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LON/00AG/LIS/2006/0044

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 SECTION 27A PAPER CASE

Applicant: Mr Ian Binge & Other Leaseholders

Respondent: London Borough of Camden

Re: Rothay 154 Albany Street, London NW1 4DH

Application received: 17 March 2006

Hearing date: 24th July 2006 (Hearing)

Appearances: Applicant

Respondent

Members of the Leasehold Valuation Tribunal:

MRS F R BURTON LLB LLM MA
MR D L EDGE FRICS

LON/00AG/LIS/2006/0044

ROTHAY, 154 ALBANY STREET, LONDON NW1 4DH

BACKGROUND

1. This was an application dated 27 March 2006 for the determination of whether the costs for replacement central heating and hot water service charged to the Lessees' for the service charge year 2006 were reasonable and reasonably incurred, pursuant to s 27A of the Landlord and Tenant Act 1985 ("the Act") together with an application for limitation of service charge costs pursuant to s 20C.

2. On 27 April 2006 the Leasehold Valuation Tribunal issued Directions following a Pre Trial Review attended by Mr Binge (Flat 2) Chairman of Rothay Leaseholders Association, Mr Tibby (Flat 6) and Mrs Shah (Flat 25) on behalf of the Applicants, and Mrs Howells on behalf of the Respondent Council's Home Ownership Services.

3. The Directions required the usual exchanges of information and relevant copy documents, including as to the necessity for the works and any alternative quotations, following which the case was set down for consideration at a hearing on the Tribunal's Paper Track in the week commencing 24 July 2006.

THE HEARING

4. At the hearing, the case was considered on the basis of the written submissions only, no parties attending. There had been no inspection and none was considered necessary. It was noted that the subject property was of a 1960s low rise block of 50 flats on 4 floors (22 one bedroom, 2 four bedroom and 26 maisonettes).

THE APPLICANT'S CASE

5. It was the Applicants' case that although the Respondent Council had

insisted on spending £500,000 (costing a one bedroom flat £9,000 and a three bedroom flat £12,000) the works were excessively expensive as the Council had not chosen the most cost effective way of replacing the heating and hot water systems as they believed a much cheaper solution could have been found, and that it had not been necessary to replace the boilers and all the pipework. The Applicants' statement in support of their application to the Tribunal indicated that throughout the period of consultation prior to the execution of the works they had "collectively and repeatedly appealed" to the Council to find another solution so as to reduce the costs to a reasonable level, but the Council had nevertheless employed a contractor (TSG Mechanical Services) to replace the 2 central boilers and existing pipework, to fit wet radiators in each flat and to remove the existing warm air heating system. The Lessees had argued that individual heating systems in each flat would be much cheaper (about £250,000 or less rather than £550,000, based on estimates from British Gas) and that this would also make it easier for each household to manage its own bills. An approach to the Mayor of Camden was similarly unsuccessful in obtaining any change of plan, and the Mayor had pointed out that it was Council policy to insist on central boiler systems. However the Applicants considered that this was incompatible with the Council's responsibility to provide affordable heating and hot water, and that apart from increased running costs there were actual practical problems in managing the level of heating in each flat when the heating system was a central one, for example if the level of heat in a flat was too high for the occupant's preferred temperature there was no alternative but to open doors and windows to let the heat out in a wasteful manner. The Applicants did not agree with the Council that the existing boilers were at the end of their useful life, although they had been replaced only 7 years previously, and considered that this was inconsistent with the Council's claim that the new boilers would have a life of 30 years. They were similarly sceptical about the replacement of the pipework as their own plumber had inspected it and considered that it did not need replacing.

6. The Tribunal first considered the terms of the specimen Lease which was for 125 years from 8 January 1990, noting the Tenant's basic covenant to pay all monies due under the Lease (clause 3.1), the usual provision for a regular interim service charge (clause 3.3), the provisions for the calculation of the service charge (clause 5.6 and the Fourth Schedule, including at paragraph 7.1.1 of that Schedule liability for a

proportion of the costs of improvements), the allowable items of expenditure (Fifth Schedule (including in paragraph 2 the cost of periodically "where necessary replacing the heating and hot water systems and gas electricity and water pipes") and the usual Landlord's covenants (clause 4). They noted that clause 4.2.3 of the Landlord's covenants did contemplate the possibility of individual heating and hot water systems in each flat in that clause 4.2.3 excludes the Landlord's responsibility to maintain such systems "as may be now or hereafter installed in the Flat serving exclusively the Flat and not comprising part of a general heating system serving the Managed Buildings". However this clause contemplates only the liability of the Landlord *if and where* such an individual system were installed in any Flat and does not confer any right to have such an individual system or to contract out of the arrangements for centralised heating and hot water provided in the ordinary course of management of the building. The Lease therefore appears to confer the usual wide powers on a Landlord who has the obligation to manage the building imposed by the Landlord's covenants.

