

9738



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

Case Reference : **CAM/00JA/LSC/2013/0113**

Property : **The Apex, 2 Oundle Road, Peterborough
PE2 8AT**

Applicants (Landlord) : **PC Beneveniste & HA Pusey**

Representative : **Martin Paine of Circle Residential
Management Ltd**

Respondents :

Leaseholder	Flat
Mr D Ricorda	1
Miss S Ladha	2
Mr N Isenovic	3
Mr MJ Dalton	9
Mr TH Tran	14
Mrs R Wahiwala-Patel	16
Relative Property Management	18
Mr RA Wheldon	25
Mrs S Noble	32

Date of Application : **6th September 2013**

Type of Application : **A determination of the reasonableness and
payability of Service Charges (Section 27A
Landlord and Tenant Act 1985)**

Tribunal : **Judge JR Morris
Miss M Krisko, BSc (Est Man) BA FRICS
Mr PA Tunley**

Date of Hearing : **13th January 2014**

DECISION

© CROWN COPYRIGHT 2014

Decision

1. The Tribunal determined the scope of the work as set out in the specification of works provided to be reasonable subject to preparation work to the slatted doors on the bin store and bicycle shed and around the windows in the common parts.
2. The cost of the work of £25,424.88 including VAT as estimated by Bull & Company Limited was determined to be reasonable if incurred as a service charge.

Reasons

Application

1. The Application made on 6th September 2013 was for a determination of reasonableness under section 27A of the Landlord and Tenant Act 1985 of specified costs to be incurred in respect of qualifying works under section 20 of the Landlord and Tenant Act 1985.

Issues

2. The issue is whether if the costs for specified works were incurred a service charge would be reasonable and payable. The specified works are to carry out internal decoration to all internal common parts of the property as per the specification and quotation provided.

The Law

3. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
4. Section 18 Meaning of "service charge" and "relevant costs"
 - (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, improvement 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 of 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 period*

5. Section 19 Limitation of service charges: reasonableness

- (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 provision 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 of the Landlord and Tenant Act 1985

- (1) *An application may be made to a leasehold valuation 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 a leasehold valuation 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 arbitration agreement to which the tenant was a party*
 - (c) *has been the subject of a determination by a court*

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

6. Section 20 of the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 limits the amount which tenants can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a Leasehold Valuation Tribunal, now subsumed into the First-tier Tribunal (Property Chamber). Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount, which results in the relevant contribution of any tenant being more than £250. The consultation provisions are set out in the Schedules to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations).

7. The Procedure appropriate to the present case is in Schedule 4 Part 2 of the Regulations and may be summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days.

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord's Proposals must be served on all tenants in which an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. This is for tenants to check that the works to be carried out conform to the schedule of works, are appropriately guaranteed and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

Lease

8. A copy of the Lease for Flat 1 was provided the covenants of which were said to be the same as for all Leases in the Building. The Lease is for a term of 125 years form the 1st January 2004. The proportion of the service charge was stated to be 1/33rd

9. The relevant Clauses under the Lease are as follows:

10. Clause 1(a)(ii) of Part 1 of the Sixth Schedule:

SUBJECT to the payment of the Lessee of the rent and Maintenance Charge herein mentioned and provided that the Lessee has complied with all the covenants agreements and obligations on his part to be performed and observed to keep in good repair and decoration (and to renew and improve as and when the Lessors may from time to time in their absolute discretion consider necessary)

- a) *The structure of the Property INCLUDING:*
(ii) *all the wall of the Property whether external or internal apart from the walls and partitions referred to as included in the Demised premises...*

11. Clause 2 of Part 1 of the Fifth Schedule:

TO pay the Lessors on the 30th day of June and 31st day of December in each year a Maintenance Charge being the Proportion specified in the Paragraph 7 of the Particulars of the expenses which the Lessors shall in relation to the Property reasonably estimate it will properly incur in each Maintenance Year being the costs and expenses incurred by the Lessors as detailed in the Eighth Schedule hereto...

Inspection

12. The Tribunal inspected the property in the presence of the Applicants' Representatives, and those Respondents who attended the hearing and their Representative. The Apex is a 9 storey Building which was originally an office block and was converted into 33 flats circa 2004. The Building is surrounded by a car park with numbered bays. There is a painted concrete or rendered boundary wall. Access to the car park is controlled via a barrier. The Building is constructed of brick apart from the top floor which is a metal clad frame structure and appears to be a later addition, possibly at the time of the conversion to flats. The ground floor comprises an under-croft for further parking and the entrance foyer. The upper floors have upvc windows. There is a metal front entrance door and foyer windows and a glass canopy over the entrance.
13. Internally the Building has an entrance foyer access to which is via a door entry system. There is a post box for each flat in the foyer. There are two staircases and a lift. Between the staircases are landings off which are the flats. The staircase at the front of the Building rises directly from the foyer. A door from the foyer opens into a lobby from which rises the rear staircase. There is also a door to the car park and another to the bin store.
14. The Tribunal inspected each floor. The emulsioned walls of the lower floors (ground to 7) had a number of scuff marks and a few isolated graffiti but were in fair condition. The ceilings were fair to good with some marking on a few landings probably due to moving of furniture. The paintwork of the skirting, architraves and doors was also fair. Notwithstanding its fair condition there was some discolouration and overall the surfaces needed to be cleaned and

freshened. The walls of the eighth and ninth floors were significantly marred by graffiti, particularly the rear staircase.

