

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Case nos : CAM/26UK/LSC/2006/0034 & 0053

Property : 1-12 & 14-43 The Spinney, Church Road, Watford, Herts WD17 4QF

Applications : For determination of liability to pay service charges for year 2006 :
a. Proposed expenditure on roofing works [2006/0034]
b. Proposed expenditure on curtain walling (windows to common parts) & proposed works to garages [2006/0053]
[LTA 1985, s.27A]

Applicant : Reo Estates and Property Management Company Limited, c/o Rayners, The Old Parish Hall, Godstone, Surrey RH9 8DR

Respondents : The lessees of all flats on the estate, as listed in the two applications

DECISION (PAPER DETERMINATION)

Handed down : 29th November 2006

Tribunal : G K Sinclair, Miss M Krisko BSc (Est Man) FRICS, & L Jacobs FRICS

Inspection date : Friday 24th November 2006

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Summary

1. In August 2004 the Applicant freeholder commenced statutory consultation procedures with the leaseholders of every flat in this late 1960s development of 3-storey residential blocks. Its intention was to carry out essential repairs to the flat roofs of every building, to replace the damaged timber and glass curtain walling to the front and rear of each communal staircase, and to continue the programme of replacing individual blocks of prefabricated concrete garages (one block having already been completed by previous managing agents).

2. Most but not all leaseholders belong to a leaseholders' association, but it is described by the Applicant freeholder in each application as "only an informal association". Notices therefore had to be served upon each and every leaseholder. Tenders were invited for the re-roofing works and 6 replies were received. After a very considerable delay the tenderers were invited to confirm or revise their prices. Four did so; the preferred contractor doing so on 17th February 2006. The second statutory consultation stage took place in 2005 and again, following the repricing, in March 2006. There have been no objections. The tribunal was informed during the inspection that the contractor has agreed to hold his February price. On that basis the proposed cost is approved.
3. Only two tenders were received for the curtain walling contract. The prices were very far apart, which causes the tribunal concern. Again, the pricing relied upon is very old (August 2005 for the preferred contractor), and the tribunal has been shown neither tender; instead seeing merely letters referring to additions and savings. Acting solely on the limited information before it the tribunal does not consider that it can have enough confidence in the tendering process or the proposed contract figure to say that this is a reasonable price which every leaseholder should be compelled to pay. However, were the tribunal faced with an application¹ for dispensation with the statutory consultation requirements then it would be content if the freeholder immediately sought fresh tenders from at least the proposed contractor (Pro-Fix) and a new, third contractor, following which a new second stage consultation on timing of the works and other practical issues would be all that would be necessary.
4. On a careful analysis of the lease the tribunal notes that the service charge provisions are unusual, in many respects unsatisfactory or defective, and fail to place responsibility for maintenance and repair of the structure of the garages (as opposed to their insurance) on either party. Despite this, acting on certain apparent understandings, money has been collected for certain purposes (although partly deployed for others) despite the absence of any provisions for the operation of a sinking fund or the payment for such works under the maintenance charge. Management of the estate would be improved if responsibility for the managing agents was placed firmly with the freeholder, if the latter were able to deal directly with one recognised leaseholders association instead of a multiplicity of individual leaseholders, and if the service charge provisions in each lease were varied (preferably by consent, or in default by application to the Leasehold Valuation Tribunal).

Relevant lease provisions

5. Each application has been accompanied by a copy lease. Although for different flats, the terms of each lease are in all material respects the same. As discussed below, confusion has been caused by the word "Building" in clause 1, where the lessor
...demises unto the lessee ALL THAT tenement or flat and garage described in the Third Schedule hereto (hereinafter called "the demised premises") in the block of forty-two flats situate in The Spinney Church Road Watford ... (which block of flats is hereinafter referred to as "the Building")...
6. Clause 2 sets out the lessee's covenants, which include payment of the annual rent, the

¹ See the Landlord and Tenant Act 1985, s. 20ZA

repair and maintenance in repair of the interior of the demised premises, compliance with regulations, etc.

