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THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 (AS AMENDED) SECTIONS 27A and 20C

Reference: LON/00BA/LSC/2010/0073

Premises: 15 Grosslea, 90 Bishopsford Road, Morden, Surrey SM4 6BE

Applicant: Ms Adu-Twumwaa and Mr W Essandoh

Respondents: Douglas Graham Management Limited, represented by Tyser Greenwood Estate Management ("TGEM")

The Tribunal's decision

Background

1. The applicants, Ms Adu-Twumwaa and Mr W Essandoh, submitted an application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act"). In the application they sought a determination as to liability to pay and the reasonableness of service charges under a lease or an under lease of 15 Grosslea ("the flat"). The respondents to the application are Douglas Graham Management Limited, represented by Tyser Green Estate Management ("TGEM"). The property in which the flat is contained ("the Grosslea property") was built in the 1960s and comprises 23 flats on four storeys including the ground floor.

2. The Tribunal were provided with a copy of a lease of the flat dated 10 April 1970, made between Douglas Graham Developments Ltd and Richard Stephen Jones-Bateman. The Tribunal were informed that the lessee's interest was vested in the applicants at all times material to this application. That lease, in (4) of the recital, referred to the grant a lease by Douglas Graham Developments Ltd to the respondents to facilitate the maintenance and management of the common parts of the block including the garages and amenity land. The intention to grant an under lease to the lessee was also referred to, but no copy of this was provided.

3. A copy of the above mentioned lease between Douglas Graham Developments Ltd and the respondents was not provided at the hearing. However it was not disputed by the applicants that the lessees were under an obligation to pay contributions to the respondents towards the service charges in respect of repair and maintenance the Grosslea property and that such service charges had been paid by monthly instalments and one off payments over a number of years.

4. The main issues identified in the directions were:

(a) The applicants' liability to pay £826.66 towards the cost of roof repairs.

(b) Whether the additional sum of £673.33 sought in a letter dated 29 July 2009 is reasonable and payable given that the service charge was increased from £60.56 to £100 following an AGM on 16 December 2008.

(c) The applicants' liability to pay £500 towards the cost of proposed electronic gates.

(d) Whether the respondents are entitled to retain £600 paid by the applicants' tenants for parking permit.

(e) Whether the Tribunal should make an order under section 20C of the Act.

Statutory Provisions

5. Section 18 of the Act provides:

In the following provisions of the Act "service charge" means an amount payable by a tenant of a dwelling as part or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

(1) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord in connection with the matters for which the service charge is payable.

6. Section 19 of the Act 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) 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs are incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

7. Section 20 of the Act is supplemented by section 20ZA. These sections require landlords to carry out extensive consultation with the tenants where

they intend to carry out works to which Section 20 applies. In order to recover the costs under the service charge the landlord is under an obligation to comply with the statutory consultation requirements that are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003 1987) ("the Consultation Regulations").

8. Section 20 of the Act contains provisions in respect of limitation of service charges: estimates and consultation. The practical effect is that where the section applies, the amount which a tenant may be required to contribute under his lease to the service charges is limited to £250 unless the statutory consultation requirements have been either complied with in relation to the works, or dispensed with in relation to the works by a leasehold valuation.

9. The Consultation Regulations are made under Section 20 of the Act. The relevant schedule is Schedule 4 Part 2. This is arranged in a number of paragraphs.

There is provision for the service of a notice by a landlord on the tenant in which the landlord must describe in general terms the works proposed to be carried out, give the landlord's reasons for considering it necessary to carry out the proposed works, invite the making in writing of observations in respect of the works within a specified period, and specify an address to which these may be sent. The landlord must have regard to any observations sent in accordance with this. The notice of intention should also invite the tenants to name a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

There are provisions for the landlord to obtain estimates, supply a copy of what is known as a paragraph (b) statement to the tenants and make all estimates available for inspection. Where observations are made within the relevant period, the landlord shall have regard to those observations.

