LON/00AU/LSC/2007/0228

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD AND TENANT ACT 1985: SECTION 27A, AS AMENDED

Address:	Flats 4, 20 & 21, Mary McArthur House, Hornsey Estate, London, N19 3BS
Applicants:	(1) Kate Forde (2) Rachel Board (3) Richard Wilkinson
Respondent:	London Borough of Islington
Application:	18 June 2007
Inspection:	25 September 2007
Hearing:	25-26 September 2007

Appearances:

Tenants

Ms R Board	Leaseholder (Flat 20)
Ms K Forde	Leaseholder (Flat 4)
Mr D Wilkinson	Representative of Mr R Wilkinson (Flat 21)
	For the Applicants

Landlord

Ms Bryan	Counsel
Ms E Duncan	HFI Capital Programme
Mr M Raes	AMEY Quantity Surveyor
Ms M Strange	AMEY Building Surveyor
	For the Respondent

Members of the Tribunal:	Mr I Mohabir LLB (Hons) Mr B Collins FRICS Ms T Downie MSc

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AU/LSC/2007/0228

IN THE MATTER OF FLATS 4, 20 & 21, MARY McARTHUR HOUSE, HORNSEY LANE ESTATE, LONDON, N19 3BS

AND IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT 1985

BETWEEN:

(1) KATE FORDE
(2) RACHEL BOARD
(3) RICHARD WILKINSON

Applicants

-and-

LONDON BOROUGH OF ISLINGTON

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. The Applicants make this application pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the reasonableness of the cost of major works in the sum of £307,591 arising in the 2006/07 service charge year.

2. The Applicants are the lessees of Flats 4, 20 and 21 respectively in the property known as Mary McArthur House, Hornsey Lane Estate, London, N19 3BS. They

occupy their respective premises by virtue of leases granted variously by the Respondent. The Applicants contractual liability to pay a service charge contribution or the extent of that liability is not in issue in this matter nor that the cost of the major works is recoverable as service charge expenditure. It was also accepted by the Applicants that the Respondent had properly consulted in accordance with the statutory requirements of s.20 of the Act. It is, therefore, not necessary to set out the relevant service charge provisions in the leases. The First and Second Applicants individual liability is presently placed at £12,036.17 and the Third Applicant at £13.373.52.

3. It seems that the Applicants purchased their respective premises between July and December 2004. The Respondent did not dispute the assertion made by the Applicants that, at the relevant time, they were informed no major works were being contemplated. However, it appears that in or about February 2005 the Applicants received a letter from the Respondent informing them of the proposed major works to be commenced later that year. The proposed works included redecorations and associated repairs, including structural remedial work and the installation of new windows.

4. The contractor appointed to carry out the works was Kier Islington ("Kiers") under a Strategic Framework Agreement entered into with it by Homes for Islington ("HFI") dated 7 September 2004. HFI is an Arms Length Management Organisation (ALMO") created by the Respondent to carry out the management of it entire housing stock. HFI is a company limited by guarantee and wholly controlled by the Respondent. The contract was administered by AMEY Property Services ("AMEY") as consultants on behalf of HFI. The overall cost of the proposed works was agreed with Kiers as an Agreed Maximum Price ("AMP") under the Strategic Framework agreement. Apparently, towards the end of the AMP process, it was discovered that major structural works were required to the rear balconies and this was included in the price. Any further work not falling within the AMP would require further consultation with the lessees. Kiers took

possession of the site on 19 October 2006 with practical completion anticipated at the end of October 2007. It seems that once the works had commenced, it was also discovered that the walkways required major structural works at considerably greater cost. However, the Respondent has agreed to bear this additional cost and not to recharge it to the lessees.

5. It was asserted by the Applicants that they had made several unsuccessful attempts to obtain greater clarification from HFI about how the costs had been calculated. Following 9 months of unsatisfactory responses from the Respondent, the Applicants made this application on 18 June 2007.

The Issues

6. The Applicants primary submission was that the cost of the works was too high and, therefore, unreasonable for two reasons. They were:

   (a) that because of historic neglect, the extent of the works was far greater than it otherwise would have been.

