

5344

MAN/00CZ/LAC/2010/0010

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
COMMONHOLD AND LEASEHOLD REFORM ACT 2002 – SCHEDULE 11**

Property: 2 Viewlands, Huddersfield, HD2 2HY
Applicants: Mr D & Mrs B Harper
Respondent: Fairhold (Huddersfield) Limited
Tribunal: P J Mulvenna LLB DMA (Chairman)
Mrs E Thornton-Firkin BSc MRICS
Date of Hearing: 7 September 2010

INTRODUCTION

1. By an application dated 23 June 2010, the Applicants applied for the determination of the reasonableness of an administration charge.
2. The Respondent is the freeholder of the Property.

THE HEARING

3. Directions were issued by Mr L Bennett, procedural chairman, on 29 June 2010.
4. The substantive hearing of the application was held at the Panel's offices, 5 New York Street, Manchester, on 7 September 2010. The parties had agreed to a determination on papers and neither was present nor represented.
5. The Tribunal had before them the written evidence and submissions of the Applicant and the Respondent.

THE ISSUE FOR DETERMINATION

6. The Appellants have challenged as being unreasonable an administration charge of £680, in addition to a payment of £80 already paid (£40 in respect of each extension), demanded by the Respondent for considering the grant of retrospective consent for two extensions to the Property completed in May 1999 and September 2001, respectively.

THE LEASE

7. The Property is held for a term of 999 years from 25 March 1972 under a Lease ('the Lease') made between The Mayor Aldermen and Burgesses of the County Borough of Sheffield (1) Jack Brook (Builders) Limited (2) and Derek Harper and Barbara Harper (3). It is to be observed that the Applicants are, together, the third party to the Lease.

8. The Tribunal has read and interpreted the Lease as a whole but in reaching its conclusions and findings has had particular regard to Clause 2(3) which provides:

‘The Lessees jointly and severally covenant with the Corporation as follows:-

Not to pull down add to or alter any of the erections or buildings at any time standing or being on the demised premises nor to erect any other erection or building on any part of the demised premises without the consent first obtained of the Corporation in their capacity as owners of the reversion immediately expectant on the term hereby granted.’

9. The Tribunal is satisfied that there is privity of estate and that the covenant is enforceable by the Respondent against the Applicants.

THE LAW

10. Section 19(2) of the Landlord and Tenant Act 1927 provides:

‘In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against the making of improvements without a licence or consent, such covenant condition or agreement shall be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that such licence or consent is not to be unreasonably withheld; but this proviso does not preclude the right to require as a condition of such licence or consent the payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to the landlord, and of any legal or other expenses properly incurred in connection with such licence or consent nor, in the case of an improvement which does not add to the letting value of the holding, does it preclude the right to require as a condition of such licence or consent, where such a requirement would be reasonable, an undertaking on the part of the tenant to reinstate the premises in the condition in which they were before the improvement was executed.’

11. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides, insofar as it is material to the present case –

‘Meaning of “administration charge”

1 (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals...

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

5 (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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 at or by which it is payable, and
 - (e) the manner in which it is payable.
 - (2) Sub-paragraph (1) applies whether or not any payment has been made.
 - (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.'
12. The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 provide -
- '1(2) These Regulations apply where, on or after 1st October 2007, a demand for payment of an administration charge is served in relation to a dwelling in England.
 - 2. The summary of rights and obligations which must accompany a demand for the payment of an administration charge must be legible in a typewritten or printed form of at least 10 point, and must contain [the information prescribed by the Regulations].'