10. Under Section 27A of the Act, an application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable.

The Hearing

11. A hearing was held at which Ms R Adu-Twumwaa and Mr W Essandoh attended in person. They made submissions and gave oral evidence. The respondents were represented at the hearing by Ms C Parnell, Senior Estates Manager at TGEM. Mr R Leslie, Senior Estate Manager at TGEM gave oral evidence.

12. Ms Parnell said that she had been involved with the Grosslea property since October 2009. She said that she had had regard to the previous service charge records.

13. Ms Adu-Twumwaa said that she and Mr Essandoh had been told by the respondent in 2007, when they bought the lease of the flat, that any roof expenditure that was anticipated would be met through existing service charge funds. However they received a demand dated 29 July 2009 for £826.66 for roof works and for a further sum of £673.34 for 'additional works'.

14. She said that she wrote to the respondents' director and secretary and to JJ Homes Limited (the then managing agents) on 16 August 2009 and 18 September 2009, but received no reply. In January 2010 she said that she spoke to Ms Parnell. She asked for a breakdown of the figure for the 'additional works' but was not given an explanation. However, it was now the respondents' position that this charge was in respect of proposed installation of electronic gates. She was unable to attend the AGM but was sent a copy of the Minutes.

15. She said that the service charge instalments are paid monthly and this had been the position since the applicants moved in. The sum payable had previously been £60.56 including insurance, but was increased to £75 in about September 2008 and then to £100 per month including insurance with effect from January 2009.

16. In 2007 the applicants had been charged £500 for electronic gates at the Grosslea property. The money was paid by instalments of £50. The gates had not been installed but the money had not been refunded. Ms Abu-Twumwaa said that the applicants were also charged about £500 in 2007 for garage roofing which was also paid by instalments.

17. She said that she had been charged £24 by the respondents for late payment of the service charge notwithstanding that she did not know who to pay until January 2010. A cheque that she paid in October 2009 was returned by JJ Homes Limited the former managing agents. However the applicants were not informed of the identity of the new managing agents and found this out in January 2010 as a result of the parking issue. Ms Parnell confirmed that the respondents usually charge a late payment fee.

18. Ms Adu-Twumwaa said that a private clamping company had clamped the car of their tenants who live in the flat. The tenants had paid £600 in respect of this. She contended there was no warning that the system was going to be introduced. However she agreed that by the time of the clamping incident that time there was a sign at the property about the clamping system. There is a very small car park at the Grosslea property for about ten cars, on a first come, first served basis. Ms Parnell said that this sign had been erected a week before the system was introduced. The applicants have now received a parking permit.

19. Ms Parnell said that the electronic gates were not installed by JJ Homes in 2007 as most of the service charges for this item were not paid. However it was not disputed that £500 had been paid by the applicants. There had been no specific consultation in respect of the electronic gates works and there was no commencement date planned, although she anticipated that these works might take place towards the end of 2010. Mr Leslie thought that the money raised in 2007 for the electronic gates may have already been used for general upkeep of the property.

20. Ms Parnell confirmed that works to the garage roof had been carried out about two years ago. The roof works were separate works and were commenced about six weeks before the hearing. This work included the replacement of three flat roofs.

21. Ms Parnell said that the roof works had been carried out by a firm called Warren Berry Roofing. There was no copy of the builder's estimate or the instructions to the builders available at the hearing. Ms Parnell said that the respondents' directors were supervising the works.

The parties' cases

22. In their Statement of Case, the respondents, Douglas Graham Management Ltd, stated that TGEM took over the management of the Grosslea property from JJ Homes (Properties) Limited in October 2009.

23. During this handover, they said that TGEM were told about a number of ongoing issues at the Grosslea property. Quotations had been obtained in July 2009 for the roof works and for automatic gates to be erected. It was submitted that the roof works were required because of ongoing leaks.

24. The respondents said that there were insufficient funds in the service charge fund to cover the cost of the proposed works. It was therefore necessary to raise additional funds from the lessees.

25. The respondents said that a notice under Section 20 of the Act had been served. A copy of the section 20 notice of intention dated 8th May 2009 and notice of proposal dated 15th July 2009, which had been sent to the lessees were provided. The estimates referred to in the notice dated 15th July did not include an estimate from Warren Berry Roofing.