15. The fillets around the windows were noted to be in need of some attention. On a brief inspection it could not be said what remedial action was required but they appeared rough and might need filling and rubbing down in the context of decoration.
16. The front staircase and landings were carpeted. It was noted that re-carpeting had been removed from the works to be carried out. The carpet was in generally fair condition although areas were soiled and required cleaning.
17. The Tribunal inspected the bin store and bicycle store. The walls were part unpainted concrete block and part emulsioned plaster. There did not seem to be any reason to paint the concrete block and there was no mention in the specification of doing so. The painted walls needed a clean and freshen in the same way as those on the staircases and landings. The Tribunal noted that the slatted doors of the bin store had suffered some damage from the moving of the bins in and out at the time of emptying. The Tribunal considered that these would require rubbing down and primer costs for a sound decorative finish and possibly some carpentry e.g. a slat may require replacing.
18. The Tribunal inspected the boundary walls and found the paint work to be variable. In some places it appeared quite sound in others it was flaking and blistering.

Attendance at the Hearing

19. The Applicants were represented by Mr Martin Paine and Ms Lizzie Walpole. Mr Bernard Wales represented Mr Daniel Ricorda (Flat 1), Mr Thien Tran (Flat 14) Mrs Rajvinder Wahiwala Patel (Flat 16) and Relative Property Limited. Miss S Ladha (Flat 2), Mr N Isenovic (Flat 3), Mr MJ Dalton (Flat 9), Mr RA Wheldon (Flat 25), Mrs S Noble (Flat 32) did not attend the hearing.

Preliminary Issues

Representation

20. The Applicants' Representative questioned the right of Mr Wales to represent the Respondents as it was said that Mr. Wales had not given the requisite notice of his representing the Respondents under paragraph 14 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. It was further submitted that as the Respondents not provided statements of case or witness statements in accordance with the Directions they should not be permitted to adduce such evidence now.
21. Mr Wales stated that he had been representing the Respondent Leaseholders to the present Application and other Respondent Leaseholders in relation to other Applications. He said that he had been under the impression that this Application and the other Applications were to be joined and referred to a County Court Order. He said that the Applicants' Representatives had been

aware and had been corresponding with him in relation to the other Applications and that as he believed that this Application was joined with those there had been no need for the Respondents or for him on their behalf to write to the Applicants' Representative to state specifically that he was representing the Respondents in this case. However, he conceded he had not expressly informed the Applicants' Representatives of his role in relation to this case so far as he was aware neither had the Respondents.

22. Mr Wales produced a statement of matters agreed and disputed by the Respondents (a copy of which had been provided to the Applicants' Representative), which he said were the written statement of the points he wished to raise in oral representations but that he had no further evidence taking into account the very limited issues of the Application.

Decision on Representation

23. The Tribunal found that irrespective of whether Mr. Wales or the Respondents had complied with paragraph 14 the Tribunal had jurisdiction to permit Mr Wales to represent the Respondents under paragraph 14(5) of the Rules. The Tribunal was of the opinion that where there were several Respondents or Applicants it was sensible to have a single spokesperson. Having one representative also facilitates compliance with directions with only one or at least a reduced number of copies of documents to be served. Notwithstanding Mr Wales being a representative in the other applications, as all the Respondents were not represented by Mr Wales in this case and as the issues were different, it could not be assumed that he was the representative. However, the Tribunal decided to exercise its jurisdiction under paragraph 14(5) and permit Mr. Wales to represent the Respondents he had listed as his clients.
24. Taking into account the very limited issues of the Application, the nature of the document and the convenience of having a written record of matters to be addressed orally and in the absence of representations to the contrary, the tribunal decided the Respondents' Representative's written statement should be submitted.

Compliance with Directions

25. The Applicants' Representative stated that it had complied with Directions in serving a statement of case, as included in the bundle, on the Respondents on the 21st October 2013 in accordance with Directions and were able to produce the requisite evidence. This was not contested by the Respondents and the Tribunal accepted that this was so.
26. However, the Respondent's Representative stated that the Applicants' Representatives had not complied with Directions in so far that it had served a copy of the bundle on the Respondents on the Saturday before the hearing on the Monday when it had been required by the Directions to serve it 7 days before the hearing. The Tribunal confirmed that it also had not received the bundle until the Friday before the Monday hearing.

