

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : **The Square, Hart Street, Brentwood  
Essex CM14 4AL**

**Applicant** : **Freehold Managers plc**

**Respondents** : **The Tenants of the Long Leasehold  
Residential Flats at The Square**

**Case Number** : **CAM/22UD/LDC/2008/0010**

**Date of Application** : **10<sup>th</sup> October 2008**

**Type of Application** : **Application to dispense with  
consultation requirements in respect  
of qualifying works under Section 20ZA  
of the Landlord and Tenant Act 1985  
as amended ("the Act")**

**The Tribunal** : **Mr Duncan Robertson  
(Lawyer/Chairman)  
Mr Richard Marshall FRICS FAAV  
Mr Frank W. James FRICS**

**Place and Date of  
Decision** : **16<sup>th</sup> December 2008 at the Marygreen  
Manor Hotel, London Road,  
Brentwood, Essex CM14 4NR**

**In Attendance** : **Mr Christopher Shakespeare of  
Countrywide Property Management as  
Managing agents for the Applicant**

: **Mr Boyd Parker of Flat 46 The Square  
and Mr Daniel Giles of Flat 26 The  
Square for the Respondents**

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**DECISION**

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1. The Applicant is not granted dispensation from the consultation requirements in Section 20ZA of the Act in respect of the qualifying

works as described in the Application by the Applicant to the Tribunal on the 10<sup>th</sup> October 2008.

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## **REASONS**

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### **Introduction**

2. The Application is for dispensation with consultation requirements relating to planned works to stop water ingress into various flats at the Property. The Applicant states that there is a roof problem on this development allowing water ingress into some of the flats. Due to heavy rain and the colder winter weather the Applicant feels the sooner repairs are carried out the less chance there is of more internal damage. The Application refers to a surveyors report being obtained. This has now been issued. There is a report from Bowyer Bryce chartered surveyors prepared by Matthew Nelson TechRICS on the 19<sup>th</sup> November 2008.

### **The Property and Lease**

3. The Property appears to have been built in approximately 2002. It comprises 48 flats built on different levels with an underground car parking facility. The Tribunal is advised by the surveyor for the Applicant that it is of a timber frame construction with some rendered elevations and some brick elevations. The pitched roofs are covered with slate and hand made clay roof tiles. A specimen copy of the standard Lease for this development has been provided. It is presumed all Leases to flats in the Property are similar. There is nothing unusual with regard to the specimen Lease which states that the Landlord keeps the structure in good repair and condition with the Tenants covenanting to contribute by way of a service charge.

### **The Inspection**

4. The Tribunal inspected the Property in the presence of Mr Christopher Shakespeare on behalf of the Applicant company and also in the presence of the sub-tenant of Flat 40 The Square when the interior of that flat was inspected. The Tribunal wish to highlight that their inspection is not a structural survey. This Statement of Reasons is made as a result of general observation rather than detailed inspection.
5. The Tribunal first inspected the dummy chimney stack above Flat 40 The Square. This was covered with blue plastic sheeting secured to the structure. It proved difficult to carry out a full inspection.

6. The Tribunal then proceeded to inspect the dummy chimney stack above Flat 26 The Square. This stack showed evidence of past repairs. When leant against it showed some signs of movement. The tribunal are told that this stack and others have central heating flues running through them.
7. The Tribunal then carried out an internal inspection of Flat 40. A section of the bedroom ceiling has been cut out at the time of a previous repair and has been patched. There was evidence of water ingress.
8. Mr Christopher Shakespeare the representative of the Applicant company confirmed that Flat 40 had suffered the worst water ingress. The Tribunal decided not to inspect the interior of other flats.

### **An Explanation of the Law**

9. Mr Robertson the Chair of the Tribunal reviewed the law with the parties. He explained that in addition to Section 20ZA of the Act the Tribunal has also to consider the Service Charges (Consultation Requirements) (England) Regulations 2003. The Act and these regulations give power to the Tribunal to dispense with consultation requirements if the Tribunal considers that this is reasonable.
10. Mr Robertson explained that the consultation requirements are a lengthy and complicated procedure designed to protect tenants. There are situations in the interests of all parties when these requirements should be dispensed with.
11. It was noted that the Applicant has dealt with the first set of Notices required by the regulations and has also obtained two estimates.
12. Mr Robertson then explained that the Tribunal would consider if urgent work is needed to protect the fabric of the building. Should repairs be done quickly to prevent more extensive work in the future?
13. It was further explained that the Tribunal needs to consider if flat owners will be substantially prejudiced by a lack of consultation.
14. The Tribunal will consider if further temporary repairs are a practical solution whilst full consultation and assessment is pursued. The Tribunal will consider if the leaks have got worse or if there has been any stabilisation of the position.
15. Mr Robertson then highlighted the fact that this is only an Application for Dispensation. Whatever works are eventually undertaken they may still be the subject of an Application under Section 27A of the Act. It was noted that although correspondence

refers to Mr Boyd Parker as being chairman of a Residents Association there is in fact no formal association in existence.

