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

Case Reference : **LON/OOBE/LSC/2013/0598**

Property : **41b Graces Road London
SE5 8PF**

Applicant : **SLS Properties Limited**

Representative : **Mr M Bayntum Director
Mr S North Property
Manager**

Respondent : **London Borough of
Southwark**

Representative : **Ms Wybraniac Legal Officer
Ms E Bennett Assistant
legal officer
Ms A Long Surveyor
Mr C Ayton Contract
manager
Mr Sidorczek Capital
Works manager**

Type of Application : **Determination of liability to
pay service charges**

Tribunal Members : **Judge P Leighton LLB
Miss M Krisko BSc (Est
Man) FRICS**

Date and venue of PTR : **10 Alfred Place, London
WC1E 7LR**

Date of Hearing : **11th December 2013**

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

DECISION

Introduction

- 1 By an application dated 17th August 2013 the Applicant applied to the tribunal for a determination of its liability to pay service charges in respect of major works to the premises known as 41B Graces Road Camberwell London SE5 8PF
- 2 The property consists of the first and second floor maisonette of the property of which the Respondent is the freehold owner. The Applicant holds a long lease of the property and the ground floor flat is occupied by a tenant of the Respondent. There is a common front door to the premises but otherwise the two properties are self contained and it was agreed that there were no common parts
- 3 Neither party requested an inspection of the building and having regard to the issues raised the tribunal did not consider an inspection necessary and the cost would be disproportionate

The Lease

- 4 The lease was granted by the Respondent to the Applicant on 20th November 2011 for a term of 125 years from that date at a ground rent of £200 per annum rising to £600 by increases of £100 at each period of 25 years of the term
- 5 The landlord's covenants to repair, maintain and decorate the premises are set out in clause 4(2) to (5) of the lease and the obligation to pay service charges is provided for in Clause 2(3) (a) and the Third Schedule
- 6 Clause 2(5) of the Third Schedule required the Applicant to pay a fair proportion of the costs incurred and provides for the landlord to adopt any reasonable method of determining a fair proportion of the costs. The Applicant's proportion under the lease is 6/11 and this proportion is not challenged.
- 7 Clause 2(7) of the Third Schedule provides for the landlord to employ a managing agent and to charge the management expense and in default of any appointment to charge the sum of 10% of the total costs.

The Law

- 8 The relevant legal provisions are set out in the Appendix hereto... In addition the respondent referred to a number of cases including **Forcelux -v- Sweetman (2001) 2EGLR 173** **London Borough of Southwark -v- Paul 2013 UKUT 0375** and **Regent Management Ltd -v- Jones 2010 UKUT 369** to support the proposition that the landlord is entitled to choose within a range of options and need not necessarily choose the cheapest option provided that which is chosen is one which a reasonable landlord could adopt.

The Hearing

- 9 At the hearing the Applicant appeared by its managing director Mr Bayntum and the Respondent was represented by Ms Wybraniac of the Legal department accompanied by Ms Bennett
- 10 The Applicant called as a witness Mr Sam North the property manager of the Applicant and the Respondent called Ms Long a quantity surveyor, Mr Ayton a contracts manager and Mr Sidorczuk capital works manager

