2022

LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/33UG/LSC/2005/0058

Property	:	**3 Cavalry Ride, Norwich NR3 1UA**
Application	:	For determination of liability to pay service charges for the year 2003–04 [LTA 1985, s 27A]
Applicant	:	Paul Stephen Pearce, 3 Cavalry Ride, Norwich NR3 1UA
Respondent	:	Norwich City Council, City Hall, Norwich NR2 1NH

DECISION

Handed down 10th March 2006

Hearing date	:	Tuesday 28th February 2006, at the Maid's Head Hotel, Norwich
Tribunal	:	**G K Sinclair (Chairman), J B Shrive FRICS FAAV, R S Rehahn**
For Applicant	:	Mr P Pearce in person
For Respondent	:	David Johnson, solicitor, Norwich City Council Christopher Rayner, Housing Property Services Manager

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Introduction and decision

1. This dispute, although it concerns a demand for payment for works, is really an argument about a point of principle : should major works of repair to a building be carried out when its condition dictates, or as part of a larger programme of works – and regardless of the building's actual condition? The point is a short one, the parties share a knowledge of the building trade, and each has merit on their side. At the hearing each put their points in a calm, civilised manner; and without rancour. However, for the reasons which follow the tribunal determines that it was reasonable for the council to carry out the

works as part of a planned programme affecting the whole of the surrounding estate.

2. Due to the cost of the works and the date when the council purported to consult its leaseholders the pre-October 2003 consultation requirements of the old, unamended section 20 of the Landlord and Tenant Act 1985 apply. The council's ability to recover its outlay is therefore limited to the total sum of £1,000 for this building, or £250 per leaseholder, unless the County Court were to grant dispensation from some or all of the statutory consultation requirements under section 20(9). For major works carried out under the amended section 20 the power of dispensation with consultation has passed from the court to the tribunal.[1] This power does not apply here, but if it will assist the court the tribunal offers its opinion that were it to do so the tribunal would have granted dispensation in this case upon the basis that the landlord consulted as well as it could for an organisation tied to a long-term maintenance and works contract with one provider, and that the amount sought is that originally included in the estimate, a lower figure than the actual cost when the works were completed in 2004.

The lease

3. The lease in the instant case is dated 23rd January 1989, between the current parties as lessee and lessor respectively, for a term of 125 years from 26th October 1987. It is very much in standard form for flats sold off by the council under the right to buy provisions of the Housing Act 1985. The "building", for service charge purposes, is shown on the plan as comprising flats 1 to 4 Cavalry Ride. It forms part of the council's larger estate bounded by the roads known as Anchor Close to the west, Barrack Street to the south, St James Close to the east and this side of Cavalry Ride to the north. Interestingly, the flats comprising 9 to 15 Cavalry Ride, which directly face the subject property and have also had similar works carried out, are not included within the estate as defined.

4. The service charge provisions appear in clause 4(3) [tenant's covenant to pay], clause 6 [landlord's covenant to insure, repair and provide services], and Schedule C [calculation of service charge]. Schedule D refers to some additional services [communal lighting and gardening] which benefit the whole estate and to which the tenant must contribute a

[1] See LTA 1985, s.20ZA (introduced by the Commonhold and Leasehold Reform Act 2002)

lower proportion of the cost. Save for those costs incurred in connection with or in contemplation of the service of a section 146 notice the lease does not appear to provide for the recovery of legal costs as part of the service charge. The service charge year ends on 31st March and the amount certified due is payable in arrears within one month after service on the tenant of an itemised service charge statement.

Applicable law

5. Section 18 of the Landlord and Tenant Act 1985 defines service charge, for the tribunal's purposes, as :

> an amount payable by a tenant of a dwelling as part of or in addition to the rent ... (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management ...

6. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :

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.

7. This is subject to a further limitation on costs incurred without prior consultation with those liable to pay for them. Under section 20, as it was at the material time and prior to amendments coming into force in late 2003, the landlord was obliged to obtain competitive estimates and submit them to consultation with all affected leaseholders. Without such consultation the landlord's ability to recover the cost was limited to the greater of £1000 in total or £50 per flat[2] unless, under section 20(9), the County Court were to grant dispensation.

8. 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.[3] 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

2 As increased by the Service Charge (Estimates and Consultation) Order 1988 (SI 1988/1285)

3 As introduced by the Commonhold and Leasehold Reform Act 2002, section 155(1)

section.[4] 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)[5] 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.

Inspection, hearing & evidence

9. The tribunal inspected the premises and the rest of the estate which had been the subject of the disputed works on the morning of the hearing. The only party present was Mr Pearce, who showed the tribunal one of his aluminum windows from inside his flat. At the time of the inspection the weather was cold and dry, but the ground was damp.

