

was in a sorry state and much needed to be done. They commissioned Mr Vestey of Drew Pearce, Chartered Surveyors in Exeter to carry out a survey (31 October 2005). At that point it became clear that certain works were necessary to be done on the building. The Managing Agents were so worried by the position that it commissioned Drew Pearce to draw up a Schedule of Urgent Works (15 December 2005). The major works in particular concerned the defective and dangerous rendering at the rear which due to the "Listed" status of the building requires special attention in conjunction with the Conservation Officer of the local council. These rear rendered elevations required lime rendering. The Managing Agents wrote to each of the Lessees advising them of what they saw as the critical nature of the problem and asking them to comment on the two quotations they had obtained within 7 days. This is a clear breach of the consultation requirements and needs permission from the Tribunal. Only the Respondent's objected to the works done with the suggested contractor. The Respondent's wrote to the Applicants saying that they, the Applicants, were in breach of the consultation requirements 15 days after receiving the advice from the Applicants as to the critical nature of the works. In correspondence the Respondent's asked why they, the Respondents, had not been asked to tender for the works required. The Applicant made the current application.

The Hearing

The Tribunal heard evidence from Mr Vestey and Mr Henry for the Applicants. The Respondent did not attend nor did they send written representations. All the Tribunal knew of their case was contained in letters and emails forwarded by the Applicants. The Respondent's sent one letter (7th June 2006) leaving the consideration of the matter to the Tribunal.

By way of evidence the Tribunal asked Mr Vestey to justify the urgency of each and every recommendation in his report.

At the Inspection the Tribunal had heard evidence from Mrs Tearle (the leasee of 4B with her husband) who told us that she would attend the hearing to be cross-examined if anyone for the Respondents attended. As no-one did we did not ask her to attend the hearing but took account of her unchallenged evidence. She told us that all the tenants to whom she had spoken felt that the recommended work was urgent and they couldn't understand why it was not being done. In her view and that of her fellow residents the work could not be put off through the forthcoming winter and she was very anxious that it should be started as soon as possible so that the summer weather was not missed. In the opinion of Mrs Tearle the building had significantly deteriorated since the original schedule was drawn up.

The Applicants asked the Tribunal to make an order that the Respondent's pay the costs of taking the matter to the Tribunal and the fees thereof. They asked the Tribunal to take into account the frivolous and vexatious nature of their objections particularly given

- a. That they had not attended nor sent submissions and
- b. That all the other tenants, who agreed to the work, would have to bear the costs through their service charge and
- c. Their objection seemed to be based, at least in part, upon the fact that they had not been invited to tender for the works required.

The Decision

Having heard the evidence of Mr Vestey and using our own expert knowledge we are of the view that the works set out in his report are urgent save those set out at paragraphs 3.9.3 and 3.12.1.2 and 3.12.3.3. Therefore we allow the application in respect of all the other works set out in the schedule at page 124-130 in our bundles.

As to the question of costs we invite the Respondents to deal with the Applicants points raised as to why the Respondents should not pay the costs of this matter and invite such submissions within 21days if they are to be made in writing or, within 21days, the Respondent should request a hearing for the Tribunal to consider this issue. If a hearing is requested the Tribunal may make an Order in the absence of either party. Further if a hearing is requested then we will expect a representative of the Respondent to attend to present their case.

Signed



Dated

5th July 2006