The Facts

- 11 Some years ago the Respondent Council, being a local housing authority entered into a partnering agreement with a building contractor Saltash for the purpose of carrying out building works to specified areas of the borough
- 12 This was a qualifying long term agreement and the Council served a section 20 notice and consulted with the leaseholders before entering into this agreement but the consultation occurred before the Applicant entered into the agreement to acquire the lease of the property.
- 13 The contract to carry out the works was entered into covering an area of approximately 800 properties. The scheme was broken up into five batches and the batch containing the subject property consisted of 147 properties of which the majority were street properties and not blocks of flats. According to Mr Ayton the contract manager a survey was carried out in the area which involved a surveyor walking past the properties and carrying out random checks to their condition. He stated that the result showed that the overwhelming majority of properties needed repair and decoration works to be carried out but that in the cases where the properties were in excellent condition they were excluded from the scheme.
- 14 The works were completed in about October 2013 but the amount claimed by the Respondent is only an estimated sum as the final contract has not been signed off and is expected to be received by about June 2014
- 15 The amount originally claimed by the Respondent was £4,800 but this figure was revised to £4,008.34 and may be revised further when the final contract figure is approved. The invoice sent out to the leaseholders demanding this sum suggested that works involving replacement roofs, work to guttering and downpipes needed doing but in fact many of these works were excluded from the final scope of works
- 16 The Applicant has agreed to pay the sum of £2401.01 for the value of the measured works, although it believes the costs to be high. It has also agreed to pay the Respondents' 10% administration fee on these works but has raised objections to the preliminary and professional fees on the grounds that these are either not recoverable or are excessive

The Issues .

- 17 The application challenged the amount payable for preliminaries and for professional fees and an administration charge. The preliminary fees, costs of management and overheads was calculated at £703.26 and the professional fees in the sum of £299.65
- 18 Following the directions it was specified that the issue of professional fees, preliminary fees, the administration charge and issues regarding the making of a Section 20C order and reimbursement of fees
- 19 However during the course of the hearing it was possible to dispose of some of those issues by agreement. In particular the professional fees had been charged at a rate of 8.96% of the cost of the works but it was ascertained that a figure of 5.93% applied to external works and the remaining figure related to internal works. Since no internal works had been carried out to the property it was agreed that the professional fees should be reduced accordingly and the

appropriate figure to be charged in respect of them was agreed in the sum of 5.83% of the final contract works for the whole of the 800 properties within the scheme

- 20 With regard to the preliminary costs the Respondent maintains that these are based on a figure of 1.5% of the costs of works within the batch of 147 properties plus a figure for 3.5% profit . It maintains that these costs include the costs of preliminaries which includes a survey , the costs of management and supervision, the costs of providing an office, canteen electricity , a printer site manager and provisions for health and safety. It would also include a tenant liaison officer
- 21 The Applicant contends that most of the functions contained within the list of preliminaries are either unnecessary or not provide and that they ought not be required to pay anything beyond a nominal sum for preliminaries the total of the additional costs amounts to over 27% of the cost of the works

The Tribunal's Decision

- 22 The tribunal is reluctant to give any definitive figures in respect of the preliminary works since no breakdown exists in relation to each of the areas covered by the preliminaries and in any event the amounts demanded so far are only estimates and cannot be finalised until the final account is produced in June 2014
- 23 However the tribunal is concerned that the oncosts for this work should amount to 27% or more than the cost of the works themselves. It recognises that the Respondent is a local authority and has a public duty to perform which means it has to take greater care and precautions with regard to health and safety matters, welfare facilities and other factors.
- 24 The tribunal is of the opinion ,however, that although preliminaries, management and overheads are recoverable in principle these fees should not include a profit element, which should be included in the basic costs of the works and in broad terms it is of the opinion that the total costs of preliminaries professional charges, overheads and management costs should not exceed 20% of the total costs of the measured works
- 25 This figure is given by way of guidance only. The works in question here are relatively straightforward. If they were being undertaken by the Applicant they would not cost anything near £4,000 . It is accepted that the Respondent is entitled to perform the contract as it considers best and has done so in this case.
- 26 The Applicant has accepted that, by accepting the cost of measured works , the 10%administration charge and a figure of 5.93% for professional charges. Mr Bayntum stated that the professional charges in Lewisham a neighbouring borough are only 1.5% son in accepting the Respondent's figures he believes he is making a concession
- 27 The tribunal does not believe it would be reasonable for any client to have to pay more than 20% of the costs of such a simple job as that involved in this case. It is hoped that when the Respondent finalises the account that it will reflect that proposal in the final figures. . In the meantime the Council should take no step by way of enforcement over and above the figures which have been conceded by the Applicant. If the outcome on the final account is not acceptable to the Applicant it is open to it to make a further application to the tribunal