7. Clause 3 sets out the management and service charge provisions. By clause 3(i) the lessee is required to pay either the lessor (as trustee to pay to the managing agent) or directly to the managing agent a maintenance contribution equal to one forty-second part of all moneys expended by the managing agent
...for doing the things hereinafter comprehensively referred to as "maintenance" specified in the Second Schedule hereto and shall also pay to the Managing Agent on demand an equal proportion with all other lessees in the said Building of the moneys expended by the Managing Agent for the upkeep and maintenance of the gardens and footpaths and the necessary wires aerial and other apparatus to facilitate reception of television.
8. By clause 3(ii) the lessee is required to pay in advance on 30th June and 31st December in each year the sum of £30 on account of the net half year's service charges. By clause 3(iii), immediately after each half year the managing agent is to serve on the lessee a duly certified notice in writing stating the actual amount incurred on maintenance for the preceding half year, whereupon the lessee is to remit the balance.
9. By clause 4 the lessor agrees from time to time to appoint a managing agent
...who by the terms of his contract shall be responsible to the lessor and to all the lessees for the time being of the flats in the Building for superintending maintenance...
And, whenever no such managing agent is appointed, the lessor shall so act until a new managing agent is appointed.
10. Most unusually, however, clause 5 provides that the lessor will take all reasonable steps to secure payment of maintenance contributions and will also use all reasonable endeavours to secure the performance by the managing agent of the duties imposed upon him by his contract
...but in regard to such duties the Managing Agent shall be deemed to be the agent of the lessee and the Lessor shall not be responsible to the lessee for his acts or defaults.
11. The Second Schedule lists the "maintenance purposes" in some detail. References in paragraphs 1, 2, 3, 6 and 7 to the "Building" should be contrasted with that in paragraph 8 to "insuring the Building and garage". The way in which the word "Building" is used in the Third Schedule also suggests that it refers only to the block in which the flat is situate, in contradistinction to the words "demised premises" which refer also to the garage and associated rights of way, etc.

Applicable law

12. The tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are

set out in section 27A of the Landlord and Tenant Act 1985.² Provided that the application is made to the tribunal after 30th September 2003 these powers apply irrespective of whether the costs were incurred before the coming into force of this new section.³ No application under section 27A(1) or (3) may be made in respect of a matter which has been agreed or admitted by the tenant, has been (or is to be) referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party, or has been the subject of determination by a court or by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

13. However, please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)⁴ is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A.
14. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs⁵ :
 - a. only to the extent that they are reasonably incurred, and
 - b. where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.
15. This is subject to a further limitation on costs incurred in respect of major works or long-term agreements, where the cost is an amount which results in the relevant contribution of any one or more tenants being more than £250 (for major works) or £100 in any one accounting period (for long-term agreements).⁶ In such cases the relevant contributions of tenants are limited to that amount unless the consultation requirements have been either :
 - a. complied with in relation to the works or agreement, or
 - b. dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.⁷

The inspection

16. The Spinney is a pleasant-looking cul de sac residential development off Church Road,

² However, the section does not confer a discretion on the tribunal to give such time to lessees as it thinks reasonable to make payments for service charges. Sums found to have been reasonably payable by way of service charges are payable at the date and in the manner provided for in the lease under which the lessee holds his or her premises : *Southend-on-Sea Borough Council v Skiggs & ors* [2006] 21 EG 132 (Lands Tribunal)

³ See the Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings) (England) Order 2003 [JS 2003/1986], Article 2(c) and Schedule 2, para 6

⁴ Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

⁵ Including the costs of insurance

⁶ Service Charges (Consultation Requirements) (England) Regulations 2003, SI 2003/1987

⁷ Landlord and Tenant Act 1985, s.20 (as amended by the Commonhold and Leasehold Reform Act 2002)