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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00BK/LSC/2013/0793
Property	:	Flats 1-5 and Ground Floor Flat, Newton Court, 132 Allitsen Road, London NW8 7AU
Applicant	:	Stargrove Properties Ltd
Representative	:	Mr Marcus Staples BsC MRICS
Respondents	:	(1) Mr Justine Moore (Flat 1); (2) Mr Carni Korine (Flat 2); (3) Mr E Camerson (Flat 3); (4) Mr Nemanja Pavlicic (Flat 4); (5) Mr James Jardine (Flat 5); (6) Tragus Holdings Limited (Ground floor flat).
Representatives	:	Mr James Jardine (Flat 5); Miss T Solanki (representing Flat 2); Mr Vlad Aleksic (representing Flat 4).
Type of Application	:	Determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Judge Robert Latham Mr Neil Maloney FRICS
Date and venue of Hearing	:	22nd January 2014 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	17 February 2014

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DECISION

The Tribunal determines that the estimated service charges are reasonable and payable for the year 2013/4 in respect of the major works to be carried out by the landlord at Newton Court, London NW8 7AU

The Application

1. By an application dated 18 November 2013, the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether estimated service charges are payable for the year 2013/4 in respect of major works to be carried out at Newton Court, Allitsen Road, London NW8 7AU ("the premises").

2. On 12 December 2013, the Tribunal gave Directions. The Tribunal noted that the landlord wished to carry out extensive works to the fascia, roof and decorations of the premises. The tenants had no objection in principle to the works. They rather contended that not all the works are currently necessary and that they should be phased.

3. Pursuant to these Directions:

   (i) The landlord has filed a Statement from Mr Marcus Staples BSc MRICS setting out the extent of the proposed works, the need for these works, the costs of the same and the proposed timescale.

   (ii) The tenants of Flats 2, 4 and 5 have set out their statement of case setting out their response to the claim.

The Hearing

4. Mr Staples appeared on behalf of the landlord and gave evidence. He is a Director of Crickmay Asset Management LLP ("Crickmay"), the landlord's managing agents. Mr James Jardine (flat 5); Miss T Solanki (representing Flat 2); Mr Vlad Aleksic (representing Flat 4) appeared on behalf of the tenants. Mr Jardine represented the tenants. We heard evidence from them.

5. The premises at Newton Court are situated at the junction of St John's Wood High Street and Allitsen Road. It is a Grade II listed building constructed in 1896. There is a cafe on the ground floor occupied by

Cafe Rouge. It has terracotta and brick façades with a pitched slate roof.

6. On 29 September 2009, the freeholder appointed Crickmay to act as managing agents. In 2011, the freeholder instructed Crickmay to investigate a suitable programme of repairs. A series of Stage 1 Consultation Notices (Notice of Intention to do Works) were served on 17 November 2011; 31 May 2012 and 21 March 2013. Stage 2 Notices (Notices about Estimates) were served on 28 March 2013 and 7 May 2013.

7. The dispute between the parties is a narrow one. At [4.1] of his statement, Mr Staples sets out the scope of the works that the landlord intended to execute. The dispute relates to (iii), namely "the replacement of the slates and battens on the pitched roof and the upgrading of the thermal insulation in the roof void".

8. The cost of the works which the landlord is minded to execute is set out at [4.2] namely £215,617 for the works + VAT. There will also be a 10% charge for professional fees, which will also be subject to VAT. This includes £18,982 for CDM. The landlord intends to tender for this separately. There is an issue about the need for the provision of a temporary roof (£10,752) which would be necessary were the works to be executed over the winter months. Mr Staples indicated that it may be possible for the landlord to dispense with this.

9. The tenants contend that works costing £132,000 + VAT are justified at this time to which they accept the professional fees should be added. They suggest that the replacement of the roof could be deferred for some 5 to 10 years.

10. The landlord has had regard to the decision of the Upper Tribunal (Lands Chamber) in *Garside v RFYC Ltd [2011] UKUT 367 (LC)*. The tenants are not suggesting that they are unable to afford the works if carried out in a single package, they rather suggest that it is not reasonable for the landlord to execute the works in a single phase, if it is possible to phase them.

<u>Our Decision</u>

11. Under the terms of the lease, it is the landlord who is obliged to keep the roof in good and substantial repair. The point at which a roof needs to be replaced is always a matter of judgment. The issue for us is whether the landlord's actions are appropriate and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act (see *Forecelux v Sweetman [2001] 2 EGLR 173* at [40]).

12. Mr Staples describes how it became apparent during a cherry picker survey in June 2012 that the pitched slated roof still had the original roof covering. Many of the slates were showing signs of laminating and a number appeared to have slipped. We were referred to a number of photographs. Questioned by the Tribunal, Mr Staples accepted that the roof was currently weatherproof. However, he responded that it was only a matter of time before the roof leaked.

13. The landlord also raised a number of other factors in support of his contention that the works should be executed in one phase:

    (i) The cost of scaffolding was some £26,000. Why incur this cost twice?

    (ii) If the works were executed in two phases, there was a danger that the roof might be damaged during the first phase.

    (iii) Unnecessary disruption would be caused to the ground floor business were the cafe to be surrounded by scaffolding on two occasions.

14. We are satisfied that these are relevant matters for the landlord to take into account. We accept that it would be possible to phase the works. However, we note that the tenants have not been consistent as to what works should be executed during the first phase. However, we are also satisfied that the landlord has taken all relevant matters into account and is entitled to conclude that all works should be executed in one phase. We find it impossible to conclude that the landlord's approach is unreasonable.

Robert Latham

Tribunal Judge

17 February 2014

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 20 - Consultation Requirements

(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) the appropriate 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.

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.