26. A notice from TGEM to lessees dated 15 November 2009 stated that the consultation period under the section 20 procedure had expired and that the respondents had entered into a contract for carrying out the works described in the Notice of Intention dated 8th May 2009 with Warren Berry Roofing. The reason given was that that firm had prepared the most competitive tender.

27. The notice dated 15th July 2009 enclosed what was described as a "Schedule of Decoration costs showing the amounts due from you...." However the notice dated 8th May described the works as 'replacement of Main roofs'.

28. A document in the hearing bundle on the respondent's notepaper was headed "*A breakdown of roof cost Grosslea*". This stated:

	£	
Cost with 10 year guarantee	*14700*	
VAT	*2200*	
Total	*16900*	
Fees	*1837.5*	
VAT	*2735.62*	
		2113.12
Total	*16900*	
	2113.12	
Cost per flat divided by 23	*£826.66 per flat*	

Please be advised that even although the cost per flat for the roof is £826.66 per flat each leaseholder will be asked to pay the sum of £1,500 per flat to cover the additional works needed on the development.

29. Two demands were sent to the lessees by the respondents via JJ Homes for £826.66 and £673.34. The Tribunal noted that mathematically these figures amount to a total of £1,500, as mentioned in the note to the above breakdown.

30. A demand dated 29th July 2009 was sent by JJ Homes to the applicants' correspondence address. This included two items dated 28th August 2009. The first was for "Roof Works" for £826.66 and the second was for "Additional Works" for £673.34. Also demanded was the interim service charge of £100. A cheque dated 29th October for £100 was sent to JJ Homes, but was returned on about 10th November 2009 with a note stating that they were no longer the managing agents.

31. The Tribunal were informed that the directors of the respondents decided that the management of the Grosslea Property should be transferred to another firm of managing agents. TGEM took over the management in October 2009.

32. In their statement of case the applicants said that in 2007, when they purchased the lease of the flat, they were informed in writing that there was no major expenditure forecast for the service charges and that the roof repair would be met by the service charge funds.

33. A letter dated 15 January 2007, stamped received on 24 January 2007 ("the 15 January 2007 letter"), from the respondents to the applicants, stated under the "General Notes" section that:

There is no major expenditure scheduled forecast which will create a one off payment in addition to the monthly service charge of £60.56..... Roof repairs will be required within the next 6 months however will be met from existing funds. Quotes have not been sought at this stage..... Douglas Graham Management is run by residents on a voluntary basis to keep costs as low as possible and given the limited resources in both time and money there are no regular payments to the reserve fund and work will always be met from existing funds wherever possible.

34. There was a dispute between the parties in respect of the liability to pay for the roof works to the Grosslea property. Amongst other things, the applicants questioned why they had not been informed in the 15 January 2007 letter that they would have to pay for roof works, and why they were told that roof works would be met from existing funds. The applicants also questioned whether the roof works mentioned in the 15 January 2007 letter were different to the roof works in the demand dated 29 July 2009.

35. In their response, the respondents said that the 15 January 2007 letter referred to garage roof works, which were carried out and the cost met from the service charge. It was also pointed out that this letter was over three years old.

36 The respondent's claim, that the 15 January letter referred the garage roof works, rather than major works to the roof at the Grosslea property, was disputed by the applicants. They said that they were charged separately for their contribution towards the garage roof works in 2007 and that the garage roof works were carried out.

37. In support of the contention that payments were sought by the respondents in 2007 in respect of garage works, the applicants provided a copy of a document headed "monthly demand" from the respondents dated 25th November 2007 in respect of the subject premises included the following items:

Flat number 15....

Garage payment arrears	100.00
Garage payment	50.00

38. There was a dispute between the parties in respect of the charge for the electronic gates / fences.

39. The applicants claimed that they had been asked to pay £500 towards the cost of electronic gates / fences, about two months after the 15 January 2007 letter. They had paid this sum. However the works had not been carried out.