7. The Tribunal perused the Council's replies to the Applicant's concerns and identified the following points: the Council claimed that the individual systems would incur a higher life cycle cost and reiterated its policy to maintain centralised systems. The Applicants' claimed that they could not afford the cost of the new systems and that the Council had not addressed this issue, but it seems that the Council did provide an analysis of alternatives which supported the solution they had chosen, namely that individual installations would be more expensive in the long run, although the Applicants had obtained a British Gas quotation for an individual flat as a yardstick against which the Council's scheme could be measured, and this had been for under £5,000 with a predicted annual running cost of £174 for a one bedroom flat (although the running costs must surely now be well out of date due to recent substantial fuel cost rises for all forms of heating systems).

THE RESPONDENT'S CASE

8. The Respondent Council's case, in response to the Applicants' concerns, was as follows: the Council considered it had acted in accordance with all applicable legislation (in relation to the s 20 procedure under the Landlord and Tenant Act 1985

as amended) and that all charges were reasonable. They noted that the Lessees had purchased their flats with a centralised system in place and that a full report detailing the background to the works and the reasons for the Council's decisions had been sent to all Lessees. The Lessees' nominated contractor, Westminster Heating, had declined to tender for the work. Three tenders were obtained and the lowest chosen. They pointed to the standard of their detailed replies to the Lessees' concerns and to the fact that the governing legislation required the Council to "have regard" to the Lessees' observations but not to be under any obligation to comply with them. They had conducted an internal audit of complaints as well as conducting two options appraisals in response to Lessees' concerns. The Council conceded that Lessees would have more control over the operation of their heating and hot water if there were individual systems in each flat but contended that they would not use less fuel and would in fact cease to benefit from the Council's bulk supply at favourable rates. Moreover, as far as running costs were concerned, the Lessees had not demonstrated that individual systems would be cheaper to run or that the communal system would be more expensive to run. With regard to the pipework, this had been re-run through communal areas due to anticipated problems with access to individual properties, and this had been a change from the original plan. Photographs were submitted showing the condition of the replaced pipework.

9. The Tribunal examined the report dated 7 July 2006 from the Managing Director of CBG Consultants, an experienced design engineer who had been commissioned by the Council to look into the Lessees' complaints that alternative options had not been considered. He confirmed that the Council had looked into a number of options following CBG's earlier report in April 2004 on the defective condition of the existing systems. They had rejected Option (1) to do nothing as the existing system was repeatedly failing, the 34 year old pipework had reached the end of its life and was severely corroded, the 35 year old calorifiers were similarly worn out (replacement being recommended after 25 years) and the 14 year old low cost boilers needed to be replaced at the same time to avoid higher cost if they were left in place for their limited further life (replacement being recommended at 15-20 years. Options (2) combi boilers and (3) decentralised systems were rejected, on the basis that combi boilers have a short life of only 10-12 years rather than 15-20 and that the decentralised systems would in fact incur higher overall costs, in particular because

the British Gas quotation obtained was not for a complete system and ignored the operational problems created by the height of the building which would require further installations to address the minimum pressures required. Moreover, the pipework would still have needed replacing, another uncosted extra, as a "powerflush" would not have addressed the corrosion but only cleared debris from the existing pipes.

10. The Tribunal considered a report from Mr Edosa Eweka, the Council's Project Manager. He stated that the Council was looking for a 30 year life cycle in the new system. He said that the Lessees' demand for a 50% reduction in the costs was unreasonable and does not reflect the actual cost which compares with the costs which have been incurred in the past by the Council on other estates. The Council's earliest consultation of residents in the subject property had produced many returns complaining of inadequate heating and hot water and of the noisy warm air system in place, and if the system had not been replaced it would have failed completely. Some sample questionnaires were produced with his statement. He said that the new system, which was completed in October 2005, is more efficient and it would be possible to compare running costs after a year. He added that the pipework had been re-run through the communal parts as the contractors had found that many residents refused them access to their flats, making this re-design inevitable.

