250. The consultation requirements are set out in the Consultation Regulations. Those that apply in this case are those set out in Part 2 of Schedule 4 to the Consultation Regulations. They require the landlord to enter into a 3 stage consultation process with the tenants about

the need for and cost of the qualifying works. That process takes a minimum of 60 days.

7. Subsection 1 of Section 20ZA of the Act provides:

*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.*

**Inspection**

8. The Tribunal inspected the Property prior to the hearing on 18 March in the presence of Dr. Karen Phillips, the managing agent employed by the Applicant. The Tribunal was able to see, from street level, the front slope of the mansard roof on the Queen's Road side of the Property. It was unable to see that part of the roof where slates had slipped.

**The Hearing**

9. The Hearing took place at Whitefriars, Bristol on 18 March 2010. It was attended by Dr. Phillips on behalf of the Applicant. No Respondent attended the hearing.

**Background**

10. The Property consists of 2-7 Elmdale Road and 48-56 Queen's Road. 48-56 Queen's Road consists of a five-storey building originally constructed in the late 19<sup>th</sup> century. It is in the middle of a terrace of similar properties. The ground and first floors are commercial premises used for retail sales. The upper floors have been converted into residential flats.
11. Queen's Road forms part of a busy shopping area in the University sector of the City of Bristol. It is a busy vehicular and pedestrian thoroughfare.
12. In recent years, the Property has been the subject of a comprehensive redevelopment which involved the retention of the facade facing Queen's Road. The facade is constructed of Bath stone. The main roof area facing Queen's Road is of slate covered mansard, a small section of which is set behind a stone parapet wall. There are 2 slopes to the mansard roof, both covered with slates.
13. The Tribunal was informed that the freehold of the Property is owned by Legal and General. The residential common parts of the Property were let to the Applicant by a lease dated 6 July 2004. The freeholder has demised individual flats to leaseholders by individual leases. The Tribunal has not seen a copy of the lease dated 6 July 2004. It has seen a copy of the lease of Flat 4 on the fourth floor of the Property.

14. The Tribunal was informed that, whilst the freeholder is responsible for the repair and maintenance of the structure of the Property, the Applicant is responsible for the repair and maintenance of the facade on the Queen's Road elevation and the covering of the roof. Part II of the sixth schedule to the lease of Flat 4 includes a covenant by the Applicant to keep in good repair the roof covering of the Property.
15. In January 2008, a piece of masonry fell from the facade and seriously injured a passer-by. That led to the Applicant having the facade inspected by a surveyor. Various defects were identified and that led to works being carried out in March 2009. The Applicant applied to the Tribunal for dispensation of the consultation requirements in respect of those works and that application was the subject of a determination by the Tribunal dated 26 May 2009 under reference CHI/00HB/LDC/2009/0009.

### **The Evidence**

16. Dr. Phillips gave evidence on behalf of the Applicant. She said that the Respondents are the shareholders in the Applicant company and that they appoint the directors of the Applicant company. She said that she had been appointed as managing agent in April 2006.
17. She told the Tribunal that, following the events of 2008, it was a requirement of the Applicant's public liability insurance that the facade and roof of the Property be inspected in February each year. The Applicant had instructed Mr. James Withall MRICS of 3Sixty Real Estate to carry out those inspections.
18. Mr. Withall had inspected the Property in March 2009 following completion of the works on the facade. He had inspected the roof at that time and had found no defects requiring attention. Dr. Phillips produced an e-mail from Mr. Withall dated 28 February 2010 in which he confirmed that, at the time of the inspection, there were signs of slates weathering and delaminating but that there had been no sign of slates having been removed or slipping.
19. Mr. Withall carried out his first annual inspection on 24 February 2010. Dr. Phillips produced a copy of his report dated 26 February 2010. At paragraph 10 of his report, Mr. Withall records that, at the time of the inspection, 2 slates had worked loose and were lying free on the top slope of the mansard roof and could have slipped off at any time into the street below. Those slates were removed. On carrying out further investigations, Mr. Withall found that the top row of slates had been trimmed to fit the roof and that the holes for fixing them with nails had been positioned too close to the perimeter of the slates. That was weakening the integrity of the slates themselves. The 2 slates which had become loose had sheared to the top corner where the nails were fixed allowing the slates to slip away unhindered. He anticipated that other slates would fail in the same manner. Photographs of the failed slates are attached to the report.
20. Mr. Withall anticipated that the remainder of the top row of slates would suffer the same defect and others, over time, would shear and slip. He

recommended that work should be carried out immediately to rectify the defect and to check the remainder of the slate covering of the roof to ensure that the same fixing defect had not been repeated elsewhere on the roof.