40. The respondents contended that the proposed electronic gates were required to stop problems with non-residents parking at the Grosslea property and vandalism. It was submitted by the respondents that the works to erect the new gates had been delayed (and had not yet been carried out) because insufficient funds had been received to fund the electronic gates project. However it was not disputed that the applicant's had paid £500 towards electronic gates in 2007.

41. The applicants also disputed liability on the basis that they contended that it was agreed at the AGM, which they had not attended, that the monthly service charge would be raised to £100 in order to raise money for 'other works' that were required.

42. There had been an increase in the service charge in early 2008 and also in December 2008. It was submitted that these increases were not due to an increase in insurance premiums, nor that the level of service charges had not been increased for many years.

43. The applicants said that the reason given by or on behalf of the respondents for the second increase in 2008 was: *however due to the amount of work that will be required at Grosslea it was agreed that the monthly service costs will be rounded up to £100.00 per calendar month including insurance* as was stated in the Minutes of the AGM of the respondent dated 16 December 2008.

The Tribunal's findings and conclusions

Roof works

44. The main points raised by the applicants in opposition to the respondent's claims can be generally summarised as follows. They contended that in respect of the roof works and additional works they had been informed in writing in 2007 that roof works would be met from the existing service charge funds; that they had made a contribution to the electronic gates of £500 in about 2007 and they should not be required to pay any further sums to this project; and that the general increase in the monthly rate paid in respect of the service charge had been increased to cover any other works required.

45. The 15 January letter was somewhat ambiguous in respect of the works referred to. However, the Tribunal considers that it is more likely than not that the works referred to in that letter were works to the garage roof or some other unspecified works to the roof of the Grosslea property. The Tribunal does not consider that the applicants' contractual obligations to contribute towards the costs of the current roof works at the Grosslea property are

limited on the basis of the letter 15 January 2007 letter. Further, the Tribunal were not persuaded on the evidence that the monthly service charge figure meets the applicants' total liability for services charges.

46. The evidence provided did not include a 'statement of estimates in relation to the proposed works' to support the respondents' claim for £826.66 in respect of the roof works. However, it was not disputed that major works to the roof had been recently undertaken. The applicants did not contend that this figure was unreasonable for the works undertaken, nor that the cost had not been incurred by the respondents in respect of the roof works. In the circumstances the Tribunal finds that the sum of £826.66 was reasonably incurred in respect of the roof works.

47. However, on the documents and evidence provided, the Tribunal is not satisfied that the respondents have complied with the requirements of the statutory consultation requirements. In particular the notice dated 15 July 2009 refers to a 'Schedule of Decoration costs' enclosed (which was not produced at the hearing) which is inconsistent with the description in the notice dated 8 May 2008 describing the works to be carried out as 'Replacement of Main Roofs'. The Tribunal was informed by Ms Parnell that the contractors who carried out the works at the Grosslea property were Warren Berry Roofing. This was also referred to in the letter dated 15 November 2009. However, no estimate from Warren Berry Roofing was referred to in the notice dated 15 July 2009, which referred to the selected estimates for the proposed works and named other contractors. The lowest estimate referred to in that notice was from Rosewell Roofing. In the circumstances the Tribunal finds that the consultation regulations were not complied with in respect of any estimate provided by Warren Berry Roofing and accordingly the sum recoverable from the applicants for the roof works is limited to £250 for the roof works.

48. The Tribunal notes that the respondents have not made an application for dispensation under section 20ZA of the Act.

Additional sums / electronic gates

49. The claim for £673.44, the difference between £826.66 and £1,500, was demanded for unspecified 'additional works'. The respondents provided no satisfactory explanation as to the 'additional works' in respect of which this demand was made. These works were not the roof works for which quotations had been obtained. It now appears that this charge may be in respect of electronic gates in respect of which the applicants had already paid their contribution in about 2007, without the works having been undertaken, or the money credited or returned. The Tribunal were informed that this money may

have been spent on general upkeep of the property but the position is uncertain.