THE DETERMINATION AND DECISION

13. The Tribunal considered the evidence and submissions made by and on behalf of both parties and exercised their own professional judgement and found as follows.
14. The Applicants say that the charges made by the Respondent are unreasonable. In support of their case, they have referred to two previous decisions of the Tribunal (MAN/00BU/LVA/2009/0001 and MAN/00BQ/LAC/2010/0006). The Tribunal is not bound by its previous decisions and each case must be considered on its own merits having regard to its particular facts. The principles upon which reasonableness is determined will, however, be consistent.
15. The Respondent maintains that the charges are reasonable. The Respondent has submitted that the charges are reasonable for the following reasons:
- (a) the breach has to be fully investigated which entails a considerable amount of administrative time;
 - (b) the Respondent has had to assess the application fully and the impact on adjoining properties;
 - (c) it is necessary for the Respondent to commission a surveyor to inspect the works and assess whether they should be approved;
 - (d) a formal consent document legally drafted needs to be prepared;
 - (e) a charge of £340 for each alteration is not considered in any way to be unreasonable especially as it includes regularising breaches of the terms of the Applicants' lease.
16. The charges which might be recovered under Section 19(2) of the Landlord and Tenant Act 1927 are 'a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to the landlord, and of any legal or other expenses properly incurred in connection with such licence or consent.'

17. The approach adopted by the Respondent appears to emphasise the breach of covenant rather than the grant of retrospective consent. In this particular case, the breach was admitted voluntarily by the Applicants. The Lease is for a term of 999 years and any enhancement or diminution will not affect the value of the reversion. The Tribunal would expect a reasonable freeholder to have regard to the length of the unexpired term when considering the nature and extent of any processes involved in considering the grant of consent. The alterations will, however, enhance rather than diminish the security for the reserved rent. There does not, on the evidence before the Tribunal, appear to be any basis upon which a valid claim can be made for charges incurred 'in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to the landlord.' There is no evidence of any damage, diminution of value or of any costs having been incurred. The right is not absolute – it must be reasonable and, in the absence of relevant evidence, the Tribunal cannot find the element of the charge relating to these issues to be reasonable.
18. The sole issue upon which the Tribunal finds on the evidence that a reasonable charge can be made is in relation to 'any legal or other expenses properly incurred in connection with' the grant of retrospective consent for the two extensions. The Tribunal finds as a matter of fact that, whilst there are two extensions, there is a single application. It is unnecessary for formality in the preparation of the consent. It simply needs to be in writing. The Respondent is entitled to recover reasonable costs. There is no evidence before the Tribunal of actual costs incurred by the Respondent.
19. The Tribunal finds, based on its own knowledge and experience, that the charges made by the Respondent are unreasonable and that a reasonable charge would be £200.00 plus VAT, including the £80.00 already paid by the Applicants. The Tribunal considers that when the request for retrospective approval was made, a single fee of £40.00 would have been reasonable. The fact that there were two extensions could not reasonably have been expected to increase the costs incurred by the Respondent at that stage.
20. The administration charge will become payable on service by the Respondent of a demand which complies with Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007.

COSTS

21. Neither party asked for an order for costs to be awarded against the other. The Tribunal did, however, consider the power to award costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides:

'(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.’

22. The Tribunal did not consider that any of these circumstances arose in this particular case and concluded that it would not be appropriate to award costs to either party.

23. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides:

‘(1) Subject to paragraph (2), 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.

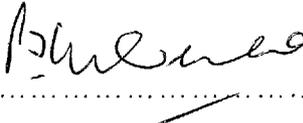
(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).’

24. The Tribunal has reviewed all the evidence in this case and is satisfied that the Applicants were willing and able to pay reasonable charges. The Respondent was unwilling to accept the Applicants’ offer. In choosing to continue to pursue the matter in the way they did, the Respondent acted unreasonably. In these circumstances, the Tribunal directs that the Respondent reimburse the Applicant’s fees in full.

ORDER

25. That the administration charges for the grant of retrospective consent for the two extensions at the Property be £200.00 plus VAT, including the £80.00 already paid by the Applicants to the Respondent.

26. That the Respondent reimburse the whole of the fee paid by the Applicants in respect of this reference.

Signed.....

P J Mulvenna

Chairman

7 September 2010