10. The premises form part of a small estate of flats comprising two storey buildings connected by shared external staircases. According to the tenant, Mr Pearce, he had actually worked on the building of the estate and could date its construction to 1973. As constructed, the buildings were of red brick with concrete tiled roofs and aluminium single glazed windows. Soffits and barge boards were originally of timber which may have been either painted or stained. They have been replaced with white PVCu, and by new guttering and downpipes. A building around the corner in Anchor Close, which may mistakenly have been left out of the contract, still has its original soffits, barge boards and rainwater goods. In that building the woodwork is stained.

11. The bulk of the flats have agreed to the council replacing all of the aluminium single glazed windows with white PVCu double-glazed sealed units. Mr Pearce objected to this and so his flat retains its original aluminium windows. However, the council insisted that his building, like the others affected by the contract, should have its barge boards, soffits and rainwater goods all replaced despite Mr Pearce's complaint that all were perfectly serviceable, that they simply required maintenance, and that he preferred to have stained timber than PVCu.

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

5 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

12. At the hearing Mr Johnson informed the tribunal that on 1st April 2000 the council had signed a term contract for all its regular maintenance and works with its term contractor, Citycare. Prices were fixed or ascertainable, but with provision for their adjustment to take account of inflation and other factors.

13. He referred the tribunal [at page 107] to the council's initial consultation letter dated 9th September 2002, explaining that the landlord intended to carry out some work. The document refers to the overall estimate of cost per flat being £2,005.73, to include the replacement of the existing aluminium single-glazed windows to the flats with PVCu. Mr Pearce responded in considerable detail [page 105], objecting to the replacement of his windows as he was quite happy with them, and making other pertinent comments about the continued need for maintenance because of the non-replacement of other doors to bin and service cupboards, etc. On the subject of gutters and downpipes he considered that their replacement would be wasteful as they were still perfectly serviceable. If the bargeboards and fascias have been maintained correctly then their future maintenance should be minimal, so he also objected to them being replaced – especially in white.

14. On 14th October 2002 [page 104] the council responded to Mr Pearce, referring to the general need for a replacement programme, and referred some of his questions to the council's technical department for more detailed response. On 4th April 2003 the council wrote [page 101] saying that his observations about the windows were accepted, and that they would not be replaced, but that the rain goods will still be done. The council wrote again on 1st September 2003 [page 97]. From its tone, it would appear that the work had been done by then, a fact confirmed by the terms of a further letter dated 6th September 2004 [page 89] informing Mr Pearce that he cost to him would be £744.20, as originally estimated in 2002.

15. The service charge statement for 2003–2004 [page 33], sent to him in October 2004, shows a bottom line figure of £851.21 (including ground rent of £10.00), of which the total cost of the major works is £744, as promised. This is despite a Property Account Summary for 1/3 Cavalry Ride [page 115] produced by Citycare's sub-contractor, Anglian

Building Products, showing a cost per unit of £929.16. According to Mr Johnson this was reduced to the originally estimated £744.20 after the deduction of a credit from its main contractor (Citycare) after negotiations about the cost of certain building maintenance work.

16. At the hearing Mr Rayner, employed by Norwich City Council for about 8 months but with around 25 years experience as a building surveyor, explained that the council is a social landlord with a substantial housing stock. Asked about the reasonableness of the cost, he told the tribunal that he chairs a benchmarking group – the Eastern region benchmarking club.

> "We compare prices for each area of work. While I have not compared these particular prices, in general Norwich pays reasonable prices which are about average for councils in this area."

17. For the benefit of any court which may have to consider dispensing with some or all of the statutory consultation requirements, it is worth recording Mr Rayner's answers on the issue of lack of competitive tendering. He said that it was not possible for the council to use a small one-man band contractor with lower overheads.

> "We have to use someone like Citycare because they have to provide us with at least £10 m insurance cover. We ask for certain policies to be in force, eg Health & Safety policies, equality polices, ett (as required by our audit office). Most large contractors will carry multi-trades, which small contractors will not. We also require that the contractor can deal with over 55,000 responsive orders per year (ie on top of the planned work)."

18. On the reasonableness of doing the work even if not strictly necessary, he said that the planned strategy adopted by the council is best practice; and that the audit office forces the council down this route, with a ratio of 70%/30% towards planned works. Norwich City Council has around 18,500 properties and has to take a planned approach to maintenance. It is neither practical nor possible, with so many properties, to deal with maintenance in a reactive manner. In a planned approach one works on life cycles for particular products, based on research producing national averages. For example, for windows he said that the average life is 25-30 years, depending on the type of window.

