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**HM Courts
& Tribunals
Service**

**LEASEHOLD VALUATION TRIBUNAL
OF THE MIDLAND RENT ASSESSMENT PANEL**

Case Number: BIR/44UF/LDC/2012/0008

Property: Dormer House, 55 Binswood Avenue, Leamington Spa, CV32 5RZ

Applicant: Contactreal Ltd

Applicant's Agent: Remus Management Ltd, 110 Bradford Street, Birmingham, B12 0NS

Respondents:

Ms A Walusimbi	Flat 1 Dormer House
Mr O H Varney	Flat 2 Dormer House
Mr G Morgan	Flat 3 Dormer House
Mr M M Timson & Miss E Holbourne	Flat 4 Dormer House
Mr V Pathak	Flat 5 Dormer House
Mr A Towne	Flat 6 Dormer House
Mr D J & Dr E M Batt	Flat 7 Dormer House
Mr J M Foster	Flat 8 Dormer House
Mr & Mrs C P Bishop	Flat 9 Dormer House
Miss K M Wilson	Flat 10 Dormer House
Mr & Mrs Drake	Flat 11 Dormer House
Mr Campbell	Flat 12 Dormer House
Ms A Paoli	14 Dormer House
Mr T M W Dumbleton	19 Dormer House

55 Binswood Avenue, Leamington Spa, CV32 5RZ

Date of Application: 27th June 2012

Type of Application: Application under Section 20ZA of the Landlord & Tenant Act 1985 for the dispensation of all or any of the Consultation Requirements provided for by Section 20 of the Landlord & Tenant Act 1985.

The Tribunal: Mr G S Freckelton FRICS (Chairman)
Mr P Hawkesworth LLB

Date of Decision: 21st August 2012

INTRODUCTION AND THE DISPUTE

1. By application dated 27th June 2012, the Applicant through its managing agents, Remus Management Ltd, applied to the Tribunal for dispensation from the consultation requirements imposed by Section 20 of the Landlord & Tenant Act 1985 and the Service Charges (Consultation Requirements)(England) Regulations 2003 in respect of the block of flats known as Dormer House, 55 Binswood Avenue, Leamington Spa, CV32 5RZ.

THE FACTS

2. According to the application form submitted by the Applicants, Dormer House, 55 Binswood Avenue, Lemington Spa, Warwickshire is a detached Victorian Villa converted into 10 flats with an additional rear annex of 4 studio flats.
3. Asbestos pipe lagging has been found in the undercroft and the landlords wish to arrange for its safe removal and disposal under fully controlled conditions. All items are to be disposed of as contaminated waste. There is also some non-contaminated water, which will be removed.
4. The landlords have confirmed that the contractors will require the provision of electricity generators for the duration of the works, which will be carried out in a confined space. All works are to be carried out in accordance with current regulations and following removal of the asbestos, a stage 4 clearance air test is to be undertaken.
5. The original application submitted to the Tribunal included an estimate from Silverdell, 24b Centurion Way, Meridian Business Park, Leicester, LE19 1WQH for removal of the asbestos in the sum of £6,750 plus VAT. A further estimate has been obtained from Redhills Environmental Consultants, Conway House, St Melons Business Park, Cardiff, CF3 0EY in the sum of £380 plus VAT for undertaking the air monitoring works following completion of the asbestos removal.
6. The landlords, through their agents, Remus Management Ltd have written to all the leaseholders and confirmed that they intend to instruct Silverdell and Redhills

THE LAW

7. Where a landlord proposes to carry out qualifying works, which will result in a charge being levied upon a leaseholder of more than £250, the landlord is required to comply with the provisions of Section 20 of the Landlord & Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
8. Failure to comply with the Regulations will result in the landlord being restricted to recovery of £250 from each of the leaseholders unless he obtains a dispensation from a Leasehold Valuation Tribunal under Section 20ZA of the Act.
9. In deciding whether or not to grant dispensation, the Tribunal is entitled to take into account all the circumstances in deciding whether or not it would be reasonable to grant dispensation. An application for dispensation may be made before or after the commencement of the works.