27. The Applicants' Representative stated that the Directions did not require the service of a copy of the bundle on the Respondents and in any event it had not been considered necessary because all the documents in the bundle had been seen previously by the Respondents and none of the Respondents had provided any additional documents to be included in accordance with the Directions. The Applicants' Representative stated that the Tribunal had not been "prejudiced" by the late filing of the bundle by which the Tribunal.

Decision on Non-compliance with Directions

28. The Tribunal referred the Applicants' Representative to the bundle having to be agreed between the parties and that the purpose of the bundle as a paginated collection of documents is *so that when anyone refers to a document at the hearing, everyone else will know what that document is*. Therefore it is self evident in the Direction that all parties should have a copy. The Tribunal noted from the past cases referred to on the Application form that the Applicants' Representative had appeared at a tribunal before and would have received the same Directions and so should have been well aware of the need to serve the bundle on this occasion.
29. The late filing of the bundle caused additional expense to the public purse and inconvenience to the Tribunal Office in ensuring that the papers arrived in order that they could be read by the Tribunal members over the weekend in advance of the hearing. In the present circumstances the Tribunal decided that as the issues were limited and the documentation was not extensive and had been seen by all parties the Application hearing should continue. However, the Tribunal reminds the parties of its jurisdiction under paragraph 9(3) of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 including its ability to strike out an application for non compliance with Directions.

Joined Cases

30. The Tribunal confirmed that no cases had been joined with the current application. The Tribunal was aware that a number of cases in respect of service charges in relation to the Property were being transferred from the County Court but all the documentation had not yet been received at the Tribunal Office so Direction had not yet been issued.

Applicant's Case

31. The Applicants' Representative submitted in written representations that the Respondents are liable to pay 1/33rd of the costs and expenses which are anticipated to be incurred by the Applicants. The Applicants stated that a consultation under the provision of section 20 of the Landlord and Tenant Act 1985 had been completed with:
- Notices of Intention issued on 18th July 2012 and expiring on 22nd August 2012 (Copies were provided)
 - Statements of the Estimate issued on 14th February 2013 and expiring on 21st March 2013 (Copies were provided)

32. The Applicants' Representative provided copies of the "Specification of Works" which had been made available to the Leaseholders. The specification provided for a contingency of £2,000.00.
33. Two estimates were received copies of which were provided stating that the cost of the works would be as follows:
- | | |
|--------------------------------|----------------------|
| Bull & Company Limited | £21,187.40 ex VAT |
| Paul Tee Painting & Decorating | £25,650.00 inclusive |

34. The Applicants' Representative stated in oral evidence that the section 20 Procedure did not provide for informing the Leaseholders by way of a Notice of Works if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. In this case the Applicants intended to employ the contractor giving the lowest estimate which was Bull & Company Limited whose estimate was £25,424.88 including VAT. To remedy this non-statutory notice in the form of a letter was sent to the Leaseholders following completion of the procedure. The letter dated 10th April 2013 invited Leaseholder to agree the reasonableness of the scope and costs of the proposed works. Attached to the notice was a copy of the estimate from Bull & Company as the selected contractor. (Copies of both letters were provided). In the letter the Leaseholders were requested to:

...agree that the proposed works and the costs thereof are reasonable and that you understand the contents of the notice received by signing, dating and returning a copy of this letter within 14days of the date of this letter.

All of the flat owner must return a copy of this letter with the above deadline otherwise we will be obliged to make an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of the proposed works and the cost thereof.

35. Attached to the Notice was a copy of the estimate from Bull & Company as the selected contractor.
36. 21 out of 33 of the Tenants signed and returned the letter agreeing the reasonableness of the cost of the works. The persons named as Respondents to the present Application did not return the letter and an additional letter was sent on the 23rd April 2013. As all the Leaseholders had not replied the Application was made with those Leaseholders who had not specifically agreed the costs and scope of the works as Respondents.
37. In addition to the Notices of Intention issued on 18th July 2012, the Statements of the Estimate issued on 14th February 2013 and the letters of 10th and 23rd April 2013 the Tribunal was provided with what was described as a section 20 calculator. This identified Bull & Company as the contractor and the cost of the works as being £25,424.88. An additional contingency was added of £2,542.49 and Administration Fees of £3,813.73. This had not been provided to the Leaseholders at the time of the hearing.
38. At the hearing the Applicants' Representative made it clear that the Application was only for a determination as to the reasonableness of the scope

and cost of the works. Whether or not the section 20 procedure had been complied with was not in issue.

