

Ref: CHI/45UG/LDC/2010/0033

LEASEHOLD VALUATION TRIBUNAL
FOR
SOUTHERN RENT ASSESSMENT PANEL

**DETERMINATION IN RESPECT OF
MAPLE HOUSE, 207-209 LOWER CHURCH ROAD, BURGESS HILL, WEST
SUSSEX RH15 9AA**

Applicant: COUTTS AND HORN INVESTMENTS LTD

Respondents: (1) S BARKER (FLAT 1)
(2) C POTTS AND MS McLOUGHLIN(FLAT 2)
(3) J HAMMOND (FLAT 3)

Hearing: 26 OCTOBER 2010

Appearances: Mr C Potts and Ms McLoughlin (Flat 2)

Members of the Leasehold Valuation Tribunal:

MR M A LOVEDAY BA(Hons) MCI Arb, barrister

MISS CD BARTON BSc MRICS

1. This is an application under s.20ZA of the Landlord and Tenant Act 1985 to dispense with consultation requirements in respect of major works. The applicant is the freehold owner of Maple House, 207-209 Lower Church Road, Burgess Hill, West Sussex RH15 9AA. The respondents are the lessees of the three flats within the building. An inspection and hearing was held on 26 October 2010 at the conclusion of which the Tribunal gave an oral decision in accordance with regulation 18(2) of the Leasehold Valuation Tribunal (Procedure)(England) Regulations 2003. The Tribunal allowed the application for the reasons given below.

INSPECTION

2. Maple House is located on the corner of Lower Church Road and London Road near the centre of Burgess Hill. It is a mixed use development of flats shops and offices completed c.1984. The development consists of modern properties on the London Road frontage, converted Victorian buildings on the Lower Church Road frontage and parking to the rear accessed through an arch on London Road. The Lower Church Road frontage comprises two storey buildings of rendered masonry under pitched artificial slate roofs which includes retail/office units on the ground floor with three flats above known as 1-3 Maple House. Access to these flats is through a street door on Lower Church Road and a secondary entrance from the car parking area to the rear. There is small hallway and stairs to the first floor. Flat 2 forms part of the older part of the development and is situated on the first floor overlooking the car park.
3. There is a mixture of roof types above the flat. The kitchen has a flat roof which the Tribunal was unable to inspect at close quarters although a limited view was available from the car park behind the building. It was evident that a plastic tarpaulin has been placed over what appeared to be the whole of the flat roof surface. There were pitched roofs above the remainder of the flat incorporating valley gutters. The valley above the front door to the flats was finished in metal. Internally, the hallway ceiling to Flat 2 showed signs of water ingress which had started to affect the walls abutting the ceiling. The Tribunal inspected the interior of flat 2. To the hallway ceiling, in a position

apparently corresponding with the valley gutter referred to above, there were two areas of blistered decorative finish through which stained plasterboard was showing, large areas of water staining and cracks to the wall finishes were evident. The lessees had a dehumidifier running. Above the kitchen at the other end of the flat, there were signs of historic water damage to the walls and ceiling with staining and areas of wallpaper missing.

LEASE

4. The Tribunal has been shown a copy of the lease of flat 1 dated 21 September 1984 for a term of 99 years from 1 June 1984. By clause 4(b)(i) the lessee was to pay one third of the landlord's costs in complying with the landlord's obligations to decorate the exterior of the three flats under clause 6(e) of the lease. By clause 4(b)(ii) the lessee was to pay a share of the landlord's costs of complying with its obligations in relation to the whole development under clause 6(d). By clause 4(b)(iii) the lessee covenanted to pay an interim service charge on 25 December and 24 June in each year on account of the lessee's liability to pay the landlord's costs in the next half year. Thereafter, as soon as practicable after the 24 June in each year the landlord or its agent was to serve on the lessee a notice in writing (certified by the lessor or its agent) of the actual amount of the lessee's liability for the previous year. The landlord's obligations under clause 6 included obligations to keep the structural parts of the properties "including the roofs main walls ... timbers and external parts thereof ... in good and substantial repair and condition".
5. The tribunal was told the lease of flat 1 is in similar form to the leases of the other two flats.

