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

Case Reference : **BIR/44UF/LIS/2012/0060(b)**

Property : **15 Park Road Kenilworth Warwickshire
CV8 2GF**

Applicant : **Elmbirch Properties PLC**

Respondents : **A Farrington Esq.
S Jacques Esq.
G S Ellard Esq.
Mrs E M John
Ms J Bayston
D Carrington Esq.
Miss A J Frost and
Miss N J Shurvinton**

Representatives : **None – Paper Determination**

Type of Application : **Application for a determination of liability
to pay and reasonableness of service
charges pursuant to sections 27A and 19 of
the Landlord and Tenant Act 1985**

Tribunal Members : **Mr R Healey (Chairman) &
Mr D J Satchwell FRICS**

**Date and venue of
Hearing** : **28 February 2013 and 3 July 2013 at The
Courts and Tribunals Centre Bull Street
Birmingham, B4 6AF**

Date of Decision : **15th July 2013**

DECISION

Introduction

1. This is an application by Elmbirch Properties Limited, the Freeholder, ("the Applicant") for a determination of liability to pay and reasonableness of service charges in accordance with the provisions of sections 27A and 19 of the Landlord and Tenant Act 1985 ("the 1985 Act") for the years 2012/13, 2013/14 and 2014/15 in respect of 15 Park Road, Kenilworth, Warwickshire ("the Property"). The Property comprises seven flats. The service charge proportion is split one eighth in respect of six tenants and two eighths in respect of the remaining tenant.
2. The application relates to the draft service charges for the years 1st April 2012 to 31st March 2013; 1st April 2013 to 31st March 2014 and 1st April 2014 to 31st March 2015.
3. The proposed expenditure is split between roofing works proposed in Phase 1 for inclusion in the 2012/13 service charge year; general building works proposed in Phase 2 for inclusion in the 2013/14 service charge year and driveway and associated works proposed in Phase 3 for inclusion in the 2014/15 service charge year.
4. The Applicant requested early approval for the Phase 1 works to enable the works to be commenced prior to the onset of winter and a determination has previously been made on that issue. This determination relates to the Phase 2 and Phase 3 works and is supplementary to the Phase 1 works determination.
5. The Applicant's request for service charge approval relates only to the proposed works referred to in paragraph 4 above and specifically does not relate to any other items included in the annual estimated service charge budgets.
6. The law and the content of the leases is dealt with in the earlier determination.

Phase 2 works

7. The Phase 2 works for which approval is requested for the service charge year 2013/14 are set out below. The numbers in italics are taken from the tender analysis.
 - 3.17 *To demolish and dispose of existing perished wall and rebuild adding height to accommodate waist height handrail to comply with building regulations and to remove and dispose of ivy on wall to rear of entrance.*
Cost £1,200.00
 - 3.18 *To remove and repair existing porch canopy and refix using timber gallows brackets.*
Cost £250.00
 - 3.19 *To level out uneven paving and steps, to paint edgings and nosings on steps to define a safe walking area between flats.*
Cost £450.00
 - 3.20 *The provision of external lighting*
Cost To be subcontracted
 - 3.22 *To remove the existing south boundary fence and retainer, to construct retaining wall out of concrete bedded slabs and replace fence with concrete posts and feather edge boarded panels.*
Cost £550.00

3.23 To remove small garage construction from end of garage block and dispose of, to remove approximately 18 cubic metres of refuse from construction by way of 2 x 9m skips to dispose asbestos cement fibre roof sheets in accordance with Health and Safety Executive Guidelines.

Cost £900.00

The above quotations are made on the understanding that Value Added Tax is not chargeable.

8. The submissions by the Respondents may be summarised as allegations of failure to properly maintain by the Managing Agents over a number of years leading to a deterioration of the building resulting in a larger repair bill.

9. It was also submitted by the Respondents that certain exterior lighting had been completed at the expense of the leaseholders.

10. Following the inspection and hearing on 8 November 2012 it was accepted in connection with the earlier application that item 3.20 (external lighting) be removed from the application, item 3.22 (southern boundary fence) be removed from the application as it was no longer in existence and that item 3.23 (removal of garage) be removed from the application as the Applicants were unable to satisfy the Tribunal that the garage was within their ownership.

Findings by the Tribunal in respect of Phase 2 works

11. The Tribunal finds neglect over a period of time but does not find that the failure to repair, on balance, has resulted in an overall increase in the present proposed expenditure compared with the likely cost of dealing with such matters earlier and/or on an independent basis.

12. The Tribunal determines the charges set out in 3.17, 3.18 and 3.19 (£1,900.00 in total) to be reasonable.

Phase 3 works

13. The Phase 3 works for which approval is requested for the service charge year 2014/15 are set out below. The numbers in italics are taken from the tender analysis.

