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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT
PANEL**

IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED) S27A

**IN THE MATTER OF : ABBEY HOUSE BAKERS ROW LONDON E15 3VB
CASE NUMBER LON/00BB/LSC/2007/0165**

Parties	Finebeam Limited	Applicant
	Mr D O James & Miss R Cousins	Respondents

Appearances:

For the Applicant	Mr K Rose From Feldgate Limited/Managing Agents
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For the Respondent	Non Attendance
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Date of Application	08 May 2007
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Date of Hearing	17 July 2007
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Tribunal	Mr A A Dutton	Chair
	Mr C White	FRICS
	Mr O N Miller	BSc

Date of Decision

REASONS AND DECISION

A. BACKGROUND:

1. This application was made by the freeholder under s27A of the Landlord and Tenant Act 1985 for a determination as to the liability to pay service charges.
2. The basis of the application was that Finebeam Limited, the Applicants, had obtained estimates for substantial works to the subject premise at Abbey House, Bakers Row, London E15. The Applicant had followed the correct s20 procedures and now wished to obtain approval from the Tribunal for the costs that would be incurred in connection with these major works.
3. Somewhat unusually at the time the matter came before the Tribunal the Respondent Landlord had acquired the long leasehold interests in ten of the twelve flats in the building. Only Mr James, of Flat 6 and Miss Cousins of Flat 11 remained independent Lessees.
4. Prior to the application to us the Applicant had entered in to correspondence with Mr James concerning the refurbishment works and despite invitations to attend meetings with a view to resolving any differences those meetings had not happened and as a consequence the Applicant decided to apply to the Tribunal for approval of the works in question.
5. The works to be carried out are extensive and include the external decorations and repairs to the fabric of the building. In addition there was an intention to replace the main roof and flat roofs of the building, the back guttering and rainwater goods and the fascias. Works were required to the brickwork, in particular the piers supporting the upper open balconies, and the intention was also to install a chemical damp proof course, improve the lighting to the common parts and other external areas, install security doors with a door entry phone system and generally enhance the area including the communal stairs and the gardens.
6. The documentation sent with the s20 Notices indicated that two companies had tendered, Cranescote at £149,880 plus VAT and Springdale Building Contractors at £156,440 plus VAT. With the additional costs associated with the supervision and management the total liability to Mr James and to Miss Cousins was £17,568.34 each. The total sum taken from an invoice dated 1 November 2006 is £210,819.90 divisible between the twelve properties.

B. EVIDENCE:

7. The Respondents did not attend the hearing. The Applicants were represented by Mr Rose, a Director of Feldgate Limited who were the Managing Agents appointed by the Applicants solely for the purposes of administering these major works. In a Statement included within a bundle of documents, he told us the history of their involvement and the steps taken to obtain the specification and subsequently the s20 procedures. We noted all that was said. Within the documentation were copies of the s20 Notices and the tender

documents from Springdale Building Contractors and from Cranescote Limited. We also had a copy of one of the leases and the specification of works prepared by Building Surveying Consultancy, from Oxted in Surrey. Mr D J King of that firm had apparently dealt with the matter. This listed the works to be carried out although the document itself appeared to be a standard specification which had been adapted to cover the present position. It was noted that there were some provisional sums totalling £38,650.00. In his evidence to us Mr Rose told us that he had been through the specification with Mr James who had told him that he would be contacting builders to review the matter. As he had heard nothing, he had initially intended to submit the application in November of last year but had given Mr James and Miss Cousins, from whom he had no response whatsoever, until earlier this year to proceed and he had not in fact submitted the application until May 2007.

8. He told us that Finebeam Limited wanted to be certain that they could recover from these two lessees their contributions towards the costs, the bulk of which would of course be borne by the freeholders. He confirmed that the two contractors who had provided estimates were not linked to the freehold company although Cranescote Limited were known to Feldgate, if not to Finebeam Limited. He also confirmed that although the estimates had been given last year, there would be no uplift on the figures so far as he was aware. Although the Lease referred to rateable values for the assessment of contributions he believed that the Landlord had at all times dealt with on a straight 1/12th split. He believed the Landlords managed the properties themselves.
9. He confirmed that as far as he was aware the occupants of the various flats were all there as short term lessees and did indicate that he would endeavour to provide the Tribunal with a copy of any surveys that may be on the file, the details of the maintenance trustee referred to in the lease and also any Reserve Fund that may exist.
10. This additional information was provided under a letter dated 26th July 2007. It included further comments from Mr King, a copy of a previous report from Taylor Harvey, correspondence from the London Borough of Newham and documents dealing with the appointment of the "Maintenance Trustee" as provided for under the lease which we had seen. Finally a tribunal case concerning the top floor flat C 174 Coldharbour Lane London (case LON/00AY/LSL/2004/0042) was produced to support management charges for the works to be carried out