   (b) does the overall cost of the works represent value for money and did the Respondent carry out a proper tendering process.

   Each of these issues is considered below.

7. In the application the Applicants also raised a further issue of the conduct of HFI in failing to deal with their enquiries adequately or at all. The Tribunal indicated that it could not make any ruling or finding upon this matter because it did not have jurisdiction to do so in this application. The relevance, if any, of HFI's conduct would be in relation to the issue of costs, which is dealt with later in this Decision.

Inspection

8. The Tribunal inspected the subject property on 25 September 2007. The subject

property is a 1930s purpose built block of flats comprising 23 flats over 5 storeys with similar blocks adjacent in a high density residential location. Although still encased in scaffolding, major works now nearing completion, decoration of communal stairways was in progress. All works appear to have been carried out to a satisfactory standard. Among the remedial works carried out, old ties were removed and new stabilizing rods inserted in balconies (including private balconies) and flooring renewed with asphalt covering. Windows and doors resin were repaired / renewed under window care system, with new sashes as required. Repointing and replacement rain water goods carried out as deemed necessary. The subject flats, 4, 20 and 21 were all inspected. Further work (beading) was agreed as being still outstanding in respect of the bedroom window to flat 4.

Decision

9. The hearing in this matter also commenced on 25 September 2007. The First and Second Applicants appeared in person. The Third Applicant was represented by his brother, Mr D Wilkinson. The Respondent was represented by Miss Bryan of Counsel.

(a) Historic Neglect

10. The Second Applicant, Miss Board, told the Tribunal that at the time she purchased her flat, her solicitors had been informed that no major works were envisaged. Indeed, the survey at the time of her purchase did not reveal any defects to her flats. There was no need to replace her rear windows because they were in good condition. No other external repairs were needed. She had been told by the Respondent that the property was supposed to be subject to a 7 year cycle of repair/renewal and this had not been carried out for at least 12 years. The previous owner of Flat 21 had replaced the rear window in the flat at his own cost because it had been in a poor condition. The inference to be drawn was that there had been historic neglect and that must have increased the extent and cost of the present major works.

11. Miss Board accepted that the windows in the block generally were in disrepair because they had not been decorated since 1994 or 1995. However, she was unable to quantify that additional costs incurred by failing to carry out redecoration in the interim. She was also unable to do so in relation to the structural work carried out to the rear balconies or the repointing.

12. In cross-examination, Miss Board said that she had commissioned a Homebuyer's report but this was limited to a survey of her flat only. She accepted that daily maintenance and responsive repairs were carried out by the Respondent.

13. The Respondent did not adduce any evidence in relation to the historic neglect point save to rebut it at paragraphs 4 and 5 of the Respondent's statement of case. It was submitted that this point was without merit because the Applicants had failed to particularise in each and every instance the extent to which the present costs had been increased as a result of the Respondent's failure to historically maintain the building.

13. The Tribunal agreed with the submission made on behalf of the Respondent. It was accepted that the Respondent had not carried out cyclical repairs and/or maintenance in the preceding 12 years. However, save for their assertion otherwise, the Applicants had not adduced any evidence that the Respondent's failure to carry out cyclical repairs and/or maintenance had necessarily resulted in the present costs being increased. The Applicants had only recently purchased their flats and their actual knowledge of the historic condition of the building was very limited. In any event, as was acknowledged by them, they are not experts. The fact that the previous owner of Mr Wilkinson's flat had replaced one rear window was not evidence of extensive disrepair caused by the Respondent's historic failure to maintain the property. At its highest, this was only evidence of disrepair to one window in that flat. It was not, therefore, reasonable to draw an inference of general disrepair to the block generally.

14. Even if the Applicants were correct about historic neglect on the part of the Respondent, they had also not adduced any evidence to identify which items of work had been unreasonably incurred and/or to quantify the amount by which they had been increased thereby. An argument about historic neglect is a difficult one to sustain even with the assistance of expert evidence. In this instance there was no evidence at all upon which the Tribunal could make such a finding. The evidential burden was upon the Applicants to prove this point and they had failed to discharge that burden. Accordingly, the Tribunal did not disallow any amount for historic neglect.

