



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

Case Reference : **CHI/43UG/LSC/2013/0101**

Property : **FLATS 1-10 IMPERIAL HOUSE, STATION
PARADE, VIRGINIA WATER, SURREY GU25
4AA**

**Applicant
Representative** : **A2 DOMINION HOUSING GROUP LTD
Ms. C. Nixon Area Leasehold Manager
Ms. Matraxia Leasehold Solicitor
Mr. McAleer Cyclical Surveyor
Mr. Hayward Surveyor, Property
Tectonics**

**Respondent
In attendance** : **THE LEASEHOLDERS
Mr. S. Ludolf (flat 1)
Mr. M. Pearce (flat 5)
Mr. S. Lock (flats 7 & 8)**

Type of Application : **Section 27A of the Landlord and Tenant Act 1987**

Tribunal Members : **Judge D. R. Whitney LLB(Hons)
R. A. Potter FRICS**

Date of Hearing : **28th February 2014
Staines County Court**

Date of Decision : **24th March 2014**

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DECISION

1. The application was made by the freeholder, A2 Dominion Housing Group Limited, in respect of Flats 1-10 Imperial House, Station Parade, Virginia Water, Surrey GU25 4AA ("the Property"). The Applicants sought a determination as to the costs of certain major works to be undertaken to the Property.
2. A specification had been prepared by Property Tectonics and was included in the bundle supplied to the Tribunal but in general terms the works were of redecoration and repair to the external parts of the building, including windows, and internal communal area redecoration and carpeting.

THE LAW

3. In reaching its determination the Tribunal had regard to Sections 27A and 19 of the Landlord and Tenant Act 1985.

INSPECTION

4. The Tribunal inspected the property immediately prior to the hearing in the presence of all those who attended at the hearing.
5. The Property was a 1980's red brick constructed block of three storeys. The roof was made of interlocking concrete tiles with some of the parapet walls appearing to have lead capping. The majority of the flats were accessed by way of a communal staircase. There was a car park to the rear and a number of car parking bays at ground floor level with the flats above. Some scaffolding was in place but the Tribunal was advised this was for other repair works not connected to the issue before it currently.
6. The Tribunal were shown flat 1 by Mr Ludolf. This flat had its own separate entrance directly off Station Parade. Mr Ludolf pointed out he had decorated the external woodwork to his flat at his own expense in the past. In the rear corner of the bedroom where the flat backed on to the car parking bays to the rear there was a damp patch.
7. The Tribunal were shown the car parking area to the rear. There was evidence of water staining. Some of the guttering appeared to be leaking and the Tribunal noted that various of the windows appeared to be peeling and also some evidence of wood rot particularly to some parts of the windows to the communal stairway.
8. Internally the Tribunal inspected flats 5, 7 & 8. In flat 5 the windows overlooking the car park were very rotten and clearly in need of urgent repair. The windows in other flats did not appear to the Tribunal to be in such a poor condition as flat 5.
9. The carpeting to the communal areas was worn and there was evidence of significant damp penetration on the third floor landing to the communal stairway. The Tribunal were also shown the storage cupboards and the windows to the same. It was evident repairs and redecorations were required.

HEARING

10. Prior to the hearing beginning the Tribunal had given to both the Applicant and the Respondents a copy of a case report: Continental Property Ventures Inc. v White & Anor [2006]EWLands.
11. At the start of the hearing Mr Lock confirmed that he had now transferred ownership of flat 7 during the week preceding the hearing. Mr Pearce appeared as Secretary of

