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**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/OOBR/LAC/2013/0011**

Property : **35 Sandringham Road, Boothstown,
Manchester M28 1LX**

Applicant : **Mr David Garvey**

Respondent : **Ashby's Eling Brewery Company Limited**

Type of Application : **Commonhold & Leasehold Reform Act 2002
Schedule 11, Paragraph 5**

Tribunal Members : **Laurence Bennett (Tribunal Judge)
Jonathan Holbrook (Tribunal Judge)**

Date of Decision : **22 November 2013**

DECISION

Application

1. Mr David Garvey applies for a determination under Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 of his liability to pay and reasonableness of an administration charge relating to 35 Sandringham Road, Boothstown, Manchester M28 1LX (the Property).

Preliminary

2. The Applicant and the Respondent are the respective owners of the Lessors and Lessees interest in the Property created by the lease specified below.
3. The application was received on 5 August 2013.
4. Directions dated 22 October 2013 made by a Deputy Regional Judge of the Tribunal included: "It is considered that this matter is one that can be resolved by way of submission of documentary and other written evidence leading to an early determination." The directions gave opportunity for the parties to request a hearing. No request was made.
5. The Applicant and Respondent provided submissions and documents in accordance with the directions.
6. The Tribunal convened on 22 November 2013 without the parties to determine the application.

The Law

7. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act) provides that:-
 - 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 application for such approvals,
 - (b) for or in connection with the provisions of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) In respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) In connection with a breach (or alleged breach) of a covenant or condition in his lease.
 - 1(3) In this part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither –
 - (a) Specified in his lease, nor
 - (b) Calculated in accordance with a formula specified in his lease
 - 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 the appropriate tribunal for 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

8. The operation of the Act was brought into effect by SI 2003 No 1986. Paragraph 8 of Schedule 2 of that instrument states:

Paragraphs 2-5 of Schedule 11 shall not apply to an administration charge that was payable before the first commencement date.

9. The first commencement date was 30 September 2003

The Lease

10. The Applicant holds the leasehold interest in the property created by a lease dated 16 December 1968 made between Lancashire & Cheshire Building Company Limited of the one part and Wilfred O'Brien and Josephine Winifred O'Brien of the other part for a term of 999 years from 1 September 1966 (less 10 days) (the Lease).
11. Paragraph 5(j) of the Lease contains the Leaseholders covenant: "Not to erect any permanent or temporary building on the Property without the consent in writing of the Lessor."

Facts and Submissions

12. On 23 January 2013 the Applicant wrote to the Respondent indicating that they wished to replace an old conservatory with a modern conservatory and stating: "We should be grateful if you would confirm your acceptance of knocking down the old and erecting a new conservatory."
13. After further correspondence the which included provision of a drawing and a note of materials the Respondent replied: "..... and can confirm that we are willing to give this our consent subject to approval costs of £360 being paid." The Respondent stated in submissions that this represents 1% of the estimate construction costs.
14. The Applicant has offered the sum of £50 "with the aim to resolve the matter amicably" but submits that the Lease does not make a provision for a payment for consent

Tribunal's conclusions with reasons

15. We find that although the relevant provision within the Lease does not make an express provision for payment that it is reasonable for a payment as a condition of consent to defray the Lessor's expenses. In the absence of a reasonable payment we do not consider consent has been unreasonably withheld.
16. Noting the provisions of the Lease and our conclusion above, the request made by the Respondent to the Applicant is a variable administration charge falling within Paragraphs 1(1)c and (d) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and within the Tribunal's jurisdiction.
17. We have considered the work that might be involved in considering the Applicant's request and preparing a letter of consent. We accept as happened that sufficient

details of the work should be requested and note that following receipt of this information consent was indicated subject to a payment. This involved receipt by the Respondent of 3 letters and 3 short letters in response. The correspondence is routine and does not indicate issues of complexity.

18. The Respondent has calculated a payment on the basis of estimated construction cost. This appears a premium rather than the expense in giving consent. The Lease does not provide for a premium nor does the resultant sum reflect the reasonable cost of the consent activity.
19. Bearing in mind the administrative work indicated and the routine nature of the correspondence and taking into account the consideration undertaken by the Respondent we find that reasonable costs would amount to £75. We have had regard to recent Upper Tribunal decisions in similar circumstances.

Order

20. The sum payable to Ashby's Eling Brewery Company Limited by Mr David Garvey for the consent requested shall be £75 + VAT if applicable.