21. On receiving that report, Dr. Phillips had immediately asked Mr. Withall for further information which was supplied by Mr. Withall in his e-mail dated 28 February. Dr. Phillips instructed Mr. Withall to carry out a further inspection with a roofing contractor. She produced a further e-mail from Mr. Withall dated 2 March 2010 in which he confirmed that he had inspected the roof again on the previous afternoon with a roofer. Responding to a question from the Tribunal, Dr. Phillips said that she was not aware of any temporary method for making the roof safe whilst consultation requirements were complied with. Her concern was that other slates could slip at any time and fall into Queen's Road, potentially with disastrous results.
22. Following receipt of Mr. Withall's report, Dr. Phillips submitted an insurance claim to Zurich under the 10 year defects guarantee. She anticipated that Zurich would accept liability for carrying out repairs as they had paid for the total cost of the works carried out in March 2009. Zurich replied to her on Friday, 12 March rejecting cover. Dr. Phillips said that she intends to pursue the claim but she decided, at that time, to make the application for dispensation as she considered that the work had to be carried out urgently.
23. Dr. Phillips produced copies of 3 quotations which she had obtained for carrying out the work. The quotations show that the major part of the cost of the work consists of erecting scaffolding and protection. The quotations for erecting scaffolding and re-fixing the top course of slates were:
  - Hills Construction Ltd - £15,469 plus VAT;
  - Callow Building Services - £17,600 plus VAT;
  - Hanham Building Services £17,850 plus VAT.

In addition, Hills Construction Ltd provided an option to install a snow guard at the edge of the mansard roof at a cost of £2,941.45 plus VAT. Dr. Phillips was minded to accept the quotation from Hills Construction Ltd and to instruct them to install the snow guard. She said that all of the contractors were able to start work immediately and that they would need about one week in which to obtain the necessary permits for erecting the scaffolding.

24. Dr. Phillips had reported the position to the directors of the Applicant company. However, no information had been given to the individual leaseholders. On 16 March she had posted on the notice board at the Property, a copy of the Tribunal's letter to the Respondents dated 16 March 2010. Apart from that, there had been no attempt to communicate with the Respondents on an individual basis about the defect, the application or the hearing. She had received no response as a result of posting the letter on the notice board.

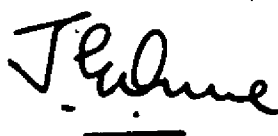
## Conclusions

25. The question which the Tribunal must determine is whether it is satisfied that it is reasonable to dispense with the consultation requirements in whole or in part. The Tribunal is mindful of the fact that the consultation requirements have been imposed by Parliament in order to protect the interests of lessees who, ultimately, have to pay for the work.
26. Having heard the evidence of Dr. Phillips, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements. In coming to that conclusion, it takes into account the following matters:
- a. The report of Mr. Withall identifies a defect in the manner in which the slates are fixed to the roof.
  - b. The Tribunal accepts the evidence of Dr. Phillips that there is no temporary method of making the roof safe which would not involve the erection of scaffolding. The Tribunal notes that the major part of the cost of remedial works is the erection of scaffolding.
  - c. The Tribunal accepts the evidence of Mr. Withall that further slates could fail at any time and become loose.
  - d. Mr. Withall recommends that work is undertaken on an immediate and urgent basis.
  - e. If a slate became loose and falls to the street it could have very serious consequences. The Tribunal is mindful of the event which occurred in January 2008 when a passer-by was seriously injured by falling masonry.
  - f. The Applicant has obtained 3 quotations for carrying out the work and is minded to instruct the contractor who has provided the cheapest quotation.
  - g. The contractors are in a position to proceed with the work within a very short time scale. If the Tribunal were to insist on compliance with the consultation requirements, the works could not proceed for at least 60 days.
27. The Tribunal is concerned by the fact that notice of the application and the hearing has not been given to the Respondents. Paragraph 5 of the Procedure Regulations requires the Tribunal to send a copy of the application to each of the named respondents on receipt of the application. Paragraph 14 of the Procedure Regulations requires the Tribunal to give not less than 21 days notice of the appointed date of the hearing to the parties. That period may be abbreviated in exceptional circumstances. Paragraph 23 of the Procedure Regulations provides for notices to be delivered or sent to a party at his usual or last known address.
28. This is not a case where short notice of the hearing has been given but one where no notice has been given at all. Due to the urgency of the situation, the

Tribunal would have been minded to abbreviate the notice period for the hearing, if notice had been given. Although there are provisions allowing notice to be given by another method where a party cannot be found, there is no suggestion here that any of the Respondents would not receive notice if it was sent to their last known address by post.

29. In the normal course of events, the Tribunal would have adjourned the hearing to allow proper notice to be given to the Respondents so that they might make representations. However, the Tribunal finds itself faced with a situation where time is of the essence. There is no doubt that work needs to be carried out to ensure that the roof covering is safe. That work needs to be carried out as a matter of urgency. Until that work is carried out, there is a risk that one or more slates could become loose and could fall into Queen's Road with potentially disastrous results.
30. For those reasons, the Tribunal has determined that it should dispense with the consultation requirements in respect of the work to make the slates secure but on a conditional basis. The Tribunal directs that a copy of the application, the supporting documents and this decision is to be served on each of the Respondents by post. The Respondents will then have until 4pm on Monday, 29 March 2010 in which to notify the Tribunal if they object to the decision taking effect. If any Respondent objects by that time, there will have to be a further hearing at which representations may be made. If no objections are received by that time, the decision will take effect.
31. In the event that this decision takes effect, the Tribunal wishes to stress that it is merely dispensing with the need to comply with the consultation regulations. In making that decision, the Tribunal is not making any judgment as to the reasonableness of the works or the cost of those works.

Dated 19 March 2010.

A handwritten signature in black ink, appearing to read 'J G Orme', with a horizontal line underneath the name.

J G Orme  
Chairman