3.21 Access driveway and garage compound resurfacing

Cost: £13,750.00

14. Following the inspection by the Tribunal further information was requested from the Applicant concerning the user of the whole of the accessway and the terms upon which such user had been granted.

15. The Applicant produced a copy of a Licence dated 3 January 2007 governing the use of part of the access at the Premises by number 17 Park Road. Rent is payable by number 17 to the Applicant at £200 per annum from 3 January 2007 and subject to review on 2 January 2010. There is no evidence of any review before the Tribunal. Clause 4.2 of the Licence provides for a contribution of one ninth of the costs and expenses incurred by the Landlord in maintaining and repairing the driveway. The driveway is shown on the plan attached to the licence. ("the driveway")

16. In addition to the driveway there is additional land at the foot of the garden of the Property in front of the garages ("the additional land"). The driveway and the additional land are together referred to as "the accessway". The service charge payable by the Property under this heading is in respect of the accessway.

17. The Applicant states that there is further user by number 13 Park Road. There is no licence presently in existence and the proposed parties are negotiating. The proposed new user is not prepared to contribute to repairs and maintenance prior to his usage.

18. The Applicant is unable to obtain information from the original contractor, Complete Maintenance, relating to the split of the costings relating to the individual sections of the accessway due to the contractor's serious illness. Further tenders were requested from alternative parties and one was forthcoming from Walsgrave Contractor Limited. This is at an increased price of £14,750.00.(plus VAT) for the original specification. The new contractor proposes that the work required to the additional land is to a higher specification. The tender for the higher specification is £16,220.00 (plus VAT) or the accessway providing all the works comprising the accessway are done together.

19. The Tribunal as an expert tribunal and using its own skill and knowledge finds that the higher specification is likely to represent better long term value.

20. The Tribunal has before it the benefit of a plan showing the accessway split into six parts and the new contractors quotation in respect of each part both to the original specification and to the higher specification.

21. The Tribunal notes that the Licence provides for number 17 Park Road to be responsible for one ninth of the costs relating to the driveway. The driveway comprises parts A,B,C and D on the contractors plan. Using the higher specification and assuming that the works on the accessway are undertaken in their entirety the Tribunal calculates the costs of the driveway works to be £9732 in total of which one ninth (£1,081) is allocated to number 15.

22. The Tribunal has no jurisdiction to make a binding determination on the contribution to be paid for the use of all or any part of the accessway in respect of the user by adjoining or neighbouring properties. However the Tribunal proposes to calculate an appropriate contribution from such other users, deduct it from the total service charge for the accessway, and use the resulting sum as the figure for the service charge payable by the Property.

23. The Tribunal notes that number 13 is a user of the access and that it refuses to contribute to repairs and maintenance on a historical basis. The Tribunal notes from the Landlord's letter to the Tribunal dated 7 January 2013 that the user was already in existence at that time. The Tribunal further notes that the works to be undertaken are for the service charge year 2014/15. The Tribunal finds that it is reasonable to expect the user at 13 to contribute.

24. The Tribunal proceeded to consider the appropriate contribution that may reasonably be expected to be made by number 13. The Tribunal notes that number 13 has the benefit of the use of the driveway in its entirety and accesses it over the

additional land. The Tribunal finds that considering the user by the Property and the user by number 17 a contribution of one tenth to the driveway repair and maintenance is reasonable. This gives a contribution of £973.00. In addition the Tribunal considered the user of the additional land by number 13. This is shown as E and F on the contractor's plan. The costs of the works calculated on the same basis as the costings for the driveway amount to £6,488.00. The Tribunal notes that the additional land is used by the Property but is not used by number 17. The Tribunal finds that an appropriate contribution is 9% which gives £721.00. The total anticipated contribution by number 13 is therefore £1,694.00.

25. The total service charge quoted for the accessway is £16,220.00. It follows that by deducting the deemed contribution of £1081.00 from number 17 and the deemed contribution of £1,694 from number 13 the allowable service charge for the Property is £13,445.00 plus VAT

26. The Tribunal considers that the Applicant may proceed with the original specification which will be charged at the lower price. The figure chargeable to the Property will be 83% of the charges attributable to the accessway.

DETERMINATION

27. In respect of the Phase 2 work for the service charge year 2013/14, taking into account the above findings the Tribunal allows *3.17, 3.18 and 3.19* and determines the service charge figure of £1,900.

28. In respect of the Phase 3 works for the service charge year 2014/15, taking into account the above findings the Tribunal determines the service charge figure of £13,445.00 based on the higher specification by Walsgrave Contractors Limited. In the event of the original specification being adopted in place of the higher specification the service charges shall be limited to 83% of the agreed works. The charges of Walsgrave Contractors Limited are subject to the addition of VAT.

29. The Tribunal makes no determination on the budgeted costs other than in respect of the works set out above.

Roger Healey
Chairman

15th July 2013