50. On the evidence provided, the Tribunal finds that the sum of £673.44 claimed by the respondents is not payable by the applicants to the respondents.

Parking charge

51. The subject premises are let by the applicants to a tenant. In about January 2010 his car or cars were clamped and/ or towed away and he was charged £600. The applicants claimed that they were previously unaware that TEGM were managing the estate

52. As stated above, the applicants received a note from JJ Homes on about 10 November 2009 stating that they were no longer the managing agents, a copy of which was produced. They dispute having been informed of the identity of the new managing agents until January 2010.

53. The applicants said that they have never lived at the subject property, nor was it their correspondence address. They produced an email dated 15 September 2009 sent by JJ Homes to the respondents informing them of the applicants' correspondence address and submitted that during the period of JJ Homes' management that that firm had been aware of that address.

54. The applicants questioned why the respondents had not issued them with a parking permit and why their tenant, Mr Ali Baig, had been charged £600 in respect of parking which was free to other leaseholders. They accepted that it was their responsibility to ensure that their tenant had a parking permit, but submitted that it was the respondents' responsibility to provide a parking permit and inform them when the system was introduced and that they should have sent this to the applicants' correspondence address of which JJ Homes were aware and to which they had been sent service charge demands.

55. The respondents provided a copy of a letter dated 15 October 2009 from Ms Parnell to Ms Adu-Twumwaa. This letter was sent to flat 15. In the letter Ms Parnell introduced herself as the new Estate Manager and stated that Tyser Greenwood was the new Estate Management Company. Contact details were provided in the letter. In a letter dated 24 November 2009, addressed to Ms Adu-Twumwaa at flat 15, she was requested to complete an enclosed contact details form.

56. In a further letter dated 17 December 2009 also addressed to Ms Adu-Twumwaa at flat 15, Ms Parnell stated that she was 'writing to all the leaseholders in respect of the clamping scheme which was effective from 7 January 2010. This explained the clamping system, stated that signs had already been erected at the Grosslea property, and stated that a permit

was enclosed. The letter explained that the permit must be displayed in the front window of the vehicle and that there was one per property.

57. A parking permit has now been provided. The applicants suggested that £600 be set off against their service charge liability and said that they would refund this amount to their tenant.

58. The issue of whether respondents or their contractors were entitled to institute a scheme of parking by licence only, clamp cars parking or charge in respect of this is not a matter within the Tribunal's jurisdiction. No sum has been paid by the applicants and this charge does not form part of the service charges. In the circumstances the Tribunal makes no finding in respect of the parking charge.

Late payment charge

59. The Tribunal finds that on the evidence provided that the applicants were not informed, at their correspondence address provided to JJ Homes, of the identity of the new managing agents and did not discover this until January 2010. However, there is insufficient information on the documentation provided, in respect of the late payment charge and how this is made up for the Tribunal to make a finding as to whether this is payable to the respondents.

Section 20C application

60. Under Section 20C of the Act, a tenant can make an application for an order that all or any of the costs incurred, or to be incurred by the landlord in connection with any 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 person specified in the application.

61. Mr Leslie said at the hearing that the respondents did not oppose the Section 20C application. The Tribunal considers that the applicants were justified in making the application and in the circumstances considers that it is reasonable and appropriate to make an order under section 20C that the costs incurred by the landlord in connection with the proceedings before the Tribunal are not to be regarded as relevant costs in determining the amount of the service charge payable by the applicants.

Summary of decision

62. (1) The sum payable by the applicants to the respondents in respect of the roof works is limited to £250.

(2) The sum of £673.44 for additional unspecified works is not payable by the applicants to the respondents.

(3) The Tribunal finds that a sum of £500 was paid by the applicants in 2007 towards the installation of electronic gates which were not installed.

(4) The Tribunal has no jurisdiction in relation to the parking charge.

(5) The Tribunal makes an order under Section 20C of the Act.

CHAIRMAN: A Seifert Anne Seifert

Date: 24 July 2010

Members of the Leasehold Valuation Tribunal:

Miss A Seifert FCI Arb
Ms S Coughlin
Mr A D Ring