11. The Tribunal also considered a letter dated 21 May 2004 from the Council's Capital Service Charge Officer to the Lessee of Flat 25 which reiterates Council policy not to permit Lessees to opt out of communal systems, which would in any case require a variation of the Lease the costs of which would have to be charged to Lessees. She said that it would also require the installation of new gas mains, since the existing load would increase and the present supply would be inadequate for the increased load required by numerous individual boilers. (The Tribunal noted that the first CBG report identified the existing 3" gas pipe bringing the supply into the building.) She said that the Council had considered environmental issues and it was thought that individual boilers might be positive in environmental terms, but this was only one consideration which had been outweighed by the extra cost of individual systems. The Tribunal then considered a letter from the Council's Capital Service Charge Manager to he Lessee of Flat 25, which reiterated the points made earlier and

stated that the Council had carried out an adequate option appraisal and although the Lessee disagreed with their approach the Council considered they had adequately addressed the issues.

12. The Tribunal then considered the Specification and Tender Report.

DECISION

13. Considering the project overall, the Tribunal noted that a significant cost was the replacement of pipework throughout the building and re-running it through the common parts. With regard to the remainder of the bill, it seems that the extra costs were justified by the Council's policy decision not to permit individual systems for which justification can be seen both in the terms of the Lease, which provides for the Council's obligation to provide heating and hot water through a centralised system (and which was in place when the Lessees bought their flats), and in the fact that practical difficulties might arise if only some Lessees had individual systems, as this would require the Council as Landlord to maintain a centralised system which would probably not be cost effective if delivering heat and hot water to only some of the flats in the building; this would clearly be the case unless all the Lessees agreed to the change to individual systems. Indeed, such agreement might well be a problem given that the pipework has already had to be rerouted through the common parts due to Lessees' refusal to allow contractors to have access to their flats. Moreover as most Council blocks contain both owner occupier Lessees and rent paying Tenants any divided heating and hot water system could create endless logistical problems. It does not seem to the Tribunal that the Council is therefore at all unreasonable in relying on the terms of the Lease to impose its policy decision for the building.

14. With regard to the necessity to replace the existing systems, this appears on the technical data and photographic evidence submitted to have been established.

15. With regard to the costs of the new system, it is clear that the individual costs of radiators, boilers and pipework are in line with all the averages mentioned in the documentation from both sides. However the extra pipework appears to have added considerably to the base cost per flat because of the extent of that pipework

around the building. The Tribunal also noted that the cost of steel has risen dramatically. However the Council has adopted the correct legal procedures and taken the lowest quotation. As a result the LVT is unable to disturb the sums demanded and determines that they are reasonable, reasonably incurred and duly payable.

16. With regard to the Lessees' claim that they cannot afford the bills, it is a fact that personal circumstances are not relevant in these circumstances. Such costs are a known routine incident of the flat owner's position as a Lessee with a legal estate in the property rather than a tenant with only limited rights of occupation so long as s/he pays the rent and treats the property in a tenant like manner. It is true that the work could perhaps have been done more cheaply but this is not the Council's obligation under the terms of the Lease which imposes covenants on the Landlord to manage the building. The Council did consider alternatives although it is a fact that they did not obtain any detailed comparative quotations, dismissing the individual installation option on the basis that overall it appeared to be more expensive and less cost effective over the 30 year period projected.

COSTS UNDER S 20C

17. The LVT is aware that normally a local government Landlord is unlikely to charge any costs to the service charge of proceedings before the Tribunal, except possibly for Counsel's Opinion (which has not been incurred here) or for photocopying, since the administrative costs are absorbed in the ordinary management cost centres. The Tribunal is normally minded therefore only to make such an order if it is clear that it is intended to make such a charge, which is not apparent from the papers before us in the present case. However as there has been no hearing at which the Council could have clarified their intentions in the matter, and as the application clearly showed that such an order was sought by the Applicants, without the Council having made any representations against it, the Tribunal orders that no costs of the present application shall be applied to any service charge.

REFUND OF FEES

18. The Applicants have paid application fees of £350. Pursuant to the Tribunal's power to order reimbursement of such fees as notified in the Directions dated 27 April 2006 the Tribunal considers that £200 of this fee should be reimbursed by the Council to the Applicants who might have avoided the necessity to bring this matter to the LVT had the Council listened to their concerns at an earlier stage and obtained detailed alternative costings in order to demonstrate that the relationship over the 30 year cycle between the centralised system (apparently now dictated by their policy and the circumstances of the subject property) and the individual systems for which the Lessees were pressing.

Chairman.....F.R. Barnes.....

Date.....18. 8. 06.....