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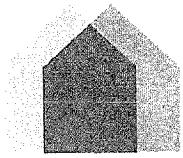

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/OOAG/LSC/2009/0775

THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A of the Landlord and Tenant Act 1985

Applicant: Mr B. R. Maunder Taylor as Manager
RFYC Limited being the Head leaseholder

Respondent: The Leaseholders of the Frognal Estate

Premises: The Frognal Estate, Finchley Road, London NW3 5HL

Date of Application: 27 November 2009

Date of Hearing 4 March 2010

Appearances for Applicant: Mr Maunder Taylor

Appearances for Respondent: Mr Denehan of counsel

Leasehold Valuation Tribunal: Mrs B. M. Hindley LL.B
Mr D. D. Banfield FRICS
Mrs G.V. Barrett JP

Date of Tribunal's Determination 10 March 2010

1. This is an application to determine the reasonableness of service charges in respect of proposed major works for the years ending December 2009 and 2010.
2. The application was brought by Mr Maunder Taylor who had been appointed as manager and receiver of the subject block, with effect from 25 May 2009, on the application of the Residents' Association (Frognall Estate Residents Association).
3. On appointment Mr Maunder Taylor had devised a programme of works to address the concerns of the London Borough of Camden, in respect of which notices had been served, together with the long term neglect of the estate.
4. After Section 20 procedures had been complied with he had sought £100,000 as an advance payment in 2009 and £500,000 as an advance payment in respect of 2010, to cover the cost of the works.
5. When the tendering process was completed it appeared that the actual cost of the major works was to be £638,012 inclusive of VAT and fees.
6. The respondents did not dispute that the works were required or that the cost was reasonable. However, they maintained that the works should be phased over a period of five years because the sums demanded were beyond the means of some leaseholders.
7. Mr Maunder Taylor argued that under the terms of the management order he had a legal duty to carry out the landlords' repairing obligations under the terms of the respective leases and that to effect the works under a single contract was the most cost effective solution. He claimed that he was supported in this view by some 20 leaseholders who had already either paid the demanded service charge or who had entered into an arrangement with him to pay.
8. Moreover, he asserted that, because the state of the roofs meant that the building insurers were refusing to provide cover for water damage, it was imperative that this work should be done immediately. With necessary scaffolding in place he considered that it would then not be cost effective not to use it for all required external works.
9. Further, the notices served by the London Borough of Camden required also interior works concerning the safety of the common parts staircases.
10. Mr Deneham pointed out that the leaseholders had themselves applied for the management order and, he argued, the purpose of such an order was to protect the interests of leaseholders. He said that under the terms of the order Mr Maunder Talylor had a discretion to decide how to carry out his management responsibilities and that Mr Maunder Taylor was not correct when he asserted that he had a legal imperative to carry out the landlords' repairing obligations. He argued that Mr Maunder Taylor had demonstrated that he considered that he had a discretion because he had chosen to exercise that discretion by choosing not to renew the lifts in the rear blocks, or to carry out works to the gardens at the rear of the building, although these works were also required if the estate was to be put into good repair.
11. Mr Deneham was of the opinion that the Tribunal should take into consideration, in their determination of reasonableness, whether it was reasonable to have the agreed long term neglect rectified in a single year, having regard to the fact that the cost to the 54 leaseholders of such work was substantial.

12. On behalf of the leaseholders Mr Deneham took great exception to a comment that Mr Maunder Taylor admitted he had made which was that if leaseholders could not pay then they would have to sell their homes. Mr Deneham acknowledged that there was a conflict on the estate between those who wanted the works done in one phase and those who wanted the works to be phased and he considered that it was for the Tribunal to protect the rights of the tenants in occupation against the rights of investors. He said that the purpose of the legislation was to protect people in their homes.
13. The Tribunal was saddened that it was found necessary to bring this application since the manager had been appointed at the instigation of the Residents Association and was endeavouring to carry out works agreed to be required.
14. The Tribunal was not told that any leaseholder considered the totality of the costs of the required works to be unreasonable. The respondents' case was that the works should be phased because the cost to some leaseholders of doing them in their specified entirety was unmanageable.
15. The Tribunal does not accept Mr Deneham's argument that consideration of the reasonableness of costs requires consideration of the ability of individual leaseholders to pay those costs. Whilst Mr Deneham suggested that this was one of the factors behind the legislation he was unable to direct the Tribunal to any evidence which suggested that different classes of leaseholders should be treated differently. In the opinion of the Tribunal the ability of individual leaseholders to pay for required works is not a matter covered under this legislation.
16. Given that there was no argument as to the reasonableness of the costs, the specification of the works or Mr Maunder Taylor's ability to seek the payments in advance, the Tribunal is satisfied that reasonableness under Section 19 of the Landlord and Tenant Act 1985 relates to the reasonableness of the works themselves and their costs, not to the ability of persons to pay for them.
17. Accordingly, the Tribunal determines the service charges sought in respect of the major works for the years ending 2009 (£100,000) and 2010 (£538,012), to be reasonable, reasonably incurred and, therefore, payable.

Chairman B. M. Hindley

Date 10 March 2010