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LON/00AG/LIS/2006/0089

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 27A & 20c OF THE LANDLORD AND TENANT ACT 1985

Applicant: Mr Charles M Thompson

Respondent: Luckworth Properties Ltd

Re: Flat 82 Boydell Court, St John's Wood London NW8 6NG

Application received: 26/6/2006

Hearing date: 24th July 2006 and 14 December 2006

Appearances: Mr Charles M Thompson Applicant

Miss S Fisher Respondent
Mr M R Lee

Members of the Leasehold Valuation Tribunal:

Mrs B Hindley LLB
Mr T N Johnson FRICS
Mr E Goss

1. This is an application, dated 22 June 2006, for a determination of the reasonableness, under the terms of the lease, of the percentage payable in respect of service charges for the subject flat for the years ending 2004, 2005 and 2006.
2. The tenant's contribution is defined in the lease as 'a proportionate part to be determined according to the proportion which the floor area of the Flat shall from time to time bear to the floor area of the Building as a whole the floor area of the Flat and the Building being such as shall reasonably be determined by the Landlord's surveyor PROVIDED THAT there shall be excluded from the floor area of the Building as a whole any house the freehold of which is not owned by the Landlord and which does no contribute to the Service Charge and does not benefit from the services specified in clause 5'.
3. Directions were issued by the Tribunal on 25 July 2006 requiring the respondent to send to the applicant a statement identifying the proportion which the floor area of the tenant's flat bore to the floor area of the Building as a whole and identifying those areas of the Building which the landlord's surveyor was excluding from the floor area of the Building for this purpose, and stating why this was considered to be appropriate.
4. Mediation was proposed but not taken up by the parties.
5. A hearing commenced on 13 November 2006 at which it was explained that additional penthouses had been built over Block A (Phase 1) and were in the course of construction over Block B (Phase 2). An additional flat ((58b) had also been created by the conversion of a former storage locker. The development also included some seven houses, 1 – 7 Court Close and these enjoyed some but not all of the services.
6. In his initial submission to the Tribunal Mr Lee contended that the applicant had an applicable service charge percentage for Phase 1 of 0.80% and for Phase 2, 0.71%. These percentages had been calculated from the design drawings provided by Lewis Patten, the chartered architects for the penthouse development.
7. At the hearing Mr Lee, who had been appointed by the managing agents on 15 September 2006, contended for percentages of 0.76% and 0.68% whilst the applicant sought 0.648% and 0.573%. The parties differed in their calculation of some of the floor areas of both the new and the old flats and thus were not able to agree the total floor areas.
8. Additionally, the applicant was of the opinion that the balconies of the flats, the terraces of the penthouses, the gardens of the houses and the garden of one flat (No 30), which had its own discrete garden, should be included in the calculation.
9. Mr Lee considered that an allowance of 20% of the floor areas of the balconies only should be made on the basis that they could, at some time, require maintenance and thus should be considered as floor space eligible for service charge costs allocation.
10. The hearing was adjourned on the day to enable disputed measurements to be revisited and the areas of the dispute further refined. The parties agreed to reconvene on 14 December which gave sufficient time for them to meet, inspect and narrow the outstanding issues.
11. Immediately after the hearing Mr Lee E. Mailed the applicant a revised spread sheet showing the differences between them in the various calculations. He proposed that they should meet. However, despite his best efforts no meeting

took place. Therefore, Mr Lee, alone, measured Flat 58b, inspected Flats 58 and 107 externally and estimated the depths of the balconies.

12. As a result he produced revised calculations which were handed to the Tribunal immediately prior to the reconvened hearing on 14 December 2006. These showed revised contributions of 0.78% for Phase 1 and 0.70% for Phase 2.
13. At the same time the applicant handed in floor plans, land registry maps and a downloaded copy of a planning variation of the two floor development at the subject property.
14. The Tribunal requested that the parties, who had not discussed the matter together since the previous hearing, spend time attempting to agree floor areas.
15. On their return the parties were in agreement as to the internal floor areas of all the flats, penthouses and houses for both Phase 1 and Phase 2. They were still not in agreement as to whether any of the floor areas of the balconies of the flats, the gardens of the houses and that of Flat 30, or the terraces of the penthouses should be included in the calculation.
16. The applicant considered that the total floor area of the balconies and terraces should be included as well as all of the garden areas.
17. Mr Lee considered that only 20% of the balcony areas should be included. He was of the opinion that the balconies could, at some stage, require maintenance but that the terraces, being new, and the gardens being self contained and discrete did not create a service charge liability.
18. Mr Lee had also carefully considered the specific services the houses received and had made consequential adjustments based on their individual circumstances. This had the effect of increasing the average house contribution to a weighting of 44.45%.
19. As a result Mr Lee now calculated the applicable percentages to be 0.748% for Phase 1 and 0.663% for Phase 2.
20. The Tribunal was satisfied that Mr Lee's approach to the inclusion of the balconies at 20% was reasonable. They were not satisfied that the applicant had established any case for including the gardens.
21. So far as the penthouse terraces were concerned the Tribunal was of the opinion that neither party had produced any compelling reasons for their inclusion or exclusion. Since neither course greatly affected the total apportionment payable by the applicant the Tribunal determined that the terraces should be excluded from the calculation.
22. Accordingly, based on the internal floor areas agreed by the parties for the flats, penthouses and houses @ 11,905.5sq.m. for Phase1 and the Tribunal's determination that 20% of the balcony floor area should be added, the Tribunal determines the service charge percentage attributable in Phase1 to Flat 82 to be 0.7484%.
23. For Phase 2, with the floor areas of the flats, penthouses and houses agreed by the parties @ 14,007.39sq.m. and with 20% of the balcony floor areas added, as determined by the Tribunal, the percentage attributable to Flat 82 becomes 0.6631%.
24. In his application the applicant had indicated that he wished to prevent the respondent recovering costs under Section 20c of the Landlord and Tenant Act 1985. In the circumstances of this case the Tribunal is not satisfied that it would be just and reasonable to make such an order.

P. N. Hardley - CHAIRMAN 18/12/06.