

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property: Newbury House, Andover Road, Newbury, Berkshire
RG14 6NG

Applicant: Mr S Schollar, Leasehold Services Manager, Sovereign
Housing Association Limited, Berkshire House, 17-24
Bartholomew Street, Newbury, Berkshire RG14 5LL

Respondents: Mr & Mrs D Bune Flat 1 & Beech Tree Cottage,
Bucklebury Alley, Newbury Berkshire RG18 9NH
Mr J Brown Flat 2
Mr K Davis Flat 4
Mrs VA Emmens Flat 5 represented by Mrs J Colbourne,
49 Greenacres, Woolton Hill Newbury

Repondents' Surveyor: Mr DN Blomley MRICS, Marshalls, 34 Cheap Street,
Newbury, Berkshire RG14 5DB

Case number: CAM/00MB/LSC/2004/0056

Application: Landlord applies for a determination of the liability to pay
Service charges including the reasonableness of
service charge (Section 27A Landlord and Tenant Act 1985)
for the financial year 2004/ 2005

Tribunal: Mr JR Morris (Chairman)
Mrs Redmond, BSc (Econ) MRICS
Mr B Tyers

Date of Application:

Date of Hearing: 23rd March 2005

Attending Hearing:

Applicants: Mr S Schollar
Mr M Cummins

Respondents: Mr D Bune Flat 1
Mrs C Bune Flat 1
Mr Davis Flat 4
Mr Broan Flat 2
Mrs SJ Colbourne for Mrs VA Emmens Flat 5
Mr R Colbourne
Mrs A Crowther

The Application

1. On the 13th April the 2004 Applicant applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to whether costs incurred by way of service charge during the period 1st April 2004 to 31st March 2005 were reasonable.
3. In addition the Respondent made an application pursuant to section 20(c) of the Landlord and Tenant Act 1985, for an order that the Landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants of the property.

The Law

4. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 18

- (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 land lord 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

Section 19

- (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 other wise.

Section 27A

- 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 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.

5. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002. The notice required under this legislation was served in the present case after the 31st October 2003 and therefore the amendments introduced by s 151 of the Commonhold and Leasehold Reform Act 2002 to s20 and 20ZA of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 apply.

Section 20

- (1) Where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified [£1,000] the excess shall not be taken into account in determining the amount of the service charge unless the relevant requirements have been either
 - (a) complied with or
 - (b) dispensed with by the courtand the amount payable shall be limited accordingly.
- (2) ...“qualifying works”...means works ...to the costs of which the tenant by whom the service charge is payable may be required under the terms of the lease to contribute by the payment of a service charge.
- (4) The relevant requirements in relation to such of the tenants concerned as are not represented by a recognised tenants’ association are-
 - (a) At least two of the estimates of the works shall be obtained one of them from a person wholly unconnected with the landlord

- (b) A notice accompanied by a copy of the estimates shall be given to each of those tenants concerned ...
- (c) The notice shall describe the works to be carried out and invite observations on them and on the estimates ...
- (d) The date stated in the notice shall not be earlier than one month after the date on which the notice was given...
- (e) The landlord shall have regard to any observations received in pursuance of the notice ...

Description of the Building and Property

- 6. The Property comprises a detached block of 10 converted flats (the Building) in what was a large two-storey house with communal grounds and a drying area together with space for communal parking at the front of the building. The Building is rendered to all elevations under a pitched slate roof. The Property is situated on the South side of Newbury about a mile from the town centre.

Inspection

- 7. The tribunal inspected the Property in the presence of Mr Schollar and Mr Cummings for the Applicants and Mr Brown (Flat 2) and Mrs Colbourne (Flat 5). Externally the Building was in fair condition and the render was satisfactory in some areas but cracked in others. There were algae on shaded walls. The wooden windows were in need of redecoration and there appeared to be some rot, which needed attention. There were mostly plastic down pipes and gutters with some cast iron. It appeared from a stop end that had fallen that the plastic had become brittle. The roof appeared from a ground level inspection to be sound. The grounds were laid mainly to lawn appeared to be well kept. The drive and parking area at the front of the Property was gravel.
- 8. Internally the common hall and stairs were in a neglected condition. The decoration was poor and the floor covering utilitarian. The Common parts served the flats of 1, 2 and 7 on the ground floor and 8, 9 and 10 on the first floor. Flats 3, 4, 5 and 6 have separate entrances.