C. INSPECTION:

11. We inspected the subject premises in the morning of the 17 July 2007. The weather was dry and clear. The block consists of three stories with four flats at each level. There is a central open communal staircase which leads to open balconies serving the flats at the first

and second floor. To the front of the property is a large tarmac area fringed with derelict buildings and to the rear a reasonably large garden area which is overgrown and dishevelled. The area immediately adjacent to the subject premises appeared to be largely utilised for commercial purposes and includes a railway line to the immediate rear of the property. The pathway between the garden area and the block is uneven and the general impression of the building is one of neglect. We noted on closer inspection that a number of the brick piers which support the second floor balconies had substantial cracks and there was clear evidence of water ingress in the roof of the balcony areas from the rainwater goods. The majority of the flats had double-glazed windows but these did not match and just added to the impression of a somewhat neglected property. The roof appeared to be in reasonable order although there was evidence of patching, certainly to the front elevation. Inspection of the rear elevation was hampered by the overgrown state of the garden. The decorative state of the building insofar as decorations were required was poor. The common parts were spartan and open to the elements and our inspection left us in no doubt that the property did require some fairly extensive works.

D. THE LAW:

12. The law applicable is to be found at s27A of the Landlord and Tenant Act 1985. This section was introduced by the Commonhold and Leasehold Reform Act 2002 and enables the Tribunal to make a determination as to whom the service charge is payable, by whom it is payable, the amount, the date and the manner in which it is to be paid. Under s27A(3) it is within the jurisdiction of the Tribunal to make a determination for future expenditure that is to say, if costs were incurred, who would pay them, to whom they would be payable, the amount, the date and the manner. It is under this section that the Applicants make their claim to us.

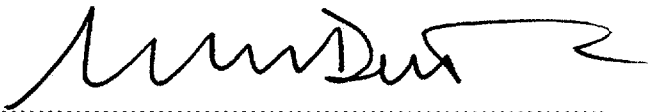
E. DECISION:

13. As we indicated under the inspection heading, having viewed the property it seems to us there is no doubt that works are required. We are somewhat concerned that there appears to have been no detailed survey carried out for the property to establish some of the provisional items which are included. However, we did receive a copy of a letter from Building Surveying Consultancy dated 18th July 2007 which went some way to explain the problems. A report of Kenwood PLC in May 2005 showed that damp was present in at least one flat on the ground floor (No. 4) and we can accept that in those circumstances it would be prudent to provide provisional sums for the investigation and possible treatment of damp in other flats. As to the roof we could see there were areas showing signs of aging and we accept that whilst scaffolding is in place, which clearly would be required to carry

out works, it would be sensible at the same time to modernise the roof and ensure there is proper felting and insulation. Again the late delivery of papers by Mr Rose after the hearing showed that there had been reports of leakages in flats 9 and 10.

14. Having considered the terms of the lease and can find no reference therein for the Landlord to be able to recover costs of improvement. In this particular instance it seems to us that the intended works to the common parts, including the creation of a security door, a door entry system and the carpeting of the property are improvements and should not be recoverable from the two tenants. In the specification the creation of a new main entrance, security door and side screen gives rise to a provisional sum of £2,000. The door entry phone system and all that goes with it, gives rise to a sum of £3,500 as a provisional sum and finally some £2,500, again as a provisional sum, is included for carpet and underlay in the common parts. These sums are not recoverable from the two lessees.
15. We draw to the attention of the landlord that in addition to these improvements it seems to us that the demise of the premises as defined in the lease we have seen, include the windows and window frames and the surfaces of the floor and the balconies which adjoin the flat. The structural parts and the railings of the balconies are clearly excluded from the demise. Accordingly the landlord will need to consider what elements of these costs are recoverable by way of service charge or individually from the tenants.
16. The delivery of the paperwork after the hearing has clarified the appointment of Feldgate Limited as the "maintenance trustee" as provided for in the lease. We were also concerned to establish the existence, or otherwise of any reserve fund. The letter from Feldgate dated 26th July 2007 confirms that there were, it seems, no funds in the trust when it was closed.
17. Finally we turn to the fees being charged in respect of the works involved. In the invoice sent to Mr James in November 2006 it shows a planning supervisors fee of 1% (plus disbursements) at £1600, surveyors fees at 10% (plus disbursements) of £15,500 and a management fee, inclusive of VAT of £17,610.90. We would be prepared to allow the surveyors fees of 10% plus disbursements being £15,500. We cannot see that the planning supervisor's fees of 1% plus disbursements is reasonable and disallow that. So far as the management fee is concerned, we note that from the s20 Notices this is referred to as being 5%. It seems to us that the management of the works would be minimal. There are only two lessees to collect contributions from and the surveyor will presumably be attending on a regular basis bearing in mind the 10% fee he is being paid. In those circumstances it seems to us that the management fee of 5% plus VAT as set out in the s20 Notices is the reasonable sum and accordingly we would reduce the management fees to a level of 5% being £7,494.00 plus VAT. We have considered the case cited at para 10 above. However that is not binding upon us and for the reasons stated above we find that a 5% fee is reasonable in circumstances.

18. Subject to these alterations and in particular the disallowed items in paragraph 14 above we approve the other costs and the need to carry out the major works as set out on the specification dated June 2006 referred to above.



Chairman

Dated 10th August - 2007