9254

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2013/ 0134**
Property	:	**Ruskin Park House, Champion Hill, London SE5 8TH**
Applicant	:	**Ruskin Park House Limited**
Representative	:	**Segens Blount Petre Solicitors**
Respondent	:	**The 239 lessees of Ruskin Park House, Champion Hill, London SE5 8TH**
Representative	:	
Type of Application	:	**(1) For the variation of a lease or leases under Part IV of the Landlord and Tenant Act 1987 (2) For the determination of the reasonableness of and the liability to pay a service charge;**
Tribunal Members	:	**Judge Tagliavini** **Mr P Roberts** **Mr P Clabburn**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR** **17 & 18 June 2013**
Date of Decision	:	**8 September 2013**

DECISION

Decisions of the tribunal

(1) In summary, The tribunal considers that the scope of works as adopted by the applicant from the summary report of Mendick Waring but without the installation of additional radiators and their cost are reasonable, i.e. fall back position 1.

NB: The parties must have regard to the whole of this decision as it is subject to certain conditions being met.

The application

1. The applicant seeks a determination pursuant to (1) Section 35 of the Landlord and Tenant Act 1987 to vary the 239 leases in order that Works can be carried out to the subject premises for which the respondent lessees are contractually liable; (2) A determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the proposed major works to replace the heating and hot water system.

2. The relevant legal provisions are set out in the Appendix to this decision. *(Will add section 35 in final version)*

The hearing

3. The Applicant was represented by Mr M Sefton, counsel. Mr Reardon and Mr Wilkinson (lessees) appeared in person. In addition, Mr Norris, a lessee and Chairman of the Committee of Management also attended and gave evidence to the tribunal.

The background

4. The property which is the subject of this application is a 1950's purpose built residential estate consisting of 241 flats arranged in three blocks, A, B and C, set in communal grounds. Of the 241 flats, 239 are let on long leases. The flats are served by a communal heating and hot water system, the boilers for which, are contained in a separate boiler house. The freehold is currently owned by the London Borough of Southwark.

5. The 239 Respondents hold a long lease of the property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

6. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for a scheme of proposed works to replace a communal central heating and hot water system, the estimated cost of which is £4,202,913.12.

   (ii) A variation of the 239 leases (2 flats being used for staff accommodation) to allow the proposed works to be carried out and the cost recovered.

   (iii) Whether it would be reasonable for the Applicant to carry out the proposed Works and to incur the estimated costs.

7. The tribunal was told that currently the flats receive their central heating and hot water through a communal system, serving the estate as a whole, and many of the components of which date back to the original construction of the Estate. On the Estate is a boiler house containing four gas-fired boilers and four distribution pumps delivering low temperature hot water to the heating and to the hot water cylinders within the airing cupboards of each flat. Space heating within the flats is provided through the largely original cast iron 1950's radiators, typically installed only in parts of the flats (hallway, master bedroom and living room), leaving parts of the flat without the benefit of central heating

8. Surveys of the continued viability and repair of the current system had been carried out with alternative solutions suggested, namely;

   (i) the replacement of the communal boilers and distribution pumps with semi-centralised boiler plant i.e. boilers in the basement of block A, block B and in a suitable location in block C. The installation of new distribution pipe work connected to a new heat interface unit for each flat. The installation of new pipework in each flat to avoid the new system being compromised. New additional (flat panel) radiators to be installed (where requested).

   (ii) Same as (i) above but no new additional radiators. ***(Fall-back position 1)***

   (iii) Fully centralised system retaining current boiler house

9. The Applicant submitted that its preferred option was (i) above and its favoured full-back position at (ii) above. However, the leases as currently drafted provided for the provision and repair of heating and hot water systems outside of the demised flat (s) while the lessee's obligations are to maintain and repair items within the demise. Consequently, the replacement of the current system with any of the scheme of Works or an alternative would require the landlord to carry out works inside the demise and arguably breach the lease terms. Further, the landlord was reluctant to commit to such a large project if the works were not considered reasonable in their extent and cost.

10. The lessees responses were varied, although those that responded did mostly indicate support for some kind of works and included:

- Some lessees want to come off the communal system.
- Some lessees assert the system does not need replacing yet.
- Some lessees arein favour of proposal but want a differently designed radiator (similar to old style) than that proposed by landlord.
- Other lessees do not want individual boilers in flat.
- Other lessees want individual boilers in flats and say proposed scheme has not been properly researched.