(b) Value for Money

15. It was submitted by the Applicants that they had not been provided with a clear breakdown of the overall costs. They wanted some accountability on the part of the Respondent and they wanted to know what they were paying for. Further, they did not know if the works represented value for money because of the unhelpful replies given by the Respondent to their enquiries. For example, they had been told at the consultation meeting on 10 July 2006 to disregard the original s.20 notice because the estimated cost stated therein was no longer applicable as it was subject to further negotiation with Kiers. No amended s.20 notice has ever been served on them. The Applicants effectively put the Respondent to proof on this matter.

16. Mr Raes, a quantity surveyor employed by AMEY was called to give evidence about the cost of the works generally. His evidence was set out in his unsigned and undated witness statement. He said that the additional works carried out under the contract, including the structural works to the walkways, were in fact 50% more that the costs being claimed for the specified major works. However, those additional costs were being borne by the Respondent. The savings of £56,000 made on the preliminary costs had been reallocated to additional structural and concrete repairs to the soffits, balconies and private balconies of the flats. In cross-examination, he said that the Respondent's policy was that if

additional works were required, the cost would be borne by it and not recovered through the service charge account. He accepted that the AMP document provided to the Applicants was large and was not readily understandable to a lay person.

17. The Respondent also called Ms Duncan to give evidence about the costs of the major works. She is the Manager for Architects and Surveyors on behalf of HFI. However, the Tribunal placed no emphasis on her evidence because it seems that she had no actual knowledge of how the cost had been derived. She said she had not been involved in the detail of the project but only had overall responsibility to ensure that procedures were followed. She simply had various consultants reporting to her from time to time.

18. The next witness called on behalf of the Respondent was Miss Strange, the client representative on behalf of AMEY. Her substantive evidence was set out in he witness statement dated 24 September 2007. She said that she was responsible for the overall management of this project, amongst others, on behalf of the Respondent. She took over responsibility after the s.20 notice had been served and had been involved in dealing with the responses given to tenants during the consultation process. The AMP document and specification had been made available for inspection by the Applicants and other tenants. Moreover, a Schedule of Outstanding Information/Action Points annexed to her statement set out a chronology of the enquiries made by various tenants and the action taken by her in relation to those matters.

19. In cross-examination, Miss Strange said that at steering group meetings she had made herself available to discuss the issue of costs. The proposed amended s.20 notice was only an internal document and was never issued. The tenants, therefore, should only have relied on the initial s.20 notice that was served on them. She also accepted that the AMP document was large and would take some time to analyse even by a professional person.

20. The Applicants had accepted that the Respondent had complied with the s.20 consultation process. However, their complaint was that their observations and enquiries had not been dealt with properly by the Respondent. Instances of this included misleading or inaccurate information given by HFI, for example, the advice to ignore the initial s.20 notice. Furthermore, there had been not been any proper accountability or transparency in relation to the overall cost of the works. They could not, therefore, safely conclude whether the cost was reasonable or not.

21. Miss Strange accepted that at the steering group meetings, the Applicants had not been allowed to raise the issue of costs. Combined with the Respondent's failure to provide substantive replies to their enquiries about cost generally, the Applicants complaints appear to be well founded. However, none of the estimated costs struck the Tribunal as being unreasonable. There was no evidence from the Applicants that they were. In making this finding, the Tribunal was reassured that the Applicants had the remedy of coming back to the Tribunal for a fresh determination, if appropriate, when the final account has been prepared and the Applicants actual liability known.

Costs & Fees

22. Although the Applicants had made an application under s.20C of the Act, it was not necessary for the Tribunal to consider this because it was conceded by Miss Bryan that there was no provision in the lease that allows the Respondent to recover either the costs or fees it had incurred in these proceedings through the service charge account.

Dated the 9 day of November 2007

CHAIRMAN..... I. Mohabir .....

Mr I Mohabir LLB (Hons)