16. It was also noted that no application is being made under Section 20C of the Act that would prevent costs relating to this Hearing being added to future service charges.

### **The Evidence**

17. Before the Hearing substantial written representations were made by both parties. This statement covers these and the oral evidence that was given expanding on the statements already made.
18. It was agreed between the parties that the flats that have experienced water ingress are those numbered 26, 37, 40, 44, 47 and 48. All of these have dummy chimneys above them except for flat 48 which has a weather vane. It was further agreed that only the issues concerning the dummy chimneys would be reviewed by the Tribunal. The written representations made reference to other problems relating to the repair and condition of the Property.
19. The main evidence of the Applicant is the report prepared on the 19<sup>th</sup> November 2008 by Bowyer and Bryce. This states that certain flats report water ingress during periods of rainfall only. They consider that the dummy chimney stacks have not been adequately installed. They give two options, one involving further repair and the other being the permanent removal of the prefabricated chimney stacks which they recommend as the best course of action.
20. In addition to this primary evidence the detailed dummy chimney drawing of OPS Architecture was produced together with estimates for the removal of four dummy chimney stacks provided by two contractors Cennet and RN Building Limited.
21. Mr Christopher Shakespeare also gave evidence that the Landlord has consented to the qualifying works. Obtaining appropriate building regulation consent should not be a problem. He was not aware that any planning consent has been obtained. This probably will be necessary and it was agreed that this would involve a two to three month delay.
22. When questioned by Mr Boyd Parker Mr Christopher Shakespeare also disclosed that although the NHBC were not at this stage interested in helping with the works the original developers may assist.
23. On questioning Mr Christopher Shakespeare agrees there is nothing in the surveyor's report that says that work is required to be

carried out urgently but all parties have agreed that work should be done sooner rather than later.

24. Mr Christopher Shakespeare disclosed that £8,000.00 had already been spent on scaffolding to allow for inspection by the surveyor and members of the Tribunal. This will be taken down shortly and further scaffolding costs will be payable before works are commenced. He also discloses that the project management is likely to involve a fee of 12 ½% in addition to that estimated. The tribunal note that the lower estimate obtained so far is £13018.
25. Tribunal member Mr James pursued a question with Mr Shakespeare concerning what arrangements would be made with regard to the lightning conductors attached to the dummy chimney stacks. He had no explanation but conceded that dealing with this problem was likely to cause extra expense.
26. The written representations of the Respondents cover the various repairs that have been undertaken so far. The problems appear to have been ongoing since about 2004 and it is alleged that high winds cause the chimneys to move slightly pushing flashing away and leaving a gap for water to come through.
27. Mr Boyd Parker agrees that work should be done as quickly as possible. He has a concern that there is an inherent defect in the design or construction of the dummy chimney stacks and this is an issue that still needs to be pursued with the original developers. He thinks that all the dummy chimneys at the Property may need to be removed not just four of them.
28. Mr Daniel Giles was concerned about the impact that water ingress has on the occupiers of the flats. He states that a bucket is required constantly to deal with the water ingress that causes lights to fuse. He is unable to use the light in his toilet. He states that the owner of Flat 47 has a similar problem and the matter has got worse in that flat during the last three months.

### **Conclusion**

29. The Tribunal has sympathy with the Applicant because it agrees that work is needed to protect the fabric of the building. Although it is not within the remit of the Tribunal in considering whether to grant dispensation or not it has recommended to the parties that whilst the scaffolding is still up action is taken to ensure that all faulty dummy chimneys have adequate sealing as a temporary repair. This is important due to the adverse winter weather conditions. The Tribunal highlights again that it has not made a structural survey. This is a general observation. There has been no detailed inspection. The Tribunal then considered whether the flat owners would be substantially prejudiced by a lack of consultation.

They were concerned that there are still issues to be pursued with the original developers and also possibly the NHBC. In particular all dummy chimney stacks may need to be removed not just four. The flat owners would be prejudiced if four stacks were taken down immediately and it then transpired that all the stacks should be taken down. This would cause additional unnecessary expense.

30. The Tribunal was also concerned that the full cost of the qualifying works had not been identified. They noted that planning permission was probably necessary and had not yet been obtained. The process of obtaining planning permission was likely to take longer than dealing with the balance of the consultation process. In this respect there would be no practical benefit in giving dispensation.
31. After the Tribunal had reached its decision it discovered that the parties were still present at the hotel. It then reconvened the Hearing to confirm that the Applicant is not granted dispensation from the consultation requirements and also verbally confirmed the points set out in this conclusion.

SIGNED.....

*Duncan Robertson*  
DUNCAN T. ROBERTSON

Chair

*2nd* January 2009