The Lease

- 9. The freeholder is the Applicant who is also the immediate landlord. The Respondents are the tenants. The Applicant provided copies of the Leases. The Applicants are the only tenants of the Property who have purchased long leases.
- 10. Clause 3 of each of the Leases states that the landlord is entitled by way of additional rent, all moneys due by virtue of Clause 4(4), which states that the tenants are liable to pay a Service Charge. Details of the Service Charge are set out in the Fourth Schedule.
- 11. The Fourth Schedule of each of the Leases states that the Tenant is to pay a proportionate part by way of Service Charge towards a number of expenses. The items relevant to this Application being:
 - 1. The expense of maintaining repairing redecorating and renewing amending re-pointing painting graining varnishing whitening or colouring the Building.

2. The cost of insuring
3. The costs of cleaning decorating and lighting the Common Parts used by the Tenant.

Documentation

12. The documents provided by the parties as being of particular relevance for the determination of the Tribunal included the following:
 - Copies of the Respondent's Leases
 - Copies of the documentation for the Section 20 Procedure in relation the disputed works including specification and tenders
 - Copies of historical correspondence
 - Copies of a Schedule of Condition prepared for the Respondents by their Surveyor

The Applicant's Case

13. It was stated that in 2003 the works of render repairs, redecoration, replacement of rainwater goods, replacement windows were identified during a re-painting survey and a section 20 procedure was carried out and tenders obtained. However the works were not proceeded with as a review of the future of the site was carried out which included the possible re-development of the property. To carry out the proposed plans the Applicants would have had to purchase the leases from the Respondents who were the only tenants of the Property who had purchased long leases and copies of correspondence relating to the negotiations was produced.
14. In October 2004, the Applicants decided to retain the Property in its present form and proceed with the works. The Applicants referred to a letter by the Applicants to each of the Respondents dated 1st October 2004 that stated "Sovereign has now decided to carry out repairs and redecoration to Newbury house and not to pursue a potential redevelopment scheme which would have involved the purchase of your flat."
15. Due to the delay it was felt that the work should be re-tendered and the procedure under section 20 Landlord and Tenant Act 1985 was carried out. The Applicant, as evidence of having followed the s20 Landlord and Tenant Act 1985 procedure, submitted the following documentation:

A letter dated 5th November 2004 to the Respondents, the Applicants which commenced the procedure under section 20 of the Landlord and Tenant Act 1985 with a view to carrying out the following works on the Property:

- Replacement windows
- Rendering
- Painting (internal and external)
- Replacement rainwater goods
- Brickwork repairs (chimneys and window sills)

Written observations were invited within 30 days of the notice and the tenants were also invited to submit names of person from whom an estimate might be obtained.

A letter dated 13th December 2004 the Applicants which informed the Respondents that two observations had been received and two estimates had been obtained:

RGC General Builders Ltd

- £140,604.03 per block being £14,060.40 per flat

Quicksons South and West Ltd

- £156,862.50 per block being £15,686.25 per flat

The Respondents were informed that they could inspect the estimates and make written observations by 13th January 2005, which was extended on the 4th January to the 20th January to allow for the Christmas holiday period.

16. The Applicants addressed the Tribunal on each of the items referred to in the notice of works given as part of the procedure under section 20 as follows:

Render Repairs

17. It was stated that repairs to the render were necessary before the exterior walls could be painted. There were several defective areas that needed to be cut away and re-filled. It was acknowledged that the delay between recognising that the work needed to be carried out in 2003 and deciding to carry out the work in 2004 might have caused a deterioration leading to a larger area having to be renewed. As a result the Applicants would absorb the cost of this work and not charge the respondents.

Decorations

18. It was stated that it is the Applicant's policy to inspect and redecorate their properties every 5 years and that the Property had last been decorated in 1997 and so was due to be decorated in 2002/3. Although the delay due to the review of the future of the Property may have caused some deterioration the contractor whose tender had been accepted following the section 20 procedure had stood by his original tender price for this element of the work and therefore the Applicants considered the Leaseholders should contribute to wards this cost. Any money in the painting fund would be used to offset the cost of the decoration.
19. The Applicants stated that the tenants of Flats 4 and 5 would not be charged for the internal decoration as there was a separate external entrance and the tenants did not have access to the common hallway.

Rainwater Goods

20. It was submitted that the rainwater goods were at the end of their useful life and repairs were needed. In addition there was a mixture of cast iron and plastic. Since the scaffolding would be erected for the decoration and since labour costs would be incurred, as the goods would need to be removed in order to paint the fascias it was believed to be cost effective to replace rather than refit the existing goods.

Windows

21. The Applicants stated that the cost of replacing the windows would be met by them and not be chargeable to the Respondents.

