

10571



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

Case Reference : **CHI/OOHN/LSC/2014/0093**

Property : **2 Campbell Road, Bournemouth,
Dorset BH1 4EP**

Applicant : **Tyrell Investments Inc.**

Representative : **Napier Management Services Limited**

Respondents : **Mr and Mrs M Miller
Mr P Blake
Mr B A Scroggs
Mr M Pitman
Miss A J Woodward**

Representative : **-**

Type of Application : **Determination of service charges-
section 27A(3) Landlord and Tenant
Act 1985 ("the Act")**

Tribunal Members : **Judge E Morrison**

**Date of
determination and
decision:** : **16 January 2015**

DECISION

The Application

1. By an application dated 9 September 2014 the Applicant lessor applied under section 27A of the Act for a determination whether, if costs are incurred in resurfacing the driveway at 2 Campbell Road, the five Respondent lessees will be liable to pay a service charge in respect of those costs.

Summary of Decision

2. The cost of resurfacing the driveway at 2 Campbell Road is recoverable from the Respondent lessees through the service charge, and the contractor's estimated cost of £3536.61 + VAT is reasonable.

The Lease

3. The Tribunal had before it a copy of the lease for Flat 2 and was told that leases for the other four long leasehold flats at 2 Campbell Road were in the same form. The lease is dated 30 July 1990, and is for a term of 99 years at a yearly ground rent of £50.00 for the first 25 years and rising thereafter.
4. The relevant provisions in the lease may be summarised as follows:
 - (a) By clause 2 and the Fourth Schedule the lessee covenants to pay one-fifth of the lessor's actual costs incurred in performing its various obligations as contained in clause 3 and paras. (1) – (v) of the Fifth Schedule
 - (b) Paragraph (ii)(A) of the Fifth Schedule requires the lessor at all times during the term "to keep in good and substantial repair and condition ... the Common Parts shown yellow brown and green" on the annexed lease plan
 - (c) Paragraph (ii)(C) of the Fifth Schedule requires the lessor at all times during the term "to keep in a clean and tidy condition and properly maintained and repaired the communal areas shows coloured yellow brown and green on the plan..."
 - (d) The driveway is coloured brown on the lease plan.
 - (e) The lessee has a right in common with the lessor and the other lessees to use the driveway (First Schedule para. 6).

Procedural Background, Evidence and Representation

5. Directions were given by the Tribunal on 12 September 2014. These required the parties to prepare and submit their respective cases in

writing. It also stated that the application would be determined on the papers without an oral hearing unless a party objected within 28 days. There being no objection, the matter is now determined solely on the basis of the written submissions. The Applicant submitted a statement of case and supporting documents through its representative, Napier Management Services Ltd. None of the Respondents have provided any submissions or otherwise communicated in any way with the Tribunal. The application is therefore determined solely on the basis of the Applicant's submissions and evidence. The property has not been inspected by the Tribunal.

The Law and Jurisdiction

6. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties.
7. Section 27A(3) provides that the tribunal may determine whether, if costs were incurred for services, repairs, maintenance [and other matters] a service charge would be payable for the costs, and if it would, the tribunal can also determine who pays it, to whom, the amount, the date and the manner of payment.
8. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
9. Section 20 of the Act provides that where costs have been incurred on qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Tribunal. The specified consultation requirements will apply if the relevant costs of the qualifying works exceed an appropriate amount, which is set by regulation and at the date of the application is more than £250.00 per lessee. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI 2003/1987.

The Applicant's Case

10. The Applicant seeks a determination that costs it proposes to incur in service charge year 2014/15 for resurfacing the driveway are reasonable and payable under the lease..
11. The Applicant's evidence included:
 - photographs of the driveway from which it appears that the existing surface is rough, worn, uneven and in generally poor condition

- copy of first notice served on lessees pursuant to the section 20 consultation requirements dated 19 June 2013
 - Specification, and tenders from contractors, including revised tenders following a revision to the specification in order to reduce the cost
 - Copy of second notice with statement of estimates served on lessees pursuant to the section 20 consultation requirements dated 25 June 2014.
11. The Applicant proposes to instruct Fletchamoore Ltd, who provided the lowest estimate. Their revised tender dated 15 January 2014 was for £3215.10 + VAT on the assumption that the existing sub-base and surface was in a suitable condition to accept the resurfacing proposed. In the statement of estimates accompanying the second section 20 notice a 10% contingency sum has been added to this estimate, producing a total contractor's cost of £3536.61 + VAT.
 12. The Applicant's evidence did not include anything indicating that any of the lessees had made representations or observations within the statutory consultation period following service of the second notice and statement of estimates.

Determination

13. Assuming it meets the test of reasonableness in section 19, the cost of the proposed driveway resurfacing work is an expense which is recoverable from the lessees through the service charge, as it falls within both paragraphs (ii)(A) and (ii)(C) of the Fifth Schedule of the lease.
14. The Applicant appears to have followed the consultation requirements under section 20 of the Act.
15. On the evidence the Tribunal finds that the estimated cost of £3536.61 + VAT for the contractor's work is reasonable. Including 10% for contingency has not been challenged and appears reasonable in view of the assumptions on which the tender was made. It is noted that the tenders received based on the original specification were much higher. The specification was then revised so as to reduce the cost. The proposed contractor's estimate is considerably less than that of the other contractor who tendered based on the revised specification.

Concluding Remarks

15. This is a determination made before the works are carried out and the costs incurred. As the lease does not provide any mechanism for collecting service charges in advance, the lessees will not be required to pay anything until the costs have been incurred i.e. the work has been

carried out. This determination does not preclude the lessees from challenging the charge in the event that the work actually carried out differs from that covered by the tender or estimate and/or is not carried out to a reasonable standard as required by section 19.

Dated: 16 January 2015

Judge E Morrison (Chairman)

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.