19. The policy of replacing rainwater goods at the same time is good practice, because with

site establishment costs, one is making best use of site costs. With this type of work one has to erect scaffolding for windows, so one should use it as well for the rainwater goods. Otherwise, one would have to come back again in five years to replace rainwater goods and need to re-erect scaffolding.

20. Asked about the life cycle of PVCu, he stated that generally the accepted model for life-cycle testing is 25 years. It is no longer than timber, but one avoids the need for periodic painting. On PVC guttering, he said that the problem is that the joints in it tend to fail. To repair joints is as expensive as replacement. It had been used in Germany for many years, so they have great experience of its longevity, but he accepted that Germany has a different climate. He said that it tends to discolour, which may indicate that it is tending to fail, and agreed that PVC is more subject to climatic distortion, but there is no problem if there is enough overlap and it is fitted in line with the manufacturer's instructions.

21. Asked by Mr Pearce if the colour would deteriorate because of weathering, he stated that one often finds that with black or brown guttering the sun will take the colour out. The product has improved over the years, but that is why, he said, the council tends to fit white PVC, because it will not fade. He accepted, however, that it will show the dirt but suggested that (without speaking for the council) there would be cyclical wash down every 5 or 6 years. One would need access, but Health & Safety Regulations say one can't have access from a ladder for more than 10 minutes, or if one needs both hands to perform the required task. For a wash down he suggested that one could use a ladder, which was his view based on conversations with the HSE.

22. In response, Mr Pearce made the following points :

a. The work carried out was unnecessary, and if the 1930s flats nearby on Barrack Street and Anchor Close still have their original timber windows, fascias, etc why did the council feel that the 1970s flats at Cavalry Ride had higher priority in any planned programme of works?

b. As admitted by Mr Rayner, the works changed the appearance of the buildings, for which the council sought and obtained (from itself) planning permission. If he, as a tenant, covenanted by clause 5(5) of his lease "not to change or permit or

suffer to be changed the exterior appearance of the property" why should the landlord be allowed to get away with doing so?

c. White goods will become grubby and need cleaning. This, he believed, would require specialist PVC cleaning goods and not simply soapy water. This belief was based on his experience working for Anglian Windows as a window fitter, and the fact (which he admitted only reluctantly) that he has an HNC in building, and is a part-time lecturer in building at Lowestoft college.

23. Briefly in reply, Mr Rayner said, on the alleged need for specialist cleaning products, that the information provided by PVCu manufacturers says that a wash-down with soapy water is all that is required. Where one did not do that for a period of years then he felt sure that Mr Pearce was right, but provided it is done regularly soapy water would do. Generally, he said, registered social landlords work to a 5-year cycle, which he regarded as sufficiently frequent.

Discussion and findings

24. Were this building to be considered in isolation then its actual condition would be highly relevant to the reasonableness of carrying out work to replace bargeboards, fascias, etc which might need only a modest amount of maintenance.

25. However, with a large social landlord responsible for the management of 18,500 units one has to consider the need for planned maintenance, economies of scale, and the impracticability of doing work on a call basis. In such circumstances one may have to consider the likely condition of many different properties and where one particular group of buildings will lie in the landlord's list of priorities. Work may therefore have to be time-tabled to fit around other projects; and not on a "just in time" basis. Even with this project, which covered a number of buildings within this estate and on the facing side of Cavalry Ride, the condition of the woodwork may differ between different buildings, depending on their aspect.

26. Although the work for which Mr Pearce was charged excluded replacement windows, the provision of double glazing was perhaps the most significant aspect of the project.

When replacing the windows with white PVCu, and while the scaffolding was on site, it was not unreasonable, in the tribunal's view, for the council to choose also to replace the aging roofline goods to match.

27. The tribunal does not consider the choice of white PVCu as being incompatible with Mr Pearce's grey aluminum windows, although it accepts that ths is a matter of taste. The council is entitled, however, to try to maintain a uniformity of appearance in this row of buildings; much though Mr Pearce would prefer the finish to the roofline goods to be in dark brown.

28. Whilst there is more than a degree of merit in Mr Pearce's observations the tribunal must therefore agree with council and determine that the works carried out were reasonable.

29. The council's ability to recover the whole of the claimed cost is limited by section 20 to £50 per flat or £1000 per building, whichever is the greater, ie £250 in this case. Were it the tribunal's decision then it would determine that the total amount sought (being the amount originally estimated, and perhaps less than actual cost) is reasonable, and would also grant dispensation from the statutory requirement to provide at least two estimates in advance, but (unless agreed) that is a matter for the County Court under section 20(9).

Section 20C

30. As the Applicant council has succeeded, but as the lease does not appear to provide for the recovery of legal costs as part of the service charge, no order is made on Mr Pearce's application under section 20C.

Dated 10th March 2006

Graham Sinclair – Chairman

for the Leasehold Valuation Tribunal