THE APPLICATION

6. By an application dated 13 October 2010, the landlord Coutts and Horn Investments Ltd applied to the Tribunal to dispense with the consultation requirements under s.20ZA of the Landlord and Tenant Act 1985. The application stated that the roof was leaking water into the hallway of Flat 2 which urgently needed attention. Contractors were available for the week commencing 18 October 2010. The roof was leaking in two places. First, there

was a leak to the felt over the kitchen causing damp in the room. Secondly, the lead valley was leaking constantly into the roof above the hallway causing the ceiling to bubble and partly collapse. The leaks were discovered by the new owners of the flat on 18 September 2010. Two quotations were obtained for the repairs at a cost of approximately £3,150 which would be shared one third between the commercial lessees, residential lessees and the landlord's contribution. The work was required urgently to avoid further damage to the structure and contents.

7. Estimates were provided by Mid Sussex Roofing Ltd dated 29 September 2010. This estimated a cost of £1,410 (including VAT) for repairs to re-felt the two storey flat roof and £1,731.95 to replace the lead valley gutter. A further estimate from Paul Harrod leadwork contractor dated 20 October 2010 estimated a cost of £3,123 (inclusive of VAT) for the same work.
8. Directions were given on 29 June 2006 and the matter was treated as one of urgency under regulation 14(4) of the Leasehold Valuation Tribunal (Procedure)(England) Regulations 2003. There were no objections to the application by any of the lessees.

THE HEARING

9. The only parties to attend the hearing were Mr Potts and Ms McLoughlin who live at Flat 2. Ms McLoughlin explained that she was joint lessee of the flat, and she agreed to be added as a respondent. The Tribunal therefore directed that Ms McLoughlin should be added as a respondent.
10. The landlord did not attend the hearing. A letter from Holmbush Property Management Ltd dated 20 October 2010 (and copied to the lessees) stated that Mr Harrod could be on site the week commencing 1 November 2010 and that the residential lessees would each incur costs of £348.34 for the work. The landlord would not be contributing to the cost due to a misunderstanding on the agent's part.

11. Mr Potts explained that Ms McLoughlin and he had only recently completed the purchase of the flat. They first viewed the property in the summer of 2010 when there was damp on one wall of the kitchen. After completing the purchase of the flat on 10 September 2010, the lessees had gone into the property and parts of the ceiling had fallen from the hallway inside the flat. There was water on the floor which had damaged the floor surface. The damp had been reported to the managing agents. The landlord sent a workman round who temporarily covered the flat roof with a tarpaulin but who was unable to deal with the other roof problems. The lessees went on holiday and while away a surveyor inspected the roofs. Mr Potts produced photographs of the interior of the loft showing containers which were placed there by the landlord to catch rainwater. The tarpaulin had stopped the damp ingress in the kitchen. The landlord's agents had sent the lessees copies of the estimates, but Mr Potts was not qualified to say whether they were excessive. Mr Potts urged the Tribunal to dispense with the consultation requirements so that the works could start.

DECISION

12. Under s.20ZA of the Act, the Tribunal can make a determination "*to dispense with all or any of the consultation requirements in relation to any qualifying works ... if satisfied that it is reasonable to dispense with the requirements*". The material consultation requirements are set out in Schedule 4 Part II to the Service Charges (Consultation Requirements) (England) Regulations 2003.
13. The remedial works to the roof are plainly qualifying works. The provisions of the lease set out above will enable the applicant to recover the costs of those qualifying works from the lessees as part of the maintenance charge.
14. The Tribunal considers it is reasonable to dispense with the consultation requirements for the following reasons:
 - a. The works are plainly urgent because of the danger of further water ingress and damage to the interior of flat 2 and the structure of the property. There is therefore

insufficient time to pursue any part of the consultation requirements of the Service Charges (Consultation Requirements) (England) Regulations 2003.

- b. Any further delay whilst the consultation requirements are followed would cause severe inconvenience to the occupiers of flat 2. Such delay is only likely to increase costs of works.
- c. The landlord has carried out such consultation as is reasonable in the circumstances - namely circulating details of the damage and the repairs needed.
- d. The landlord has ensured that some protection is afforded to the lessees against excessive cost, namely by obtaining two estimates for the work.
- e. Using its own experience as an expert tribunal the estimated cost of the works appears reasonable.
- f. The application has been made promptly.
- g. No objection has been made by any of the respondents. The lessees of Flat 2 agree with the application.

15. The Tribunal therefore determines under s.20ZA of the landlord and Tenant Act 1985 that the consultation requirements should be dispensed with in relation to the qualifying works.

16. For the avoidance of doubt, this application does not determine that the relevant costs incurred or to be incurred by the landlord are reasonable in amount or that any sum by way of service charge is payable. Those are matters which are open to the parties to agree or to be subject to a future application to the Tribunal under section 27A of the Act.

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Mark Loveday BA(Hons) MCI Arb
Chairman

Dated: 26 October 2010