



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

Case Reference : CHI/29UN/LIS/2018/0047

Property : 1 Eastern Esplanade, Broadstairs CT10 1DP

Applicant : Charing Properties Limited

Representative : Bamptons

Respondents : The Lessees

Representative :

Type of Application : Liability to pay service charges and/or
Administration Charges

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 25 February 2019

DECISION

We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at paragraphs 47 and 49 of our Decision dated 25 February 2019. Our amendments are made in bold. We have corrected our original Decision because of typographical errors.

Dated: 25 March 2019

The Tribunal determines that the following sums are reasonable and payable;

- **2017-18 £13,224.00**
- **2018-19 £44,065.65**
- **2019-20 £31,805.35**

Background

2. The Applicant seeks a determination of the service charges payable for service charge years ending 31 March 2018, 2019 & 2020.
3. An oral case management hearing was held on 15 November 2018 at which the Lessees agreed that the works were required but disagreed with the manner in which the contract had been let to one main contractor covering a number of trades and spread over 3 years.
4. The Lessees accepted that a compliant S.20 consultation had taken place.
5. The parties agreed that the application could be determined on the papers and directions were made leading to the submission of a bundle of evidence upon which this determination is now made.
6. In the Application the sums at issue are said to be;
 - 2017-18 £13,224.00 - Major works.
 - 2018-19 £45,309.00 Repointing, works to masonry and external decoration.
 - 2019-20 £31,805.35 Balance of major works.
 - TOTAL £90,338.35

The Parties' Positions

The Lessees

7. In their statement of case dated 8 January 2019 the items said to be disputed are those included in the Schedule of Works excluding 8.2 (vehicular access - £1,000) which is already complete. The total disputed is therefore £75,746 being the price given by Lednor Construction less 8.2.
8. The reasons given for the dispute are that the procurement strategy was inappropriate for the work required and the tender process was poorly executed. Specialist brickwork/repointing contractors would be more appropriate and as such the proposed expenditure does not provide value for money.
9. The lessees propose a reasonable sum to pay for the works would be £35,000/£40,000 and works to the Party Fence Wall (8.1) should be excluded as all three contractors consider it unnecessary.

10. Three alternative quotes have been obtained from specialist contractors which, for comparison purposes are then adjusted to include for items not quoted for, such as decorations. The totals arrived at range between £33,000 and £33,926.
11. Copies of the quotations are provided;
 - a. Georgian Brickwork. Works to house, an estimate of £14,376 and to the perimeter wall a provisional sum of £16,200. The estimates contain a number of provisional sums for unconfirmed costs e.g. the supply of special bricks.
 - b. Focal Point. Repointing and the provision of scaffolding £13,510 Pointing to one section of the perimeter wall is quoted at £1,800. Quotations for the remainder of the boundary wall and external redecoration are said to follow.
 - c. Brick Pointing Specialists. Scaffolding, repointing and veneering works £15,000 replacement bricks extra cost. Decoration of cills and plinths £3,000.
12. The quotations were not intended to be direct comparisons but were to demonstrate that the job can be done for half the proposed costs. The work is not large or complicated. The property is an end of terrace house in Broadstairs that needs some repointing and painting and should be well within the capability of a property management company and a chartered building surveyor.

The Applicant

13. The Applicant refers to the building as being on the sea front on the east coast and part of the works is to replace damaged bricks which are causing damp issues.
14. A 3-year maintenance plan was undertaken by a surveyor who provided a specification so that tenders could be obtained. Four companies were approached (including one nominated by lessees). Two tenders were returned and the cheapest quotation chosen.
15. Urgent works to subsidence in the car park which were included in the specification have now been carried out.
16. Attached to the Landlord's Statement dated 24 January 2019 is a copy of the Schedule of Condition, the two tender returns from Lednor Construction Limited and DJP Builders, an invoice from Lednor for works to the car park and the contractor's cost analysis from Urban Surveying & Design.
17. The statement refers to the difficulty of comparing the quotations obtained by the Lessees with the specification as they have not been priced on a "like for like" basis and refers to Urban's letter of 22 January 2019 which sets out their detailed concerns.

18. The Applicant goes on to refer to relevant provisions in the lease regarding the Lessor's and Lessees respective obligations.
19. The Schedule of Condition dated 21 July 2017 describes the various building elements and their condition together with recommendations as to when the work should be carried out.
20. Recommended timings are noted as "Year 1|", "Year 2" "Year 2-3", "Year 4" "Year 5"" Year 5-10" and "Year 10-15".
21. Included in Year 1 are works to repoint and replace brickwork, repair stone cills, replace defective rain water goods to the East and South elevations and prepare and decorate walls to communal areas.
22. Noted for years 1-2 is the replacement of the block paving in the car park, work that has now been completed.
23. Year 2 works comprise replace and repair the Boundary wall fronting the highway and repair a damaged fence panel to the rear boundary.
24. Years 2-3 works comprise repointing the boundary wall adjoining No 2 Eastern Esplanade, prepare and decorate ceilings and stairs to the communal areas.
25. Year 4 works comprise Decorate timber slatted balcony deck, and overhaul PVC windows. It was also noted that the remainder of the external timber work would require decoration "within the next 5 years".
26. The Schedule of Works upon which tenders were sought included all of the works noted as required within 5 years. i.e. repair and repointing brickwork, overhaul of rainwater goods, internal and external decoration and the repair/reconstruction of the boundary walls.
27. In Urban's Tender Report dated 16 October 2017 the quotations received from Lednor Construction Ltd and DJP Builders were compared and Lednor's quote was recommended for acceptance. The quotation was for £76,746.00 excluding the cost of defective Brickwork at 8.3 and 8.5 for which per metre prices had been given. The quote also included PC sums of £19,500. The quotation from DJP was £79,423.00 which also included a PC sum and per metre rates.
28. VAT had to be added to the Lednor quote whereas DJP was said not to be VAT registered. The Tender Report however suggested that VAT would have to be added to both quotes as to their knowledge DJP were over the VAT threshold.
29. In Urban's letter of 22 January 2019 an attempt has been made to compare the contractor's prices provided by the lessees and those of

