

**SOUTHERN RENT ASSESSMENT PANEL**

**LEASEHOLD VALUATION TRIBUNAL**

In the matter of section 20 and section 20ZA of the Landlord & Tenant Act 1985 (as amended) (“the Act”)

**Case Number:** CHI/OOHX/LDC/2008/0020

Re: 1-16 Walton Grange, Bath Road, Swindon  
 (“the property”)

**Between:**

Solitaire Property Management Limited on behalf of Holding & Management  
(Solitaire) Limited

Applicant

**and**

The lessees of flats 1-16 at Walton Grange

Respondents

**Decision of the Tribunal  
with Reasons**

Hearing: 14<sup>th</sup> July 2008

Decision issued: 14<sup>th</sup> July 2008

Tribunal:

Mr R P Long (Chairman)  
Mr R A Wilkey FRICS FICPD

## **Decision**

1. The Tribunal has determined that the Applicant may dispense with the consultation requirements imposed by section 20 of the Landlord & Tenant Act 1985 (“the Act”) in connection with the works required to repair the lift at the property that are the subject of the application.

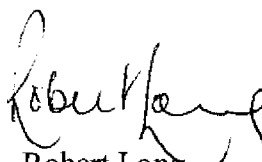
### **Reasons**

2. On 25<sup>th</sup> June 2008 Solitaire Property Management made application to the Tribunal on behalf of Holding & Management (Solitaire) Limited for dispensation from the consultation requirements imposed by section 20 of the Act in respect of works that were necessary to repair the lift at the property. Unless the applicants first either followed those consultation requirements or alternatively obtained the dispensation from this tribunal that they have sought they would have been able to recover a maximum of £250 per flat as service charge contribution to the cost of the repair work to the lift. It would ordinarily take some three months fully to follow the consultation requirements, and plainly the applicants will not be willing to undertake the work unless they can be sure of recovering its cost, so it has made this application.
3. Section 20ZA(1) of the Act allows an application to be 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, and provides that the tribunal may make such a determination if it is satisfied that it is reasonable to dispense with the requirements.
4. When the members of the Tribunal convened on 4<sup>th</sup> July they noted that notice had been given only of the intention of the Tribunal to determine the matter upon consideration of the papers then before it. Since the application was not made until 25<sup>th</sup> June it was apparent that less than the twenty eight days notice of such consideration required by regulation 13(1)(a) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (SI 2003/2098) (“the Regulations”) had been given. Accordingly any determination of the Tribunal made at that time and following that notice would be likely to be invalid.
5. The Tribunal recognised however that the matter is urgent because there are lessees on the top floor at Walton Grange for whom access is at the least extremely difficult, and for whom the delivery of medical assistance has been rendered problematical. It took the view therefore that the proper course would be to give short notice to the parties of a hearing pursuant to regulation 14(4) of the Regulations. That provision allows a hearing on short notice where there are exceptional circumstances. It concluded that the exceptional circumstances were that there are residents at the property who are unable easily to leave their flats until the lift is repaired and that accordingly there were health and safety issues that required the matter to be resolved as quickly as may be. At that hearing the Tribunal would be in a position to determine the matter.

6. None of the parties attended the short notice hearing. However, having by that time given proper notice of the matter the Tribunal was in a position then validly to determine the matter upon the papers that were then before it.
7. The Tribunal was shown a copy of a lease dated 12<sup>th</sup> April 1988 made between Maxim Homes Limited (1) Sylvia Kitching, Graham Christopher McKenzie Young and Shelley Louise Packer (2) and Holding & Management (Solitaire) Limited (3). It is a lease of flat 1 at Walton Grange and the Tribunal understands that it is an example of the leases under which the flats in question are held and of their terms. Part II of the Sixth Schedule of the lease includes an obligation imposed upon the owners of flats 1-16 Walton Grange to pay for lift repairs
8. The Applicants had produced a transcript of a report made by Mr Gren Tye of Lift Engineering Limited that described work that he had carried out with a view to trying to repair the lift in question. That report indicated that his efforts had been unsuccessful, and that the lift had been left isolated pending major repairs. Mr Tye indicated that there was potential danger in its continued operation because of excessive heat that was being generated in the Control Panel.
9. The Applicants had obtained three estimates for repairing the lift through their agents. One was from the company that habitually maintains the lift, and the other two were from companies whose names were known to the members of the Tribunal as companies specialising in the relevant field. Copies of these had been produced to the Tribunal. All set out particulars of the work that would be undertaken. Without having had the benefit of anyone to explain their technical content, the estimates appeared to the Tribunal to be estimates for the work that each individual estimator deemed to be necessary. As a result of this it appeared that the work proposed varied somewhat in each case. No specification had been made available to the Tribunal and it appeared likely that none had been prepared before the estimates had been sought. The need to deal quickly with the matter may well explain this.
10. The Tribunal had received a letter from Mrs Hector of Flat 16 Walton Grange, who supported the application. Mrs Hector said that at the time when she wrote her letter on 30<sup>th</sup> June the lift had been out of action for eleven weeks. She suffers from severe arthritis that makes it difficult for her to gain access to the flat without the use of the lift. Her husband is on home dialysis and requires a monthly delivery of the equipment. It is very difficult to get that equipment up three flights of stairs. They had had to spend some time away from their home in order to obtain respite from the problems she described, and the prospect of spending a further long period of time in the present situation was unthinkable.
11. Mr and Miss Hill, the owners of flat 10, wrote to say that whilst they did not object to a paper determination of the matter they were in the process of selling their flat and could not be responsible for any payment towards the repair of the lift. The Tribunal noted that they did not object to a paper

determination. However, their purported denial of responsibility for cost is not a matter for the Tribunal in this application.

12. The Tribunal is satisfied that the lessees affected by this application are all aware of the need to repair the lift, and of the terms of the estimates that have been received. The lack of a lift is likely to be an inconvenience to the residents who do not live on the ground floor. It is satisfied that the matter is urgent because of the position, at least, of Mr & Mrs Hector, and bears in mind that no objection has been received to the grant of the dispensation sought. The estimates have been in the hands of the lessees for some days, and even if they have not had the full period that they would usually enjoy in which to make representations about them to the applicants, nonetheless there has been a reasonable period in which, if so minded, they might have done so.
13. There has in the Tribunal's judgement been no material prejudice to the lessees in this respect. It considers that no such prejudice arises as would outweigh the desirability of granting the dispensation sought in order to minimise the delay in having the repairs done to what must be the material benefit of all the residents of the flats affected. Such a dispensation will be likely to mean that the works can be carried out some two or three months earlier than might otherwise be the case if full consultation were required. The grant of the dispensation has no effect upon the liability or otherwise of Mr and Miss Hill to pay whatever sums are contractually due from them.
14. Finally the tribunal has borne in mind that in granting such a dispensation the lessees, or any of them, are not in any way deprived of the ability to make an application under section 27A of the Act if they are so minded in order to challenge the nature of the works carried out, or their cost, in the terms that that section, and the general law, may permit.
15. Accordingly the Tribunal has determined that it is reasonable to grant the application for dispensation from compliance with the consultation requirements of section 20 of the Act that would otherwise have to be followed before the works of repair to the lift at Walton Grange the subject of this application could be carried out. The effect of the dispensation is to allow the applicant to make arrangements without further delay to have the necessary work done.

  
Robert Long  
Chairman

14<sup>th</sup> July 2008