Respondents' Case

22. The Respondents Surveyor stated that due to the delay caused by the Applicant's review of the future of the Property the Building had deteriorated substantially so that the repairs were greater and more expensive than if they had been carried out at the proper time.
23. The respondent's Surveyor referred the Tribunal to the Schedule of Condition, which broadly concluded that
- The rainwater goods were satisfactory and did not require renewal only routine maintenance
 - The render was generally satisfactory but that some patching and filling was required
 - The windows and joinery required repair but not renewal.
 - The Building required total decoration.
24. The Respondent's Surveyor made the following comments:
- It was noted that the Applicant would pay for the windows however the Respondents did not consider that replacement was necessary and that they should be repaired and redecorated.
 - The Respondent's also did not see why they should be liable for the replacement of the rainwater goods as the need to replace was due to the Applicant's lack of maintenance.
 - If responsibility for the windows and render is accepted by the Applicant then as the scaffolding is required for this work the Respondents do not feel they should have to pay for it. It certainly seemed unfair that the ground floor flats should have to pay for the scaffolding in the same as the upper floor flats.
 - The cost of painting seemed excessive at £22,520.33 especially as it did not include the windows.
 - The contingency sum of £15,864 allowed for in the tender appeared excessive. Most matters appeared to have been allowed for in the tender except perhaps for the fascia boards, which did not appear damaged.
25. The Respondents reinforced the points made by their surveyor and in particular commented:
- The Building should have been painted in 2002 as it was last painted in 1997.
 - It was submitted that a proportion of the scaffolding costs should be borne by the Applicant, as the extent of the work was greater due to their neglect.
 - The contingency appeared excessive and would normally be expressed as a percentage.
 - Concern was expressed about the standard of the work.
 - The internal decoration should not be charged to Flat 5, as the tenant did not have access to the common hallway used by flats 1, 2 and 4.

Determination of the Application under Section 27A of the Landlord and Tenant Act 1985

26. As the repairs to the render and the replacement of the windows were no longer chargeable to the Respondents the Tribunal did not have jurisdiction in respect of these costs.

34. The summary of the costs determined to be reasonable are as follows:

Item	Cost ex VAT	Cost In VAT
Internal Painting	1,200.00	1,410.00
External Painting	17,714.00	20,813.00
Preliminaries @ 19.067% of total	3,606.33	4,237.44
Sub Total	22520.33	26460.44
Rainwater goods	5884.00	6,913.70
Preliminaries @ 19.067% of total	1,121.90	1,318.24
Subtotal	7005.90	8231.94
Total cost of works for decoration and rainwater goods	29,526.23	34,692.38
Contingency @ 10% of total	2,952.62	3,469.24
Total	32,478.85	38,161.62

Determination of Application under Section 20(c) of the Landlord and Tenant Act 1985

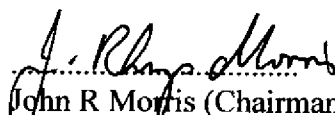
35. The Respondent applied for an order under Section 20(c) of the Landlord and Tenant Act 1985 that the Landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant of the property.
36. The Applicant stated that no charge would be made for the costs Application in the Service Charge to the Tenants.
37. The Tribunal found that there was no provision in the lease for the costs to be charged to the Respondents by way of service charge. In any event the Tribunal found that the Applicant had conceded that a proportion of the costs that would have been incurred were attributable to neglect and would have been in issue had it not been for the Applicant's agreeing to pay them. The Tribunal therefore determined that if it was found that on a different interpretation the Lease did permit the Applicant to recover such costs they should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

.....
John R Morris (Chairman)

Caution: For the purpose of reaching a decision the Committee inspected the subject property. Such inspection is not a structural survey. Any comments about the condition of the property in this Statement of Reasons must not be relied upon as a guide to the structural condition of the property.

Determination of Application under Section 20(c) of the Landlord and Tenant Act 1985

34. The Respondent applied for an order under Section 20(c) of the Landlord and Tenant Act 1985 that the Landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant of the property.
35. The Applicant stated that they did not intend to charge the costs of the Application to the Tenants by way of service charge.
36. The Tribunal found that there was no provision in the lease for the costs to be charged to the Respondents by way of service charge. In any event the Tribunal found that the Applicant had conceded that a proportion of the costs that would have been incurred were attributable to neglect and would have been in issue had it not been for the Applicant's agreeing to pay them. The Tribunal therefore determined that if it was found that on a different interpretation the Lease did permit the Applicant to recover such costs they should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.


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