



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

Case Reference : **BIR/44UC/LSC/2014/0009**

Property : **21 School Lane Exhall Coventry CV7 9GE**

Applicant : **Mr Brett Stockford**

Representative : **Miss Kavita Bachada of PEL Solicitors Ltd**

Respondent : **Nuneaton & Bedworth Borough Council**

Representative : **Mrs Wendy Davies-White Solicitor**

Type of Application : **Landlord’s application for the determination of liability to pay and reasonableness of service charges pursuant to section 27A of the Landlord and Tenant Act 1985**

Tribunal Members : **Judge R Healey, Mr A Shemilt FRICS & Mr J Arain**

Date and venue of Determination : **30 October 2014 by paper determination**

Date of Decision : **24 November 2014**

DECISION

Introduction

1. This is an application by the Lessee, Mr Brett Stockford (“the Applicant”) for a determination of the reasonableness of service charges relating to 21 School Lane Exhall Coventry CV7 9GE (“the Property”) in respect of the Service Charge Year ending 31 March 2014. The Lessor is Nuneaton and Bedworth Borough Council (“the Respondent”). The Property forms one of 14 flats together known as School Lane Flats (“the Building”).
2. The lease is dated 29 November 2004 and is made between the Respondent of the one part and Karl Martin Wisniewski of the other part. The lease was assigned to the Applicant on 14 September 2009.
3. Clause 7 of the Lease imposes an obligation on the Respondent “to keep in repair including decorative repair the structure and exterior of the Property and the Building . . . and to make good any defects affecting that structure.” Clause 4(b)(ii) of the Lease requires the Applicant to pay annually a reasonable proportion of the costs incurred by the Respondent in accordance with the repairing obligations imposed on it under Clause 7. Clause 11 allows the Respondent to carry out improvement works to either the Property or the Building and obtain a contribution to the costs from the Applicant.
4. The works carried out to the Building are set out in the specification submitted by the Respondent for tender purposes. The works may be summarised as concrete rectification to include defective fascias and soffits, concrete walkways, balconies, and rendered walled area, treatment to affected steelwork, surface coatings, waterproof membrane to walkways and external decoration.
5. The total costs of the works including management charges and VAT amounts to £84,772.59 and the sum invoiced to the Applicant is a one fourteenth part amounting to £6,055.18.
6. The Applicant challenges the reasonableness of the sum claimed and applies to the Tribunal for a determination. The jurisdiction of the Tribunal is derived from Landlord and Tenant Act 1985 section 27A and Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The application proceeds by way of a paper determination.

Issues for determination

7. The Applicant sets out his statement of case in a witness statement dated 10 September 2014. The major issues submitted for determination may be summarised as failure to consult, failure to manage rain water and drainage efficiently thereby allowing damage to occur to the Building and sub standard workmanship in executing the remedial works.

Failure to consult

8. The Applicant submits that the Respondent did not provide the leaseholders with a complete schedule of work and during site visits lead them to believe that additional works would be carried out such as redesigning the car parking, the garages and other related issues. It is submitted that the Respondent attempted to be seen to be consulting but was not genuine and co-operative in so doing.

9. The Respondent submits that consultation was undertaken in accordance with the provisions of section 20 Landlord and Tenant Act 1985. In particular, an initial letter of intention setting out the works proposed to be undertaken was issued on 14 August 2013 which allowed a 30 day consultation period; on 20 September 2013 leaseholders were informed the lowest tender received was from Gunite (Eastern) Limited in the sum of £85,042. The Respondent proposed to add contract management and administration fees of 5%. The Applicant's contribution was estimated at £6378.14. Leaseholders observations were invited for a period of 30 days. The Applicant did not inspect the tender documentation. The Applicant responded however by letter dated 24 September 2013 and the Respondent replied on 7 October 2013.

The Applicant's letter of 24 September 2013 and the Respondents response dated 7 October 2013

Failure to manage water and drainage

10. By letter dated 24 September 2013 the Applicant submitted that the probable cause of the concrete damage was due to the ingress of water due to the rainwater and drainage not being effectively managed. Further the problem is increasingly common in structures that during construction have not been sufficiently waterproofed.

