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Ref: LON/00BE/LSC/2007/0281

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

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER  
Section 27A LANDLORD AND TENANT ACT 1985 AS AMENDED**

**Applicant(s):** Mr Scammell (Flat 71), Ms Ann Fenn (Flat 55) and Mrs  
Bridget Cunningham (Flat 23)

**Respondent(s):** London Borough of Southwark

**Re:** Flats 23, 55 & 71 Wrayburn House Llewellyn Street London  
SE16 4XB (the "Properties")

**Hearing Date:** 15 November 2007

**Appearances:** For the Applicants  
Mr Scammell  
Mrs Geraldine Cox on behalf of Mrs Cunningham  
Mrs Ann Fenn  
Ms A McDonald (the tenant of Flat 28)

For the Respondents  
Ms Ewelina Sorbjan Home Ownership Unit  
Mr G Wedlake MIEE Construction Project Management  
Mr B Partridge Investment Programme Officer  
Ms L Turf Capital Works Manager  
Home Ownership Unit  
Mr G Valentine-Neal Area Manager

**Members of Leasehold Valuation Tribunal:** Mrs J S Pittaway LL.B  
Mrs Flynn MA MRICS  
Mrs Barrett

**Date of Tribunal's Decision:** 5 December 2007

## **INTRODUCTION**

1. The Application is as to tenants' liability to pay service charge for the installation of an entry phone system and related works in Wrayburn House.
2. Mr Scammell is acting as lead applicant for the Applicants. Mrs Geraldine Cox, the daughter of Mrs Cunningham, is dealing with the matter on her mother's behalf.
3. Directions issued by the Tribunal on 21 August 2007 which identified the questions for determination as being
  - 3.1 whether the landlord acted reasonably in installing the entryphone system by way of improvement; and
  - 3.2 whether the scope and the cost of the works was reasonable
4. The Applicants' leases are in standard form and a copy of the lease of Flat 71 containing the relevant service charge provisions was before the Tribunal.

## **DETERMINATION**

### **Section 20 (1) Consultation**

1. The Applicants had complied with the necessary consultation procedure. That did not of itself make the cost of the works either recoverable or reasonable.

### **The recoverability of the costs under the Leases**

2. The installation of the screens and doors in the screens was incidental to the cost of installing the entry phone system, notwithstanding the cost of their installation when compared to the cost of installing the entry phone system itself. The cost of their installation, in the absence of any evidence that the sums demanded were unreasonable, was therefore recoverable by way of service charge under the leases, as was the cost of installing the entry phone system and the cost of the entrance lighting.
3. The installation of security doors on the ground floor was not incidental to the installation of the entry phone system. Nor, in the alternative, can the cost of installing such doors be construed as falling within "maintenance", where the door replaced was not in a poor state of repair, or "management on the ordinary construction of those words. As the doors are the property of the Respondents they are at liberty to replace them but there was no evidence that the doors replaced were in want of repair and the cost of the replacement doors cannot be recovered by way of service charge. The Tribunal hopes that the Respondents will ensure that in future the wishes of the individual tenants in such circumstances are considered.

4. The cost of connecting the ground floor flats to the system was incidental to the cost of installing the entry phone system and, in the absence of any evidence that this cost was unreasonable, is recoverable by way of the service charge.

#### **The reasonableness of the cost of the works forming part of the service charge**

5. There was no evidence that nose highlighters had been installed as part of the works and accordingly the service charge should not include the cost attributed to them.
6. In the absence of any evidence that the cost of installing the entry phone system, installing the screens and the doors in the screens, installing the entrance lighting or connecting the ground floor flats to the entry phone system was unreasonable the Tribunal determine that these costs are reasonable.

#### **Tenant's fees**

7. The Tribunal determine that of the fees paid by the Applicant in respect of the Proceedings before the Tribunal, in the sum of £250, the Respondents should reimburse the Applicants the sum of £100.

#### **Other**

8. The Tribunal sympathise with the position Mrs Fenn finds herself in and trust the Respondents liaise with her as to possible noise reduction.

#### **INSPECTION**

1. The Properties were inspected prior to the Hearing.
2. Wrayburn House, constructed some fifty years ago, consists of 72 flats and maisonettes of different sizes. It is in part four, in part five stories above ground floor level. It was originally constructed in three detached parts with two sets of external stairs leading to the upper floors.
3. The Tribunal were shown the extent of the works the subject of the Application, being
  - 3.1 The enclosure of the two external staircases with a total of five glazed steel screens. Four of these screens have doors in them with entry phones, a combination pad and fob entry system. The lobbies formed by the enclosures do not enclose the front doors of all the flats on the ground floor, some of whose front doors remain directly accessible from the grounds of Wrayburn House.

3.2 The installation of a phone and entry buzzer in each of the flats in Wrayburn House connected to the above entry phones by surface cabling. These were even installed in the ground floor flats that are outside the area enclosed by the screens.

