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Residential Property
TRIBUNAL SERVICE

REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL

Landlord & Tenant Act 1985 Sections 20ZA and 20C

Premises:	28 – 34 Cockpit Close, Woodstock, Oxon OX20 1UH
Our ref:	CAM/38UF/LDC/2010/0007
Hearing:	26 August 2010
Applicants:	Cottsway Housing Association Ltd

Respondents:		
	No 28	Mr J Barrett
	No 29	Mr & Mrs D Pratley
	No 30	Ms J Brown
	No 31	Mr S Hazell
	No 32	Mr A Carter
	No 33	Mr S Peake
	No 34	Mr D Ellington

Members of Tribunal: Mr G M Jones - Chairman
Mr J R Humphrys FRICS
Mr R Sleigh

ORDER

1. The Applicant is hereby given dispensation from any further compliance with statutory consultation requirements in relation to the proposed replacement of the water pumping system at 28 – 34 Cockpit Close, Woodstock at an approximate cost of £17,371.20 including VAT.

Geraint M Jones MA LLM (Cantab)
Chairman

Dated: 6 September 2010

0. BACKGROUND

The Property

0.1 The property is a block of seven flats on four floors built by the local housing authority West Oxfordshire DC in 1964 and transferred to the Applicant Cottsway HA Ltd in about 2001, as part of a block transfer of about 3,600 housing units. All seven flats were purchased by the tenants under the right-to-buy legislation and are now let on 125 year leases at a ground rent. These are among the 75 flats in various blocks (about 25 blocks in all) owned by the Applicant which are let on long leases at ground rents. The block is of brick construction with a flat roof. The original wooden windows have been replaced with UPVC double-glazed units. In 2008 the LVT granted dispensation to the Applicant to enable immediate replacement of concrete balconies that had become dangerous owing to the degradation of steel reinforcement by rust. New "Juliet" balconies are now in place, leaving a certain amount of untidiness in the brickwork where the old concrete balconies were removed.

The Lease

0.2 The sample lease is in standard form for a buy-to-let flat purchase. It contains repairing covenants on the part of the Applicant landlord and service charge provisions which exhibit no unusual features.

1. THE DISPUTE

1.1 It is scarcely accurate to describe the reason for the application as a dispute. It appears that water pressure in the local main is inadequate to provide a domestic supply suitable for modern needs to the top floor of the building. For that reason, a pumping system was installed, together with a holding tank. The whole system, including twin pumps, operating alternately, and the necessary electrical control panel, was housed in a brick outbuilding adjoining the block. This is the only four-storey property in the Applicant's portfolio and the only property that includes a pumped water supply.

1.2 The Applicant undertook a stock survey in 2004 with a view to creating a 30-year maintenance plan. The scheme included "tenants' promises" under which the Applicant undertook to remedy a rather poor history of maintenance and upgrading. At that time, there was no complaint about the water supply at Cockpit Close and the pumping system was not identified as a system that ought to be included in the maintenance plan. However, the pumping system was maintained once a year by Carter Pumps. Some quite substantial repairs were carried out in 2009 at a cost of £3,598. At that time, Carter Pumps advised that repair, rather than replacement, was a reasonable (and more economical) option. There might have been an issue as to whether this repair was a wise decision. However, the Applicant has not recharged the cost to the Respondents and does not intend to do so.

1.3 The 2009 repair included rebuilding the pumps. Unfortunately, the system did not operate properly thereafter. It appears that the power switches were arcing, so that the pumps would repeatedly stop and start. Eventually, one of the refurbished pumps burnt out. Whether the strain of the more efficient pumps, perhaps operating at higher pressure and drawing more electricity were to blame it is impossible to say. It seems likely that some aspect of the repair work disturbed the previously reliable system.

