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H M COURTS & TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case Reference	:	**CAM/22UB/LSC/2012/0081**
Property	:	**108 Langham Crescent, Billericay, Essex CM12 9RF**
Applicant	:	**Basildon Borough Council**
Respondent(s)	:	**Edward Czenzak**
Date of Transfer from Basildon County Court	:	**16th May 2012 (received 22nd June)**
Type of Application	:	**To determine reasonableness and payability of service charges.**
Date of Hearing	:	**2nd October 2012**
Appearances	:	**Mr Currie, Counsel, appeared for Basildon Borough Council** **Mr Vickers, Counsel, appeared for the Respondent**
Tribunal	:	**Chairman: Mr Graham Wilson** **Members: Mrs Evelyn Flint DMS FRICS IRRV** **Mrs Lorraine Hart**

DECISION

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(1) The Tribunal determined that the amount properly and reasonably payable by the Respondent for the works described in an invoice dated 1st July 2011 was £123.82.

Reasons

Background

1. This matter was referred to the LVT by the Basildon County Court by an Order dated 25th May 2012. The Tribunal assumed that the

question for it was the reasonableness and payablility of the service charges claimed.

2. The amount claimed was £351.86, being the amount of the invoice dated 1st July 2011, plus interest. The invoice was for works to soffits and guttering at 106 and 108 Langham Crescent, Billericay – a block of four flats. The Respondent, the tenant of 108, had a long lease dated 10th March 1989 for 125 years. The Respondent's defence in the County Court was that the works had been carried out inadequately and "the workmanship [was] shoddy and the materials used [were] of poor quality" and did not match existing guttering, soffits etc.

The Law

3. This is contained in the Landlord and Tenant Act 1985, the relevant provisions of which are as follows:

> 27A Liability to pay service charges: jurisdiction
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> (1) An application may be made to a leasehold valuation tribunal for a determination whether 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 at or by which it is payable, and
> (e) the manner in which it is payable.
>
> 19 Limitation of service charges: reasonableness
>
> (1) Relevant costs shall be taken into account in determining the amount of 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 have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.
>
> 20 Limitation of service charges: consultation requirements
>
> (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either –
> (a) complied with in relation to the works or agreement, or
> (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal...
> (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

The appropriate amount was currently £250.

Inspection

4. The Tribunal inspected the property in the presence of the parties. Its observations are recorded so far as they are material elsewhere in this Decision.

Hearing

5. Mr Currie appeared for the Applicant. He called Mr Stokes, Technical Manager and Mrs Keys, a Home Ownership and Leasehold Services Manager.

6. As the Hearing Bundle made clear, the consultation provisions were in issue. Mr Stokes explained, however, that the work to the front and the back soffit/guttering sections had been carried out at different times and that it should not be thought that the invoice, composed as it was of three items, had been devised to circumvent the consultation provisions. The defects to the front and back had been reported about three months apart. That accounted for two of the three invoice items. The third was for the removal of old asbestos soffits carried out by another contractor and which, it was later conceded by Mr Vickers for the Respondent, was to be regarded as "separate".

7. Mr Stokes then explained that the choice of different materials for front and back was justified as both were, to paraphrase Mr Stokes, "serviceable". The "sagging" to which the Tribunal's attention had been drawn at the inspection, was easily put right. On cross-examination Mr Stokes conceded that the "sagging" was not satisfactory. It was also suggested to him that it would have been "reasonable" to have used the same materials, and what is more, the same coloured materials, to front and back.

8. Mrs Keys confirmed that the repair works were properly treated separately – as indeed was the removal of the asbestos. Mrs Keys also drew attention to the lease provision which required the Applicant as Landlord, so far as practicable, to "equalise" the costs from year to year. She rejected the suggestion that the works should have been done at one time. The defects had been reported at different times.

9. Mr Vickers called the Respondent. The Respondent developed his County Court defence in the following way. He relied on the report of a surveyor, a Mr Hughes, whose report was contained in the Hearing Bundle. He, the Respondent, did not criticise the asbestos removal cost. He did, however, criticise the work to the front of the block because the fascia was already, only eighteen months after the work had been done, "sagging". The choice of different materials front and back, and the choice of materials in a different colour, was inexplicable. The rear guttering was also insufficiently "graded" – that is to say that it did not fall sufficiently towards the down pipe.

10. In Mr Hughes' opinion, the works to front and rear were unsatisfactory on the basis both of the choice of materials and the standard of work (as evidenced by the sagging and the failure to "grade"). He thought that uniform materials should have been adopted.

11. In conclusion, Mr Vickers argued that the work should have been invoiced as one. The consequence would be, that, in the absence of consultation, the £250 statutory limit would apply. But, said Mr Vickers, work to the front and rear was unsatisfactory and the different colour of the gutters to front and back was significant. In summary, the quality of the work was far short of what it was reasonable to expect.

12. Mr Currie responded by emphasising that it simply could not be assumed that the works could have been done together, given the time that had elapsed between them being reported. What is more, the "equalisation" obligations in the lease could not be ignored. It may be true that there was sagging, but that was remediable. The choice of different materials to front and back, and indeed the different colour of materials, did not affect serviceability, which was the most important issue. A brief inspection of the surrounding buildings showed that a variety of colours for "rainwater goods" was common.

13. The Tribunal's Decision, based upon its inspection, and the evidence that it heard and read was:
13.1 It was reasonable to regard the work to front and back separately. The gutters and soffits were not continuous, being to either side of a gable end. However, the suggestion that the removal of the asbestos soffits (to the front) was a separate item (and which appeared to be conceded) was rejected. It was part and parcel of the works to the front.
13.2 The quality of the works and the choice of material was not satisfactory. The work was deficient because the soffits sagged at the front and the guttering to the rear was not adequately graded. The different colour of the materials was significant, and what was reasonable did not end with serviceability.

14. If the work to the front and the asbestos removal were amalgamated, the recoverable amount would be subject to the £250 limit (their being no application for a dispensation in this respect).

15. However, the Tribunal decided that the recoverable amount should be reduced to reflect the sagging and the inadequate choice of materials, to the sum of £190. The sum claimed in respect of the rear of the building should also, it was decided, be reduced by £40 to reflect the inadequate grading, leading to a recoverable amount of £210.

16. From the total of the recoverable amounts of £400, there would be deducted the amount that had been taken from the reserve account of £276.18. That led to a total "net" recoverable amount of £123.82 and the Tribunal so determined.

Graham Wilson

Date: 2nd October 2012.