3.3 The installation of additional lighting in the lobbies enclosed by the screens to counteract the reduction in light in the lobbies.

3.4 The installation of new lights over the new doors in the screens.

3.5 The replacement of the front door of each ground floor flat (with the exception of Flat 28) with new security doors, involving the installation of new door thresholds as part of the sub-frame of the new doors.

4. Wrayburn House is surrounded by grounds leading to two public highways, Bevington Street and Llewellyn Street. These grounds are not closed off to public access, and before the works it would have been possible for the public to use the non-enclosed lobbies as short-cuts.

5. Flat 71 is on the top floor and was not inspected.

6. Flat 55 is on the first floor, above one of the new entrance doors. The Tribunal inspected its door and threshold as examples of the originals that had been replaced on the ground floor.

7. Flat 23 is on the ground floor. Its front door is outside the now-enclosed lobbies. (Some of the front doors of ground floor flats are within the enclosed lobbies).

8. No work was carried out to the rear elevation of any of the ground floor flats. The rear elevations of those in that part of Wrayburn House which includes Flat 23 all have half-glazed back doors overlooking the grounds facing Llewellyn Street, which grounds are only separated from Llewellyn Street by a low metal railing.

9. The Tribunal's attention was drawn to Flat 28. It is on the ground floor but its door was not replaced as part of the works.

10. The Tribunal's attention was drawn to the adjacent Havisham House as being more suited to an entry door system as all the flat doors are internal to the block.

## **THE HEARING**

1. The Hearing took place on 15 November 2007

2. The Applicants appeared in person, with Mr Scammell acting as the lead Applicant

3. The Respondents were represented by Ms E.Sorbjan
4. The parties agreed with the Tribunal that the issues to be considered were
  - 4.1 Whether the Respondents had complied with the consultation procedure under section 20(1) Landlord and Tenant Act 1985, in terms of the amount of information provided.
  - 4.2 The recoverability of the costs incurred under the Leases
  - 4.3 The reasonableness of the costs of the works.
  - 4.4 The recoverability of the Landlord's costs in relation to the Application by way of service charge.

## **EVIDENCE**

### **Section 20 Consultation**

1. Mr Scammell referred to
  - 1.1 The questionnaire of 25 August 2004
  - 1.2 The Statutory Notice of Intention which dated 29 April 2005, which invited observations by way of consultation; and
  - 1.3 The formal Notice of Proposal dated 23 January 2006.

Mr Scammell did not believe that any of the above gave sufficient detail of the proposed works.

2. Ms Sorbjan explained that the initial ballot produced 32 returns, 24 being in favour of the proposals (of whom 9 were leaseholders) and 8 against (of whom 6 were leaseholders). She confirmed that there were 33 leaseholders in Wrayburn House, the remainder being Council tenants for whom the works did not have the same service charge implications.
3. Ms Turf stated that the contract in question was a simple contract for a door-entry system and associated works. She drew attention to the fact that the Statutory Notice of Intention specified that a detailed specification was available for viewing at the offices of the Leasehold Management Unit. As for the Notice of Proposal it set out the works briefly but primarily went to the cost of the works, rather than being a specification for them. Whilst a calculation sheet similar to that disclosed in the bundles before the Tribunal (at p.167) would normally be sent out with the Notice she accepted that it was possible that no such sheet had been sent out with this particular Notice. She confirmed that the contract for the works was only placed after the end of the

statutory consultation period, which was only closed in April 2006 when the final decision was made.

4. It was Mr Scammell's view that the reference to "associated works" was meaningless to a layman and did not suggest the inclusion of the screens and doors. He did not consider that enough information was provided fast enough. He confirmed that the first figures that had been supplied by the Respondents were those in the Notice of Proposal.

#### **Recoverability of Costs incurred**

5. Ms Sorbjan referred the Tribunal to Clause 2(3) (a) of the Lease under which the Lessee covenanted to pay Service Charge. Under paragraph 7 of Part 1 of the Third Schedule the Service Charge payable by the Lessee are costs and expenses "of or incidental to" the items set out in that paragraph, including at sub-paragraph (9) (ii) the installation "(by way of improvement)" of an entry phone system. Ms Sorbjan argued that the various associated works were all caught by the words "incidental to". Alternatively the replacement of the ground floor flat doors with security doors formed part of the Service Charge under sub-paragraph (6), being "maintenance and management of the building". She argued that "maintenance" could be construed as including "improvement", and that replacing the doors added to security and this amounted to management. The doors were replaced to take into account the comments received during the consultation process. The premises demised by each Lease expressly excluded the doors which remained the property of the Respondents.
6. Mr Scammell argued that sub-paragraph (9) (ii) should be narrowly construed so as to be limited to the entry phones and means to open the doors. He considered that works could not be "incidental" when they cost more than the works to which they were expressed to be incidental. The replacement of doors with security doors was neither "maintenance" nor "management".
7. Ms Sorbjan distinguished the back doors to the ground floor flats as not being entrance doors, but patio doors. The Respondents considered the replacement of the front doors to the ground floor flats as incidental to the installation of the entry system as they had been brought to the Respondents' attention during the consultation process.
8. Mr Wedlake explained that a barrier was required to make an entry-phone system, which provided security, feasible and that this was why the doors and screens were required.