1.4 The Applicant took advice from Carter Pumps who, in a written report dated 16 June 2010, advised that the system had reached the end of its useful life and recommended replacement. The Applicant (who employed nobody with sufficient engineering expertise to dispute the report) accepted that advice. The Applicant contacted Thames Water to see if the water pressure in the main could be improved so that a pumping system would no longer be necessary. Thames Water advised that they provided only one bar of pressure in the system, which was adequate for a building up to 10 metres tall. Unfortunately, the Applicant was advised that the pressure in the pressure vessel (at ground level) needed to be 2.5 bar in order to provide reasonable pressure on the fourth floor. Moreover, the system could not be replaced "like for like" because (unsurprisingly) regulations had changed since 1964.

1.5 The Applicant initially obtained a quotation from Carter Pumps on 9 July 2010. A further quote was obtained from H & E Electrical on 22 July 2010. This was in the sum of £13,440 plus VAT. On seeing the H & E quote Carter Pumps took the view that they may have misinterpreted the Thames Water requirements. As a result, they amended their quotation to match the H & E specification. Their revised quotation was in the sum of £11,150 plus VAT. The specification included an emergency bypass, so that the water supply could be continued (albeit at reduced pressure) during maintenance periods or if the pumping system were to fail.

2. THE ISSUES

2.1 The only issue before the Tribunal is whether dispensation should be granted from the strict consultation procedures under section 20 of the Landlord & Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003. The Applicants propose to recharge to tenants a total of £17,371.20, including a 10% administration charge receivable by the Applicant. The Applicant's representatives assure us that the Applicant's management team is aware that this is a substantial sum for each tenant to find and is willing to discuss easy terms for payment.

3. THE EVIDENCE

3.1 The facts set out above are not in dispute. Indeed, there is no dispute as such because no tenant has appeared or sent any written representations, whether for or against the Application. Nevertheless, the Tribunal conducted an enquiry into the need for remedial works, the urgency of the situation, the steps taken to consult the tenants and the appropriateness of the proposed works. The Tribunal considered the cost of the works, so far as was possible on the evidence.

3.2 On 14 July 2010 the Applicant wrote to the tenants informing them of the problem with the pumping system and of the proposed remedial works. At some stage (presumably a fairly early stage), the office of Mr Ledbury (Maintenance Manager) received telephone calls from the tenants of No 29 (first floor) and 34 (top floor) complaining of poor water pressure and enquiring what was being done about it. Some time between 29 July and 2 August 2010 a further letter was written to tenants summarizing the two quotations and informing them of the Applicant's intention to accept the lower quotation. There was no response from any tenant.

4. THE LAW

Service Charges

4.1 Under section 18 of the 1985 Act (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, where 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. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

4.2 Under section 27A the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for those costs and, if so, the amount which would be payable.

4.3 In deciding whether costs were reasonably incurred the LVT should consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease and the 1985 Act, bearing in mind RICS Codes. If work is unnecessarily extensive or extravagant, the excess costs cannot be recovered. Recovery may in any event be restricted where the works fell below a reasonable standard.

4.4 Under section 158 and Schedule 11 of the Commonhold & Leasehold Reform Act 2002 variable administration charges are payable by a tenant only to the extent that the amount of the charge is reasonable. An application may be made to the LVT to determine whether an administration charge is payable and, if so, how much, by whom and to whom, when and in what manner it is payable. The Tribunal may vary any unreasonable administration charge specified in a lease or any unreasonable formula in the lease in accordance with which an administration charge is calculated.

4.5 In this case, however, the Tribunal is not being asked to make a finding as to the reasonableness of costs incurred. It will be open to tenants to object to service charges relating to the proposed works on grounds of cost and quality of workmanship under section 19 in the usual way.

Consultation

4.6 Under section 20 of the 1985 Act (as substituted by section 151 of the Commonhold & Leasehold Reform Act 2002 with effect from 31 October 2003) and the Service Charges (Consultation Requirements) (England) Regulations 2003 landlords must carry out due consultation with tenants before undertaking works likely to result in a charge of more than £250.00 to any tenant or entering into long term agreements costing any tenant more than £100.00 p.a. This process is designed to ensure that tenants are kept informed and have a fair opportunity to express their views on proposals for substantial works or on substantial long term contracts.