11. The applicant relied on its expert report produced by Mendick Waring Limited dated 22/01/13 & May 2012 in support of its application to carry out works to the heating and hot water supply. A number of lessees indicated their support of the application, both orally and in writing to the tribunal.

12. The applicant proposed the following wording to amend the leases in order for the landlord to carry out the Works as described in option (1) above.

1. Add to end of the Recital a new third paragraph :

"(3) In this lease the phrase 'the Works' means the 'proposed scheme' described in the document prepared by Mendick Waring Ltd dated 22

March 2013 entitled 'Summary of the proposed scheme for the replacement of the Heating & Hot Water Systems at Rushkin Park House'".

2. Delete from clause 5(1) (i.e. the tenant's repairing covenant) the words in the third line:

"(including the hot water radiator)"

3. Add to the end of clause 5(1) (i.e. the tenant's repairing covenant) the following words:

"(and for the avoidance of doubt, following completion of the Works the Lessee shall not be liable under this covenant for the repair of the hot water radiator in the Flat, or any of the pipes serving them or serving the hot water system, or any other equipment installed as part of the Works)"

4. Add to Schedule 3 (i.e. to the rights reserved to the landlord under the lease) the following additional paragraph:

"(4) The right to enter the Flat and to carry out the Works, provided that, in exercising that right, the Lessor shall only effect entry at a reasonable time (except in an emergency) and on reasonable notice (except in an emergency), shall cause as little damage as possible to the Flat and shall promptly make good any damage caused to the reasonable satisfaction of the Lessee, and complying with any reasonable requirements of the Lessee in relation to the right of entry"

5. Add to the final line of paragraph 1 of Part 1 of Schedule 6 (i.e. the landlord's repairing covenant) the following words, to be added to the last line, after the word "Buildings":

"(including the hot water radiators in the Flat, and including all pipes serving them or serving the hot water system and any other equipment installed as part of the Works)"

7. Add to the end of paragraph 12 of Part 3 of Schedule 6 (i.e. the landlord's covenant to renew the hot water and central heating when required) the words;

"(including by carrying out the Works)"

The tribunal's decision & reasons

13. **The tribunal determines that it is reasonable for the Applicant to carry out the Works as described in 8(ii) above i.e. without the instalment of additional radiators – fall back position 1***

**The tribunal considers that the Applicant should give consideration to separate billing arrangements for each flat in order to equitably charge for additional radiators and usage to the relevant lessee and not to the entirety of the lessees in the subject block or blocks.*

The tribunal accepts the evidence of Mr G Clarke of FHP Engineering Services and his adoption of the report(s) of Mendick Waring as establishing that there is a need for works of replacement to be carried out to the heating and hot water system at the subject address

14. The cost of these Works, (without the additional radiators) is considered reasonable by the tribunal. Although the tribunal considers this to be a project involving a significant sum, it was not provided with any alternative specifications or sums showing that these works or similar could be done more cheaply. The tribunal accepts that the heating and hot water system has reached the end of its useful life and replacement is the only viable option in view of the increasing unavailability of spare parts for repairs.

15. Provisionally the tribunal accepts the applicant's submissions that the leases shall be varied in accordance with the suggested proposed variations as set out above However, as these amended variations were submitted after the close of the hearing, the tribunal considers that it is only reasonable to allow the lessees 14 days from the date this decision is sent to the parties by the respondent to object in writing to the wording of the variation?.

The applicant is to be responsible for ensuring that a copy of this decision is provided within 7 days of the date of receipt of this decision, whether by post or email to each respondent and shall ensure that a copy is placed in a communal area in each block which is accessible to each lessee

16. Although this application is made under section 35 of the Landlord and Tenant Act 1985 (variation of one lease) the tribunal for the sake of expediency treats this as in effect 239 applications to vary a lease or in the alternative as an application under sections 35 and 39 of the Landlord and Tenant Act 1985 and amends the application accordingly, subject to any objections being received to this course of action within 14 days of the date of this decision being sent to the parties

17. The tribunal is satisfied that the lease does not adequately provided for the carrying out of the proposed Works (as approved by the Tribunal) and therefore in principle the Tribunal finds that the lease(s) should be varied pursuant to section 35 (2)© (d) & (e) & 36(3) (a) & (b)

Name: LM Tagliavini **Date:** 8 September 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

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, improvements 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 landlord, or a superior landlord, in connection with the matters for 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 or later 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 provisions 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 otherwise.

Section 27A

(1) 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, 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, 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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount, which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long-term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).