#### **The Reasonableness of the Cost of the Works**

9. Mr Wedlake drew the Tribunal's attention to the "Summary of Tender" (at p.242 of the Bundle) as giving a breakdown of the costs excluding the security doors.

Of these costs of £46,503

New doors and screens were shown at a cost of	£23,700.00
New door entry system was shown at a cost of	£21,203.00
Entrance lighting	£ 600.00

No final account has yet been produced but the Draft Final Account (p.167) shows the following further sums

New ground floor flat front doors	£12,150.00
Nose highlighters	£ 285.00
Connection of 15 ground flats	£ 5,494.95

Mr Wedlake agreed that as there did not appear to be any nose highlighters at Wrayburn House the inclusion of this may be incorrect.

10. Of the above Mr Scammell agreed that the cost of the installation of the door entry system was within the costs recoverable by way of Service Charge under the Leases. He was unable to comment on whether the sum charged was reasonable. He considered the cost of the "incidental" items, being the doors and screens and security doors as disproportionate.
11. Miss Sorbjan believed that the actual cost of the works excluding the ground floor security doors was reasonable when compared to the pre-tender estimate for the works of £900,000.00 (p.248 of the Bundle). Mr Wedlake explained that the estimate included a provisional sum for doors and for unforeseen contingencies, which is why it was more than a number of the tenders actually received.
12. Mr Scammell pointed out that the instruction from the Respondents in respect of the front doors (p.173 of Bundle) costed at £12,150.00 included a door for Flat 28 which had not in fact been replaced.

### **Front door of Flat 23**

13. On behalf of Mrs Cunningham Mr Scammell made the point that Mrs Cunningham had not wanted her front door replaced but had been overruled by the builders. He said that it was not correct, as suggested by the Respondents, that Mrs Cunningham had been given a choice.
14. Miss McDonald confirmed that the builders had initially indicated to her that she did not have a choice.

### **Work to be by way of improvement**

15. Mr Scammell submitted that the enclosure of the two lobbies was not an "improvement". On behalf of Mrs Fenn he referred to the noise from the area below the sleeping area of her Flat 55, that youngsters now congregated/loitered in the enclosed area below her flat, the increased internal noise and perception of a decrease in security. Mrs Fenn commented on the heaviness of the doors.

Mr Scammell re-iterated that enclosure of the lobbies was not an improvement for an open-deck block, as distinguished from a block like Havisham House.

16. On behalf of the Respondents Ms Sorbjan regretted the unfortunate location of Ms Fenn's flat but pointed out that the installation of the entry phone system was contemplated by the Leases.
17. Mr Valentine-Neal explained that entry door systems were used on other open-deck buildings in the Borough and were considered part of the wider tool-kit to deal with anti-social behaviour.
17. Mr Scammell acknowledged that only three leaseholders had joined in the Application but did not accept that this meant that the other leaseholders were happy with the system.

### **Recoverability of Respondents' costs by way of Service Charge**

18. Ms Sorbjan stated that while the Respondents considered that the leases allowed recovery of their costs by way of the service charge they did not propose to recover them.

### **Fees**

19. Mr Scammell invited the Tribunal to consider reimbursement of the Applicants' fees in connection with the Application of £100 and the Hearing of £150, dependent upon their decision.

## **THE LAW**

**Section 27A Landlord and Tenant Act 1985** as amended by **Commonhold and Leasehold Reform Act 2002** provides

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) the date by which it is payable; and
- (e) the manner in which it is payable

(2) Subsection (1) applies whether or not payment has been made

**Section 19 Landlord and Tenant Act 1985** provides

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

- (a) only to the extent that they are reasonably incurred, and



(b) when 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; and the amount payable shall be limited accordingly

**Section 20(1) Landlord and Tenant Act 1985** provides

Where this section applies to any qualifying works.....the relevant contributions of tenants are limited .....unless the consultation requirements have...been complied with in relation to the works.

**Section 20C Landlord and Tenant Act 1985** provides

(1) A tenant may make an application for an order that all or any of the costs incurred or to be incurred, by the landlord in connection with proceedings before a..... leasehold valuation tribunal.....are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

**Regulation 9 Leasehold Valuation Tribunal (Fees) (England) Regulations 2003** provides

(1) .....In relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

Chairman:

  
Mrs J S Pittaway

Date: 5 December 2007