Respondents' Case

39. The Respondent's Representative stated that he had been under the impression that a determination was being requested as to the reasonableness of the scope and cost of the works and whether the section 20 procedure had been complied with.
40. He said that it was agreed that the service charge proportion was 1/33rd notwithstanding an error in the Lease at paragraph 2 of Part 1 of Schedule 5 which said the proportion was in number 1 on the Land Registry Front Sheet to the Lease whereas in fact it was in number 8. It was agreed that the Lessor had a responsibility for "repair and decoration" of the common parts stairways and hallways [The Sixth Schedule, Part 1 Paragraphs 1 and 2] and the Maintenance Fund should include such costs [The Eighth Schedule] and the boundary wall [The Second Schedule, part 1] and that the Maintenance Fund should include such costs [The Eighth Schedule]. It was also agreed that the Maintenance Fund should include the cost of a managing Agent or surveyor to supervise these works if the Lessor delegates those duties [Eighth Schedule].
41. The Respondent's Representative stated that the Respondents considered the estimated cost of redecoration to be unreasonably high because the Lessor had not maintained the Common Parts "in a good and tenable state of repair and decoration throughout the term" [The Sixth Schedule, Part 1, Paragraph 2]. It was submitted that the property had been neglected and mis-managed and had the Lessor complied with the Lease the cost of decoration would be lower.
42. The Respondent's Representative referred to the document at page 126 of the bundle that had been called the section 20 calculator and disputed that Mr PC Beneviste as one of the Lessors was entitled to claim the costs of supervision as he had not delegated these costs. He also said that the additional contingency referred to in this document of £2,542.49 was also disputed as double counting since a contingency had already been allowed for in the tender document for estimates. He added that the administration, professional fees and contingency were disputed as being unreasonable and invalidating the section 20 notices as inaccurate since neither was mentioned. He also said that the section 20 notice was inaccurate because it referred to internal decoration whereas there were also external decorations being undertaken.
43. The Respondent's Representative also stated that the Notice of Intention referred to re-carpeting but that this had not been included in the estimates and that the estimates were dated some 6 months after the Notice of Intention.
44. In response the Applicants' Representative stated that firstly the section 20 consultation was not in issue and secondly, as a matter of information, following the Leaseholders observations on the service of the Notice of

Intention the re-carpeting had been withdrawn. In addition as a matter of information Bull & Company had confirmed the estimated cost continued to be valid.

Decision

45. The Tribunal carefully considered the condition of the two common staircases and landing and the corridors between the two staircases of the Property as it had seen them on the inspection. It noted that the walls and ceilings of the lower floors (ground to seventh) were scuffed in places and the paint was beginning to discolour and although not in a particularly poor condition it would benefit from timely re-decoration. The Tribunal determined that to clean and apply two coats of emulsion was reasonable. The walls of the eighth and ninth floors had been defaced with graffiti and were in need of an appropriate undercoat in addition to the clean and two coats of emulsion. The proposed decorative finishes for these floors were determined to be reasonable. The condition of the woodwork finish was, like the walls and ceilings of the lower floors not in a poor condition but it was agreed would benefit from re-decoration before it significantly deteriorated. The proposed clean and prepare followed by an application of one undercoat and one gloss coat was determined to be reasonable. The proposed decoration of the ground floor entrance lobby, the lobby to the bin store room, the bin store room and the bicycle store room was also determined to be reasonable. The Tribunal was concerned that there was no mention in the specification for making good the slatted doors to the bin store room as these had suffered damage due to heavy use. The Tribunal also considered that in addition to the cleaning and preparation, these doors may require a coat of primer and more than one undercoat and gloss coat to provide a reasonable standard of finish.
46. The Tribunal noted that some reparation work around the windows to the common parts was required and might be needed to give a reasonable standard of finish to the decoration.
47. The proposed decorative work to the external boundary walls was determined to be reasonable.
48. The Tribunal noted the Respondents' submission that the extent of the graffiti might have been limited by the management of the Property but it was of the opinion that such limitation would not have significantly reduced the cost of re-decoration.
49. Therefore the Tribunal determined the scope of the work as set out in the specification of works provided to be reasonable subject to preparation work to the slatted doors on the bin store room and around the windows in the common parts.
50. The cost of the work of £25,424.88 including VAT as estimated by Bull & Company Limited was determined to be reasonable. No determination was made as to its payability and no decision was made as to whether the section 20 procedure was compliant. The Tribunal does observe that the Applicants should be mindful of the points raised by the Respondents' Representative in

relation to the administration, professional fees and sum allowed for contingency in respect of the section notices.

51. The Tribunal's determination only applies to the estimated costs of the works to be carried out. The Landlord or the Tenant may on completion of the work apply for a determination as to the reasonableness of the costs incurred and the standard of the work carried out under section 27A of the Landlord and Tenant Act 1985.

Judge JR Morris

Date: 27th January 2014