LON/00AZ/LSC/2005/0150

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S27A OF THE LANDLORD AND TENANT ACT 1985

Property: **Milner House and Fairbank, Taymount Rise, London SE23 3UX**

Applicants: The leaseholders of Flats 1, 2, 4, 5, 9, 10 and 15 Milner House, and of Flats 2, 4, 8, 13, 14 and 15 Fairbank, Taymount Rise

Respondent: Southern Housing Group Limited

Date heard: 17 and 18 October 2005

Appearances: Mr Wesley Goldthorpe (Flat 13, Fairbank) and Mr Raymond Ashby (Flat 4, Milner House) for the applicants

Ms Gill Fairham, Group Home Ownership Manager
Mr C Farrell MRICS, Faithorn Farrell Timms LLP, chartered surveyors
Mrs Dee Tyrie, Senior Home Ownership Manager

Members of the leasehold valuation tribunal:

Lady Wilson
Mr P S Roberts Dip Arch RIBA
Mr O N Miller BSc

Date of the tribunal's decision: 25 November 2005

Summary of decision

Estimated cost of proposed works will be reasonable, but landlord has not complied with section 20 in relation to redecoration of internal common parts or fall arrest system to roof. Agreed that tenants may attend site meetings and may refer back to tribunal any works or costs which are part of the proposed contract and are considered to be unreasonable. Order under section 20C by consent. No reimbursement of fees.

Background

1. This is an application by all the long leaseholders of Milner House and Fairbank ("the tenants") under section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of their liability to pay service charges. The application, which is dated 26 May 2005, relates principally to the landlord's proposed replacement of the windows and roofs to the two blocks. It also raises concerns about the landlord's proposed introduction of a swipe card method of payment of service charges, and about the general upkeep of the two blocks. After a pre-trial review on 7 July 2005 directions were made for the hearing which indicated that the reasonableness of various other costs, not at that date clearly identified, was also in issue. However, we established at the hearing that the only issues for determination about the reasonableness of costs related to the tenants' liability to contribute to the costs of the proposed major works. Mr Ashby and Mr Goldthorpe, who represented the tenants, said that they were also concerned about the landlord's alleged neglect of the blocks, but we explained that our jurisdiction did not extend to alleged failures to comply with covenants in the leases, but was limited to the tenants' liability to pay service charges demanded or to be demanded of them.

2. Milner House and Fairbank are two three storey blocks, each containing 15 flats, built in the

1980s, on a sloping site. Each block has a flat roof, brick elevations and a slated mansard, and timber pivot windows. There are car parking spaces under Milner House. The landlord is a Registered Social Landlord and the leases, which are in standard form, were granted under the Right to Buy scheme. They contain the usual landlord's covenants to maintain, repair, redecorate and renew the blocks, including the roof, windows and common parts. The flats not occupied by the applicant tenants are occupied by weekly or monthly tenants of the landlord.

3. On 3 June 2004 the landlord gave notice under section 20 of the Act and in accordance with the Service Charges (Consultation Requirements)(England) Regulations 2003 ("the Regulations") (page 154 of the bundle) of its intention: i. to take up the existing flat roofs to both blocks and renew them to comply with current regulations; ii. to take out all existing windows and replace with double glazed units, the type and materials to be chosen by the leaseholders and tenants; and iii. to redecorate all remaining timber work to the exterior. Under iii. the notice added, in brackets,: "(The cyclical redecoration to your blocks is due in 2005/ 2006)". At that time the landlord made available to the tenants a Feasibility Report prepared by its consultants, Faithorn Farrell Timms, and dated 4 November 2002 (bundle, page 190), together with Faithorn Farrell Timms' outline specification for the works. We were not shown the outline specification, but a later version dated 26 November 2004 was put before us. It was said to be similar to the outline specification, and includes provision for the redecoration of the internal common parts of the blocks and of a "fall arrest" system to both roofs.

4. The first stage of the consultation process was extended to 26 July, then to 2 August and finally to 18 August 2004 to enable the tenants to nominate their own contractor to quote for the works (correspondence at pages 149, 147 and 143 of the bundle). They did not do so, but instead obtained their own separate quotations. One, for the replacement of the windows, was obtained from Everest Commercial Division (page 18 of the bundle), dated 12 August 2004, quoting £70,955.29 including scaffolding but excluding VAT. Two quotations were obtained by the

tenants for works to the roof: one from Chris Ball Roofing (page 24 of the bundle), based on two alternative methods of carrying out the work, one for £12,960 plus VAT per block and the other for £6000 plus VAT per block, each including roof access by means of a scaffold tower. The other quotation which the tenants obtained for the roof works was from Daneby Roofing (S E) Limited (page 27 of the bundle) for a total of £29,986 plus VAT, including scaffolding towers.