- the Imperial House Residents Association representing flats 2,4,5,7,8,9 & 10. Mr Ludolf was advancing his own opposition to the Applicants application.
12. The Respondents confirmed that they all agreed that the works were required, in fact it was the Respondents case that they had been pressing for the works to be undertaken for a considerable period of time.
 13. The Applicants confirmed that they would not be looking to charge the costs of this application to the service charge accounts of the Property and so were happy for an Order under section 20C to be made.
 14. The Applicants further accepted that the Tribunal did have jurisdiction to consider, what if any effect failure by them to carry out repairs may have had on the current costs.
 15. The Applicants indicated that they intended to appoint the lowest tender received from Trail Services Limited. The Applicants accepted that works had not been undertaken in accordance with the terms of the various leases. As a result the Applicant intended as a gesture of goodwill to make some reduction to the amounts charged to the Respondents.
 16. The Respondents all accepted that the Applicants had complied with the requirements to consult as laid out in section 20 of the Landlord and Tenant Act 1985 (as amended).
 17. The Respondents relied upon the evidence of Mr Ian Haywood of Property Tectonics who had filed an undated witness evidence which stood as his evidence in support of the application. It was confirmed he was giving evidence as an expert.
 18. He confirmed that there plainly was some historic neglect to the building. He confirmed he was aware that there existed a dispute with the respondents prior to his involvement but had not received copies of any earlier reports or details of the dispute prior to his visit and preparation of the specification. He explained he likes to see a job "afresh" so that he can then work out what is required. He confirmed having visited he had prepared a specification which he believed would lead to all the external parts being repaired and redecorated including all windows and internally all works to be redecorated, carpeted and areas of damp dealt with. He also had made allowance in case any small roof repairs were required. He had not been on the roof but had reviewed this from ground level.
 19. Initially he indicated that he did not necessarily think the costs were any higher as a result of the admitted neglect to the building over many years. He was pressed by the tribunal to consider his Specification and which items might have an increased cost. Mr Haywood did this during the lunch adjournment and then went through his specification. He accepted that various items were costs either entirely incurred as a result of neglect or increased. In his opinion these amounted to about £2000 of the contract sum.
 20. Mr Haywood on questioning confirmed that the tenders received were for a fixed price contract. He assured the Tribunal that the sum would not be exceed save for any extra items not specified. The price and specification covered all items which he believed would be necessary including the cost of repairs to windows, sills etc. The contract included a industry standard contingency of 10%.
 21. In Mr Haywoods opinion at current prices if the redecorations had been undertaken in accordance with the lease and good practice on a regular basis the cost of this would be about £15,000. As to the carpeting this would always have been at the level now being charged. In his opinion the tender received represents good value and should be accepted.
 22. Following a short adjournment the Applicants confirmed that they were offering a 10% reduction to the Respondents as a gesture of goodwill given the admitted neglect. On behalf of the Applicants it was contended that if they had undertake works this would

- have incurred costs which the Respondents would have had to pay. The respondents had not had this expense over the years and account needed to be taken of this.
23. Mr Ludolf then gave evidence on his behalf relying upon his statement dated 30th December 2013 which the Tribunal accepted as his evidence. Mr Ludolf's position was that no monies should be charged to the respondents as a result of the long term neglect by the Applicants and their predecessors. He relied upon a report form Osbourne & Dormer dated 19th May 2011 and which had been referred to in previous proceedings involving the parties before the Tribunal in case reference CHI/43UG/LSC/2011/0036.
 24. Mr Pearce relied upon his statement of case dated sent under cover of letter dated 15th November 2013. His position was that some cost was payable. The amount should be reduced to take account of the neglect at the property and in particular to take account of the damage to the windows, gutters and interior which in his opinion would have been substantially reduced if a proper programme of maintenance had been adopted by the Applicants and their predecessors.
 25. Mr Pearce explained how frustrated all the residents were. They had repeatedly highlighted these issues to the Applicant. He explained the respondents also remain concerned that the actual final cost will end up being substantially greater as a result of the specification proving inadequate. Whilst they understand the offer now made by the Applicants they require the Tribunal to determine the amounts particularly given the distrust felt towards the Applicant.
 26. Mr Lock adopted the position put forward by Mr Pearce. He added that he felt the Applicants had done nothing to the building and he was doubtful that the position would change. He also is concerned as to the quality of the works to be undertaken.
 27. Prior to conclusion of the hearing the Tribunal raised further questions of the Applicant and Mr Haywood. It was confirmed that Property Tectonic would oversee the contract. The contract will be a binding fixed contract and all work would be completed to a reasonable standard. The contractor to be used had been nominated by other leaseholders of the Applicants for a different block. Their work had been found to be of a good standard and as a result they were added to the Applicants list of approved contractors.
 28. The Applicants confirmed that they were charging no management fee. The fee referred to in the documents was Property Tectonics fee for overseeing the contract. This fee would be 10% of the cost of the works (plus VAT) although no one could produce the agreement between the Applicants and Property Tectonics.
 29. At the conclusion of the hearing Mr Ludolf made an application that the Applicants should pay his costs. He had no details of his costs with him but submitted that he should be entitled to recover these as he had had to reply to the Applicants application and had been put to expense as a result of their admitted neglect of the building.
 30. In reply the Applicants contend that there are no grounds for any costs order. The purpose of the application was to clarify and confirm what sums were properly recoverable.