11. By letter dated 7 October 2013 the Respondent replies that the Building is reaching the end of its 50 year life and components of the Building are aging. Failure of the concrete can be contributed to by a number of factors including carbonation reaction, chloride based components used, water penetration due to wear and tear, cement components being to alkaline and reinforcement being close to the surface.

12. The Applicant's letter also asked for a copy of the Audited Accounts for the Service Charge, whether there was a sinking fund and asking for a least three quotes for the work.

13. The Respondent referred the Applicant to the service charge administrator for him to arrange to view a copy of the audited accounts. The Respondent submitted that it did not have a sinking fund and such was not mentioned in the Lease. Further due to the low number of leaseholders, if one was set up, then a legal consultation process would

have to be undertaken and this cost together with the sinking fund contribution would be passed on to the leaseholders.

Substandard work

14. The Applicant submits that “the manner in which the work that has been carried out is sub-standard.” The Respondent replies that the works on site were supervised on a regular basis by both the Clerk of Works and the Contract Administrator.

15. The Applicant further submits that there is no regard to proportionality by the Respondent or even to consult leaseholders to see if they could pay. The Respondent responds that in its letter of 14 August 2013, which gave notice of intention to carry out repairs, the Respondent enclosed a booklet setting out payment options.

16. The Applicant in his statement of case submits that the Respondent should obtain an independent report on the Building. The Respondent has indicated that it is prepared to do so but at the expense of the leaseholders. The Applicant does not accept this proposal.

Inspection

17. On 30 October 2014 the Tribunal Members attended at School Lane Flats. This comprises 14 individual units to two floors with an external walkway to the first floor. The Tribunal noted the paintwork on the external walkway is blistered. There are small accumulations of water on the walkway. UPVC downpipes appeared to be recently replaced and the metal soil and vent pipes did not appear new. Covers over the front doors were not replaced. Externally the site was landscaped with some provision for car parking and further garage parking.

Findings by the Tribunal

18. The Tribunal finds that the Respondent undertook consultation as required by section 20 Landlord and Tenant Act 1985. Within this statutory procedure the Applicant was advised of the availability of the quotes for inspection.

19. The Applicant makes no submissions regarding the addition of 5% to the cost of the works in respect of contract management and administration fees and the Tribunal is therefore constrained from determining the issue.

20. The Tribunal finds no evidence to suggest faults in the original construction of the Building nor that the Respondent has failed to manage water or drainage to the detriment of the Building. The Tribunal accepts the Respondent’s explanation for the deterioration.

21. The Tribunal finds that the Audited Accounts are available for inspection by the Applicant.
22. The Tribunal finds acceptable the Respondent's explanation for not setting up a sinking fund.
23. The Tribunal finds that the Respondent has agreed to the Applicant's request for an independent report on the Building and properly expects the charges for the report to be placed to the service charge.
24. The Tribunal finds that the specification for the works and three tenders were available for inspection by the Applicant during the consultation stage.
25. The Tribunal finds that the Respondent has adopted a proportionate approach to the works and that splitting the works over more than one service charge year would be likely to increase the overall cost. The Respondent has also produced a booklet to assist leaseholders who are not in a financial position to make immediate payment.
26. The Tribunal finds that generally the works have been undertaken to a satisfactory standard. The Tribunal observes small accumulations of water on the walkway situated at first floor level which is to be expected. The walkway is flat interspersed with drainage channels. The Tribunal finds the external painting on the walkway ironwork to be blistered and below the required standard.
27. The Tribunal notes from the form of application that the Applicant specifically does not wish to apply for a section 20C order and the Tribunal therefore makes no such finding.

Determination

28. Taking into account the above findings the Tribunal determines that a deduction of £3,600 from the costs of the works fairly reflects the cost of preparation and repainting the ironwork on the walkway. The Applicant's proportion is 1/14 amounting to £257.14. The Tribunal therefore determines that the service charge payable by the Applicant is reduced to £5,798.04.

Appeal

29. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. The application must be received by the Tribunal no later than 28 days after the date the Tribunal sends this decision to the party making the application. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Judge Roger Healey
First-tier Property Chamber (Residential Property)

24 November 2014