5. On 1 October 2004 (page 142 of the bundle) the landlord wrote to Mr Ashby, who is the chairman of the Taymount Rise Estate Group and who, together with Mr Goldthorpe, represented the tenants at the hearing, to say that the landlord had "appointed main contractors to manage projects of this type as it is more cost effective and it ensures that the work is co-ordinated", but that it would require the nominated main contractors to approach "companies such as Zenith and Everest" to quote for the window installation.

6. In December 2004 tenders were received from Balfour Beatty Refurbishment Ltd, Apollo London Ltd, J J McGinley Ltd and Axis Europe Ltd. After tender reports by Faithorn Farrell Timms (revised report at page 182), a statement of estimates was given under the Regulations (page 137 of the bundle) indicating that the landlord proposed to instruct Axis Europe Ltd, whose tender, at £205,352, was, by a small margin, the lowest. The tender price excluded VAT, fees and administration charge.

7. The contract has not yet been let, pending the outcome of the tenants' application.

Inspection and hearing

8. We inspected the blocks before the hearing, in the morning of 17 October, in the presence of Mr Ashby and of Ms Gill Fairham, the landlord's Group Home Ownership Manager, Mrs Dee

Tyrie, its Senior Home Ownership Manager, Mr James Marshall of Faithorn Farrell Timms and Mr Graham Priddle, the Estate Manager. It was apparent from our inspection that the felt roof of Milner House was at the end of its useful life, with pooling, moss growth and blistering, and that the front entrance door to Milner House was defective and needed to be replaced. We were shown a sample of the brown timber-effect uPVC doubled glazed window units which the landlord proposes to install.

9. At the hearing that afternoon, which continued into the following day, the tenants were represented by Mr Ashby and Mr Goldthorpe, and the landlord by Ms Fairham and Mrs Tyree, and by Mr Colin Farrell MRICS of Faithorn Farrell Timms, which is to be the contract administrator. Mr Ashby, Mr Goldthorpe, Ms Fairham and Mr Farrell gave evidence.

The relevant law

10. By section 27A(3) of the Act, *an application may be made to the 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, (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.* By section 19(1) of the Act, costs are to be taken into account in determining the amount of a service charge *(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.*

The issues

11. The tenants said that they agreed that the roof and windows needed to be replaced, but they did not accept that it was necessary or reasonable for the landlord to employ a main contractor who would subcontract the works which needed to be done. They said that the works could be perfectly adequately performed, significantly more cheaply, by two separate contractors: a roofing contractor and a window replacement contractor. They said that the three contractors which they had approached were reputable and perfectly capable of carrying out the work to a high standard, and the employment of a main contractor for a job of this size was just a waste of money. They also expressed misgivings about whether Axis Europe Ltd, which had recently entered into a long term agreement for the maintenance of the whole of the landlord's housing portfolio, was truly independent. They did not dispute that it was reasonable for the landlord to instruct a surveyor as contract administrator to supervise the works.

12. Mr Farrell, who is a partner in Faithorn Farrell LLP, said that the quotations which the tenants had obtained did not appear to be for works as comprehensive as those described in his firm's specification. For example, the tenants' quotations for the roof works did not included replacement of the roof lights, which was in the specification and which he regarded as prudent to include. Moreover, a large number of provisional sums were included in the specification to cater for contingencies which might arise on site. For example, he said, it was quite possible that when the roof timbers were exposed it would be found that works to them were required. Such works were the subject of provisional quantities in the specification but were not mentioned in the tenants' quotations. He also said that the redecoration of the internal common parts was included in the specification as a provisional sum of £10,000, and was not included in the tenants' quotations. He said that the landlord operated a list of approved contractors for major works, who must have a proven track record and be financially reliable. He considered it necessary and reasonable for the landlord to employ a main contractor for the works, which had three discrete elements (roof, windows and internal redecoration. He believed that the

employment of a main contractor would ensure that the works would be better managed and better performed, with a higher level of compliance with the CDM Regulations. He accepted that the use of a main contractor would be likely to increase the overall costs by about 10 - 12%, but was satisfied that the greater part of the difference between the price quoted by Axis Europe Ltd and the prices quoted to the tenants was that the former had allowed for contingencies whereas the latter had not. He agreed that Chris Ball Roofing was a reputable contractor and that he would be quite happy for that firm to be a subcontractor. He agreed that the replacement of the main front door to each block was excluded from the specification because, when the specification was prepared, the work was not considered to be required, but it could easily be added to the contract as a variation.

