10232

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2014/0168**
Property	:	**14 Campden Road South Croydon CR2 7 EN**
Applicant	:	**Stephen Geoffrey Clacy and Wendy Jean Nunn**
Representative	:	**Dr Barry MacEvoy for MPM Building Surveyors**
Respondent	:	**Mrs D Moss (Flat 1)** **Mr A Masini (Flat 2)** **Mr Z Dean (Flat 3)** **Ms A Hinsley (Flat 4)** **Miss S Price (Flat 5)** **Mr J Baxter (Flat 6)**
Representative	:	**None**
Type of Application	:	**For the determination of the liability to pay a service charge**
Tribunal Members	:	**Dr Helen Carr** **Mr Philip Tobin FRSCS MCIArb**
Date and venue	:	**8th July 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**8th July 2014**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the lean-to addition is not part of the demised property as described in the lease and therefore the replacement of the glass panels to the roof of the lean-to is not recoverable under the service charge.

(2) The tribunal makes the determinations as set out under the various headings in this Decision.

(3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the payability of service charges in connection with proposed major works to be carried out to replace the roof of a lean-to addition to the building .

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. At a Case Management Conference on 1st May 2014 the tribunal determined that the matter was suitable for determination on the basis of paper submissions unless any party requested a hearing. No such request having been made, the matter is now proceeding on the basis of documents and paper arguments provided by the parties.

The background

4. The property which is the subject of this application is a large detached Victorian house divided into 6 flats in 1989. At some time after the grant of the lease of Flat 1, the then lessee of that flat erected a lean-to addition described as a garden room which has a double glazed flat roof. The roof of that lean-to has now fallen into disrepair.

5. Photographs of the building and the lean-to addition were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

6. The Respondents hold long leases of the property which are in identical format and require the landlord to provide services and the tenants to

contribute towards their costs by way of a variable service charge. The specific provisions of the leases will be referred to below, where appropriate.

The issues

7. The Case Management Conference identified the relevant issues for determination as follows:

   (i) Does the garden room form part of the building?

   (ii) Is the cost of replacing glazed panels in the roof at the property recoverable pursuant to the leases?

   (iii) Whether an order under section 20C of the Landlord and Tenant Act 1985 should be made.

   (iv) Whether an order for reimbursement of application fees should be made.

8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The arguments of the Applicant

9. Dr MacEvoy for the Landlord provided a statement of case dated 21st May 2014 and a further statement, described as a supplementary reply dated 11th June 2014.

10. Dr MacEvoy explained that Mrs Moss reported that the glazed roof to the Garden Room, which does not appear on the Lease plan of Flat 1 but is a later addition sited at the rear left hand corner of the building, was in poor repair. The double-glazed panels are misted and the roof is leaking.

11. Mr MacEvoy then issued a Notice of Intention to carry out works which is dated 15th July 2013. He explains that in lessees' responses to the Notice, a common theme was that, the proposed works are not service charge expenditure and costs are not recoverable by the Landlord. He attaches to his statement as an example a response from Miss Hinsley of Flat 4.

12. Mrs Moss had obtained two tenders to carry out the work in 2011. No tenders have yet been obtained by the landlord but Dr MacEvoy expects the costs will be around £2,500.

13. It is the belief of the landlord, and there is no evidence to the contrary, that the Garden Room was added to the property by a pervious lessee in or around 2000 without the landlord's knowledge. There are no deeds of variation to the lease of Flat 1 and no licences for alternation have been entered into.

14. Nonetheless the landlord considers that the Garden Room, regardless of the circumstances of its construction properly forms part of the Building. He relies on Clasue 4 of the Third Schedule to the lease which states:

> Full right and liberty for the Lessor in his absolute discretion to deal as he may think fit with any part off the Building or common parts thereof or any lands or premises adjacent or near to the Building and to erect thereon any buildings whatsoever and to make any alterations and carry out any demolition rebuilding or other works which he may think fit or desire to do whether such buildings alternations or works shall or shall not affect or diminish the light or air which now or at any time during the term hereby granted by enjoyed by the Lessee and provided that any such works of construction demolition addition to alteration are carried out with due regard to modern standards and method of building and workmanship the Lessee shall permit such works to continue without interference or objection.

15. He argues that this is a very broad clause which supports the thesis that the Garden Room is properly part of the Building.

16. Dr MacEvoy also refers to clause (a) of the First Schedule in which the glass fitted in window frames in walls is demised to the lessee. He argues that the specific reference to *walls* in this clause is significant and lends credence to the argument that, if the tribunal accepts the Garden Room as being part of the Building, the glazing should be treated as a roof and costs therefore would be recoverable for any works carried out.

The Respondent's argument

17. Ms Hinsley, the lessee of Flat 4, prepared a statement of case for the tribunal dated 5th June 2014.

18. She argues that in order for any monies spent repairing the roof of the Garden Room to be payable under the service charge, the works must fall within the scope of clause 5(4) in which the Lessor covenants to:

Maintain and keep in good and substantial repair and condition:

(i) the main structure of the Building including the principal internal timbers and the exterior walls and the foundations and the roof therefore with its main water tanks main drains gutters and rain water pipes (other than those included in this demise or in the demise of any other maisonette in the building).

(ii) all such gas water mains and pipes drains waste water and sewage ducts and electric cables and wires as may by virtue of the terms of the Lease be enjoyed or used by the Lessee in common with the owners or tenants of the other flats in the Building

(iii) the Common Parts

(iv) the boundary walls and fences of the Building

(v) all other parts of the Building not included in the foregoing sub-paragraphs (i) and (vi) and not included in this demise of any other maisonette or part of the Building

19. In Miss Hinsley's opinion the lean-to of Flat 1 does not form part of the Building, and the costs of replacing the glazed panels in the lean-to are not recoverable pursuant to the Lease as a communal service charge cost and that the costs of whatever repairs are necessary is for either the Leaseholder of Flat 1 to bear or as a cost for the landlord to bear without the right of recovery through the service charge and under the lease.

20. More specifically she argues that the lean-to does not form part of the main structure of the building as its fabric is non-structural and is self supporting. In addition the roof of the lean-to does not form part of the main structure of the building and therefore the roof is not a roof which can fall within the ambit of clause 5(4)(a). Nor does the lean-to form part of the common parts as it is not accessible by any other tenant of the property and is for the exclusive use of the tenant of Flat 1. Finally she argues that even if the lean-to was found to be part of the building then it would be within the demise of flat 1.

21. In his reply the Applicant rejects the arguments of the Respondent. He considers that good estate management should ensure that all of the outside parts of a building are maintained by the landlord and the costs recovered from the lessees, particularly where there are more than a handful of flats. He states that treating external parts of the building partly as a service charge item but making a lessee solely response for other parts of the fabric of the building can lead to obvious difficulties.

The decision of the tribunal

22. The tribunal determines that any costs incurred in connection with works carried out to the lean-to addition are not recoverable from the lessees under the lease.

Reasons for the tribunal's decision

23. The tribunal determines that the lean-to addition does not form part of the building as described in the leases to the flats nor is it part of the common parts.

24. The tribunal accepts the arguments of the Respondent that the lean-to is part of the demise of Flat 1.

Application under s.20C

25. The tribunal makes no order under s.20C of the Landlord and Tenant Act 1985. The tribunal considers that the matter was of genuine concern to the landlord and to all six lessees. It is therefore appropriate that the reasonable costs incurred by the landlord in connection with the application are recoverable from the service charge account.

Name: Helen Carr **Date:** 8th July 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of 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.

(2) 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.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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 provisions 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.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(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) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

(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.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate 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 the appropriate 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.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).