DECISION

31. The Tribunal had regard to all the evidence put before it and included in the various witness statements and bundles received as well as the evidence given at the hearing. The case was an unfortunate one given the now admitted neglect by the Applicant. The Tribunal hopes that once the current major works are completed a proper system of repair and maintenance can be put in place to the benefit of all parties connected with this building.

32. The Tribunal was satisfied (as it seemed were the Respondents) that the works included within the specification were required. Whilst not all the windows were rotten or defective it was apparent from the Tribunal's inspection that a number of windows would require considerable repairs to be undertaken. Investigations would be required to ensure that the damp in the hallway at the very top of the communal stairway was remedied and repaired and then the damage itself made good. The Tribunal considers it would have been better practice if Mr Hayward had been made aware of the detail of the complaints and had inspected the flats internally.
33. As a result whilst the Tribunal noted the assurances offered by the Applicant and Mr Haywood they remain concerned that the contractor may look to increase the costs charged whilst works are undertaken.
34. In reaching its determination the Tribunal makes clear it is on the basis that the contract is a fixed price contract and save for any genuine extra works not included within the specification they would not expect this figure to be exceeded given the representations made by the Applicant and its expert witness.
35. The Tribunal notes that historic neglect is admitted. This was apparent to the Tribunal from its own inspection. With some reluctance the Tribunal accepts that if works had been undertaken costs would have been incurred and therefore there is a "saving" to the Respondents. The Tribunal also notes it had no evidence before it that the capital values of the flats were affected. However the Applicant's expert accepted that certain costs were higher as a result of the neglect and the Tribunal using its own knowledge and expertise believes likely the costs will be greater to deal with the increased level of repairs required to the building as a whole. By way of example the windows in flat 5 will require substantial repairs to be undertaken to make good, if these windows had been regularly treated and repaired then the Tribunal is satisfied that such significant works would not be required.
36. The Tribunal finds that for the works specified the cost proposed of Trail Services Limited of £26,897.56 plus VAT is reasonable save that an adjustment needs to be made to take account of the historical neglect and disrepair.
37. The Tribunal takes account of Mr Haywood's evidence and also the obvious distress and inconvenience that this causes to the Respondents. In the Tribunal's opinion a reasonable deduction from this amount is 10%. The Tribunal determines that a reasonable amount for the works specified as included as Appendix A to the Property Tectonics tender report dated August 2013 is £24,207.80 plus VAT.
38. In respect of the management fee payable for these works the Tribunal determines that the fee payable by respondents be £1500 plus VAT. The Tribunal limits the fee to this level being 10% of the amount which Mr Haywood estimated at today's costs the repairs and redecorations should have cost but for the disrepair. Whilst other works are being undertaken on top of these, such as the carpet replacement, the Tribunal adds nothing to the management fee for these works.
39. Given the concession made by the Applicant and to avoid any uncertainty in the future the Tribunal makes an Order under section 20C that none of the costs of this application incurred by the Applicant are recoverable as a service charge expense.
40. In respect of Mr Ludolf's order that the Applicant pays his costs the Tribunal declines to make an order.
41. The Tribunal is mindful of the application. It was in the Tribunal's determination reasonable given the clear history of discontent for the Applicant to make the application. This has provided the Respondents with a forum and opportunity to set out their complaints and as far as the Tribunal is able and has jurisdiction they have made allowances for the neglect and disrepair. If it proves that the Respondents have concerns about the quality of the works it is open to them to make a future application

to the Tribunal on the grounds that the works have not been completed to a reasonable standard.

42. In summary the Tribunal concludes:

- £24,207.80 plus VAT is a reasonable cost of the major works specified by Property Tectonics
- The management fee for overseeing the same shall not exceed £1,500+VAT
- There be an Order pursuant to Section 20C Landlord and Tenant Act 1985 that the Applicants costs of this application are not recoverable as a service charge expense
- No order made in respect of any costs incurred by Mr Ludolf in replying to the application.

Judge David Whitney LLB(Hons)
Chair

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.