THE HEARING

10. The Tribunal did not carry out an inspection of the property.
11. A Hearing was held at the Tribunal office in Birmingham on Thursday 16th August 2012. The Applicants were represented by Miss Z Byass and Ms Ladwa. Of the Respondents, Mr O H Varney attended from Flat 2.
12. Miss Byass on behalf of the Applicant confirmed that an asbestos survey had been undertaken by ASI Environmental Ltd, 36 Shamrock Way, Hythe Marina Village, Southampton, SO45 6DY. Copies were provided to the Tribunal and to Mr Varney. Miss Byass confirmed that the survey advised that some asbestos should be removed.
13. Remus Management Ltd had then obtained quotations for carrying out the work, which varied wildly between some £6,000 - £27,000. They then instructed Redhill Analysts, Vienna House, International Square, Birmingham International Park, Solihull, B37 7GN to act on their behalf and obtain various quotations. In addition to the quotation previously provided by Silverdell, they had also obtained quotations from Kitsons Environmental and Hodar in the sums of £7,850 plus VAT and £7,324 plus VAT respectively. Redhill Analysts have therefore recommended that the tender from Silverdell in the sum of £6,750 plus VAT should be accepted being the lower of the three quotations. Miss Byass acknowledged that only one quotation had been obtained for the air test from Redhill Analysts, although as they had arranged for the tenders to be obtained and were supervising the work, the Applicant felt this was not unreasonable.
14. Mr Varney expressed concern as to the ongoing circumstances and a poor relationship he had with Remus Management Ltd, although he acknowledged not with Miss Byass.
15. Mr Varney was particularly concerned that in January, the oil tank in the cellar had leaked due to flood water, which had covered most of the basement below his flat. As there was only a thin wooden floor covering, the fumes had contaminated his flat and Mr Varney, his wife and 9 month old baby had no alternative but to move out.
16. Mr Varney confirmed that he had obtained an independent verbal assessment from Aspreys of Northampton who had looked at the basement following the flooding and analysed the asbestos. They had confirmed verbally to him that there was no asbestos to the walls, although they did find asbestos pipe lagging, which had been bricked up. Mr Varney had been informed that this posed no risk as the asbestos had not been disturbed.
17. Mr Varney was of the opinion that there were more pressing matters requiring attention including the ongoing problem of flooding to the cellar and missing rendering to the front elevation. Mr Varney explained that he was endeavouring to sell his flat and could not afford a rise in the management fee. He had been informed that he may well need to extend his lease, which he had been told by another flat owner could cost in the region of £12,000. Mr Varney concluded by confirming his objection to the work, which he did not consider needed to be carried out, especially as there was no evidence of disturbance to the asbestos lagging when his contractor inspected around Christmas 2011. Mr Varney confirmed that he had asked the managing agents to have the oil tank removed from below his flat as he had also had a fire in the cellar, which resulted in the fire brigade being called.
18. For the Applicant, Miss Byass confirmed that they had only discovered the disturbance to the asbestos following the inspection after the fire as a result of which, they had commissioned the asbestos survey. It was confirmed that an air test had been carried out and that there were no risks to any of the areas used by the occupants. Miss Byass also confirmed that no asbestos was to be removed from the undercroft area below Mr Varney's flat but from another undercroft area. Mr Varney was concerned that removal of the asbestos could result in air contamination and Miss Byass confirmed that the work would be undertaken by a specialist company to ensure no contamination took place. However, Mr Varney remained of the opinion that there should be consultation as he was concerned that not all the residents would be aware of the proposals.

THE TRIBUNAL'S DECISION

19. The Tribunal is satisfied on the information provided that it is reasonable to dispense with the consultation requirements in this case.
20. The Tribunal is also influenced by the fact that although all the leaseholders have been informed of the Application, only one leaseholder made any representations to the Tribunal. The Tribunal is satisfied that the landlords have acted reasonably in instructing ASI Environmental Ltd to carry out a survey and to obtain quotations for the necessary work by specialist companies to be supervised by Redhill Analysts. The Tribunal is also satisfied that it is reasonable for Redhill Analysts to carry out the air test when the work has been completed to ensure there is no contamination.
21. Accordingly, the Tribunal will grant the dispensation requested under Section 20ZA and determines accordingly.
22. This determination does not give or imply any judgement about the reasonableness of the works to be undertaken or the cost of such works.

Signed



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Graham Freckelton FRICS (Chairman)

Dated

21st August 2012