13. Mr Farrell said that the specification provided for a "fall arrest" system for each roof (section 6.14 of the specification: provisional sum £10,718). This was a permanent fixture to be used for the safety of those who might be on the roofs in the future for maintenance purposes.

14. Mr Farrell said that the specification provided for brown timber effect replacement windows, more expensive that the usual white, because he understood that the local Planning department had required them. However, a letter from Lewisham Planning Service dated 17 February 2005 was produced, which included: "It was considered that as this is a modern building and not within a conservation area, we could not be prescriptive about the type of window to be installed".

15. Ms Fairham explained that the cost of insulating the roofs of the blocks (about £12,000) was to be borne by the landlord and not passed to the tenants. She said that as a Registered Social Landlord, the landlord had to use approved contractors and had to ensure that a proper job was done. She accepted that the notices given to the tenants under section 20 of the Act and the Regulations did not make clear that internal decorations were to be part of the works, although

they had been mentioned in passing in the notice dated 3 June 2004 (see paragraph 3 above). She asked us to dispense with the consultation requirements under section 20ZA of the Act if we considered that the landlord had not complied with them in relation to the internal decorations and/or to the fall arrest system. She and Mr Farrell agreed that the leaseholders could be advised as to the progress of the works once on site and that their representative could attend site meetings. Moreover, Ms Fairham agreed that the landlord would have no objection if any disputed costs of the works as carried out were to be referred back to the tribunal in due course as part of the present application. She also said, that, for her part, she would have preferred the installation of white windows.

16. Ms Fairham explained the landlord's proposed introduction of a swipe card method of payment of service charges, which is to be optional. She also gave evidence about the operation of the sinking fund, since the tenants were concerned that it might not have been properly and fairly operated. Having heard the evidence, however, and having been shown a statement of one tenant's sinking fund, we were satisfied that the sinking fund had been properly administered.

17. Mr Ashby and Mr Goldthorpe said that they were taken by surprise by the suggestion that the decoration of the internal common parts or the provision of a fall arrest system were to be part of the contract, and that these works had not been the subject of statutory consultation with the tenants. They agreed that the front doors needed to be replaced and should be replaced as part of the contract.

Decision

18. We are satisfied that it is reasonable for the landlord to employ a main contractor for the proposed works, whether or not the works are to include redecoration of the internal common

parts. The use of a main contractor, who will take responsibility for the performance fo the subcontractors, should result in a shorter contract time and generally more efficient performance of the contract. We agree with Mr Farrell that the difference between the prices obtained by the landlord and the prices obtained by the tenants is more apparent than real, because the former includes contingencies and provisional sums and the latter do not.

19. However, we are not satisfied that the landlord has consulted the tenants in relation to the decoration of the internal common parts (which is not only not included within the notices, but is buried in Part 5 of the specification under the heading "Window Replacement"), or in relation to the fall arrest system. We are not prepared to make an order under section 20ZA without proper notice of such an application being given to all the leaseholders. We see no reason, however, why the replacement of the front doors, which is agreed to be necessary, should not be carried out as part of the contract without further consultation.

20. We accordingly determine that the costs which the landlord proposes to incur in connection with the works to the roof and replacement of the windows will be reasonably incurred and a service charge based upon them will, provided the standard of the works are carried out to a reasonable standard, be recoverable from the leaseholders; but that, unless the landlord obtains an order under section 20ZA in relation to the internal decoration and the fall arrest system, any costs of those works over the statutory limit will not be recoverable as a service charge. We are satisfied that Axis Europe Limited was an independent contractor which made a genuinely competitive bid. We think it may be worth while reconsidering the colour of the windows if white is generally preferred, but we do not direct that that should be done, and consider that the installation of brown windows would not be unreasonable. We also direct that the tenants may restore the application to the tribunal if the costs or standard of the works are not, in their opinion, reasonable.

21. The proposal to introduce an optional swipe card as a method of payment does not affect the amount of the service charges or to prejudice the tenants in any way.

Section 20C and reimbursement of fees

22. Ms Fairham indicated that the landlord did not propose to place its costs in connection with the proceedings on the service charge of any of the tenants. We are sure that the landlord will do as she says it will, but, to protect the tenants' position, we make an order under section 20C by consent. We do not propose to order reimbursement of the fees paid by the tenants under paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 because the landlord's position has been broadly justified by our decision.

CHAIRMAN.....

DATE.....25 March 2005