4.7 The consultation requirements vary depending upon the circumstances of the case and, in particular, whether the landlord is a designated public body for the purposes of statutory regulations dealing with public works, services and supplies.

4.8 In this case the relevant requirements are those set out in Part 2 of Schedule 4 to the 2003 Regulations. The landlord must first provide to the tenants (and, if applicable, to the tenants' association) prescribed information about the proposed works and invite them to put forward a contractor. The consultation period is 30 days. The landlord must have regard to the tenants' observations, which might result in a change in the specification of works. After that, the landlord may be obliged to seek an estimate from a contractor or contractors nominated by the tenants. That is likely to occupy a further period of at least 14 days. The landlord must then inform each tenant of the amounts of at least two estimates and the effect of any observations received and the landlord's responses and invite observations on the estimates. All estimates must be made available for inspection. The second consultation period is also 30 days. The landlord must have regard to any observations made. There are other requirements to provide information; but these should not delay the works.

4.9 Landlords who ignore these requirements do so at their peril. Unless the requirements of the regulations are met the landlord is restricted in his right to recover costs from tenants; he can recover only £250.00 or £100.00 p.a. per tenant (as the case may be). However, it is recognised that there may be cases in which it would be fair and reasonable to dispense with strict compliance.

4.10 Accordingly, under section 20ZA (inserted by section 151 of the Commonhold & Leasehold Reform Act 2002) the Leasehold Valuation Tribunal may dispense with all or any of the consultation requirements if satisfied that it is reasonable to do so. This may be done prospectively or retrospectively. Typically, prospective dispensation will be sought in case of urgency or, perhaps where a tenant is refusing to co-operate in the consultation process. Retrospective dispensation will be sought where there has been an oversight or a technical breach or where the works have been too urgent to wait even for prospective dispensation. These examples are not meant to be exhaustive; there may be other circumstances in which section 20ZA might be invoked.

Costs generally

4.11 The Tribunal has no general power to award inter-party costs, though a limited power now exists to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal from the tenants through the service charge provisions i.e. he is entitled to recover a contribution to such costs not only from the defaulting tenant but from all tenants.

4.12 However, under section 20C of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. In the Lands Tribunal case Tenants of ***Langford Court –v- Doren Ltd*** in 2001 HH Judge Rich QC said that the LVT should use section 20C to avoid injustice.

5. DISCUSSION AND CONCLUSIONS

5.1 The Tribunal is satisfied that the replacement of the pumping system is reasonably necessary to comply with the Applicant's repair and maintenance covenants and that the cost is, in principle (and subject to reasonableness under section 19) rechargeable to the tenants. The Tribunal considers that, on the facts of this case, it is reasonable for the Applicant to charge 10% of the contract price for administration. The Tribunal makes it clear that the 10% should include any costs associated with the Application.

5.2 There is clearly some urgency in the matter, since adequate water supplies are not currently available to the tenants of the upper floor flats and have not been available for some weeks. Moreover, the Applicant appears to have taken reasonable steps to maintain the pumping system, which was bound to reach the end of its useful life at some stage. The fact that it has lasted for more than 40 years is a tribute to the quality of the equipment and the installation.

5.3 The Tribunal considers that the Applicant has taken reasonable steps, given the urgency of the situation, to consult with the tenants. It is very significant, in the judgment of the Tribunal that, even after knowing the likely cost of the work, no tenant has chosen to object. It seems probable that they were reassured by the promise that a reasonable time would be allowed for settlement of the related service charge bills. The Tribunal also considers that to be an important factor.

5.4 In all the circumstances the Tribunal has decided that the Applicants should be given dispensation from any further consultation processes under the 2003 Regulations. The Tribunal expects that the Applicant will keep the tenants informed as to progress and will honour its promises as regards allowing a reasonable time for payment.

Costs

5.5 As has been indicated, the Tribunal considers that any costs incurred by the Applicant in connection with the Application will be covered by the 10% administration charge and will, if necessary, order that such costs should not be separately recharged to tenants. It does not appear necessary to make such an order at present.

Geraint M Jones MA LLM (Cantab)
Chairman

Dated: 6 September 2010