Lednor and DJP. In explaining the difficulties encountered the following issues are raised;

- d. The summary referred to at paragraph 9 above includes a number of estimates obtained from other quotations.
- e. Lambs costings for special bricks has not been included
- f. Focal have allowed for 40 replacement bricks whereas 118 have been identified
- g. Brick Pointing haven't included the replacement of any bricks
- h. No allowance for Lambs premixed mortar made
- i. Georgian only allowed for 28m² of repointing
- j. Remaining contractors' quantities range from 191m² to 240m²
- k. Internal decoration, rainwater goods and spot items not included
- l. Lednor and DJP include £18,500 of provisional sums
- m. Heli bar repairs have not been included by any of the contractors.

30. A detailed comparison between each of the tender items is provided which for example indicates the cost of repointing in a range from Georgian's £3,920 to Brick Pointing's £15,000 with Lednor at £10,000.

The Lease

- 31. A copy of the lease for Flat 1 has been provided and we are told that all leases are in the same format.
- 32. The Fourth Schedule sets out the lessor's obligations which at clause 4 states "*To manage maintain and keep in good repair and condition those parts of the building and the Retained Landshall include but not be limited to the Common Service Media and Common Parts and all fixtures and fittings therein.*"
- 33. Relevant definitions in the lease are "The Retained Land" which is defined as all that land registered at the Land Registry under title number KT457955 and "The Premises" which includes the decking of the balcony but excludes the structure
- 34. Clauses 5 to 12 require the landlord to decorate the common parts, maintain the lighting, insure and, every five years, decorate the outside of the building and the inside of the common parts.
- 35. The Lessees' obligations are contained in the Third Schedule which at clause 1 requires the payment of Rent and Service Charge in the manner described at clauses 25 and 26. Clause 25 requires payment of the lessor's estimate of the forthcoming service charge in two halves on 25 March and 29 September of each year. Any Excess Service Charge is payable within seven days.

The Law

36. 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. The tribunal can decide by whom, to whom, how much and when a service charge is payable.
37. 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. Section 19 (2) concerns where a service charge is payable before the relevant costs are incurred no greater amount than is reasonable is payable.

Discussion and Decision

38. Whilst the Lessees' description of the property as an "end terrace house" is accurate it rather clouds the fact that this is a substantial 3 storey brick building with decorative features, balconies, various roof slopes and gables set behind a front garden bounded by a long low brick wall with stone copings.
39. The Lessees accept that the property requires repointing and decoration. There is no challenge to payability under the terms of the lease. The issue is whether the various works required should have been the subject of a single tender.
40. The Lessees have obtained alternative quotations from three contractors each of whom have priced some parts of the works but omitted others. The lessees have attempted to adjust the quotations to enable a fair comparison to be given.
41. The Schedule of Works includes items not indicated as due in the Schedule of Condition until Year 5 and includes the balcony decking which is the responsibility of individual Lessees to maintain.
42. The works can be broken down into sections; brickwork to house elevation, repairs to stonework, external decoration, internal decoration to common parts and repairing the boundary wall.
43. I first of all consider whether, where an element is not yet due, it would make sense to combine it with other more urgent works. External decoration of what is a substantial structure will require scaffolding and there is justification therefore in carrying out the work at the same time as brickwork repairs.
44. Some elements of the internal decoration are indicated as due in Year 1 and others in Years 2-3 and it would make no economic sense to carry out the works separately.
45. Work to the boundary wall is reported to be due in 2-3 years depending on location.

46. Given the above I am satisfied that it was reasonable for all of the works contained in the Schedule of Works, with the exception of Item 4.3 (decoration of balcony deck) to be proceeded with at the same time.
47. Turning now to whether the use of a specialist pointing contractor would have been more cost effective I have examined all of the quotations obtained and agree with the comments made by Urban as referred to at paragraph 29 above. Whilst Georgian's quotation is detailed, and on the surface attractive, it is clear that they have significantly underestimated the amount of repointing required. Of the remaining quotations Lednor's is the lowest and I am not satisfied therefore that it has been shown that the use of a specialist brickwork contractor would be more economical.
48. The alternative quotations received for decorations are not on the same basis as the schedule of Works and I am not satisfied that they demonstrate that the estimated costs are excessive.
49. The sums referred to in paragraph 6 above are estimates, include a substantial PC sum and contingency and the final cost of the works will not be known until after they have been completed. I must therefore first of all consider whether, at the time they were made, they provided reasonable guidance upon which to base forthcoming expenditure as required by the Third Schedule of the lease. I do not consider that the Lessee's contention that the inclusion of a number of different areas of work in the Schedule of Works **was inappropriate** has been demonstrated and after deducting £1,500 being the sum relating to the balcony deck I determine that the remaining £74,246 exclusive of VAT is a fair estimate of the cost of major works. With VAT added this amounts to £89,095.
50. The application covers expenditure over 3 years and totals £90,338.35. Only £13,224.00 for 2017/18 is for actual expenditure and as no information has been given as to how the remaining funds have been allocated to a particular year the Tribunal determines that it will apply its reduction of £1,243.35 (£90,338,35-£89,095) to 2018/19.

51. The Tribunal therefore determines that the following sums are reasonable and payable;

- **2017-18 £13,224.00**
- **2018-19 £44,065.65**
- **2019-20 £31,805.35**

D Banfield FRICS
25 February 2019

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.