

12/6/17



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

**Case reference** : **LON/00AK/LSC/2017/0453**

**Property** : **Brockley Court, 24A Riverbank,  
London N21 2AB**

**Applicant** : **Michelham Property Investments  
Limited**

**Representative** : **MLM Property Management**

**Respondent** : **The lessees listed on the schedule  
attached to the application**

**Representative** : **For some lessees Hatti Suvari**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal members** : **Tribunal Judge Dutton  
Mr S F Mason BSc FRICS FCI Arb  
Mr C S Piarroux JP CQSW**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **26<sup>th</sup> February 2018**

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**DECISION**

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## **Decisions of the tribunal**

**The tribunal determines that the sum of £22,675 inclusive is payable by the Respondents in respect of the Major Works to the property Brockley Court, London N21 2AB (the Property)**

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness and payability of the costs associated with Major Works (the Works) to the Property amounting to £22,675.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The background**

3. The property, which is the subject of this application, is a gated development of 14 flats built approximately 11 years ago. There are garden grounds, a car park, bin stores and garages.
4. The directions provided that the matter would be dealt with by way of a paper determination. No party requested a hearing and the matter came before us for consideration on 26<sup>th</sup> February 2018. We had been provided with a bundle prepared by MLM, for the applicant, which included a background to the Works, their extent and the costings. We were also provided with a statement made by Mrs Hatti Suvari said to be made on her behalf and 6 other leaseholders, who had provided written authority for Mrs Suvari to represent them in the statement she supplied. In addition to the above we had copies of the application, the directions, a reply to the Respondents' statement of case, a specimen lease, the tender papers and s20 documentation. A Scott Schedule had been prepared by MLM but had not been responded to by Mrs Suvari, or indeed any other lessee.
5. The Respondents hold long leases of the flats at 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. From the Applicant's point of view the application to the Tribunal seeks a determination under s27A (3). This is in respect of the Works which are:

- Repainting of internal communal areas
  - Renewal of the doors to the bin store
  - Rebedding of dipped paving in the car park
  - Rehanging the pedestrian gate
  - Repainting the entrance portico and front door
  - Repainting the balconies and metal railings
  - Repainting the lining in the car park
  - Renewal of the bicycle store cladding
7. It is said on behalf of the Applicant that on advice from a surveyor the Works were considered to be due. Through the offices of MLM a s20 consultation was undertaken. It does not seem that there is any objection to the s20 consultation process and we were told that no lessee put forward an alternative quote or named an alternative contractor. The explanation of the need for the Works is set out in the Applicant's statement, which also refers to the terms of the lease appropriate to this matter.
8. The statement goes on to refer to the matters raised by Mrs Suvari in her statement. That statement, as provided to us, acknowledges the basis upon which the Applicant made the application. However it is said that the complaint of the leaseholders is different to the matters raised by the Applicant. The essence of the complaint raised by Mrs Suvari is that the Property has been neglected and that as a result these Works are now required. A number of photographs were attached purporting to support some of the complaints made. It is said that the photographs support the state of the car park, dirty and peeling paintwork, overgrown and poorly maintained gardens and other examples of neglect.
9. The final paragraph of the statement perhaps sums up the complaint of Mrs Suvari and those supporting her. It says as follows "*It is our view that the requirement for major works is a direct result of MLM's neglect and mismanagement of this site, and as a result of this we believe that MLM should now be responsible for paying for the majority, if not all of the cost of these major works. Had MLM have(sic) not neglected the site over the years, then we believe that there would have been no requirement for major works of the stature proposed by MLM to take place at this time*"

10. In response to this statement it is said on behalf of the Applicant that there had been significant engagement with the leaseholders. It is accepted by all parties, so it is said, that the Works are required. It is said that the Respondents have failed to produce "a meaningful and reasoned argument via the Scott Schedule" and that there is no further statement of case. The Respondents' statement of case refers to gardening, window cleaning, common parts cleaning and tree work. It is pointed out that these issues are not the subject of the application before us.
11. The point is also made that in not carrying out the Works before now there has been a saving to the respondents. Samples of invoices showing some of the works that have been undertaken were produced.

### **The tribunal's decision**

12. The tribunal determines that the amount payable in respect of the Works is reasonable and payable in the sum of £22,675.

### **Reasons for the tribunal's decision**

13. We have noted the terms of the lease which at clause 6 contains the Landlord's covenants. These include the obligation to maintain, repair and renew, as necessary, the main structure and services (clause 6(ii)(a) and (b)). The lease, at clause 6(iii) requires the Landlord to redecorate the exterior of the property and the common parts when "*reasonably necessary in its reasonable discretion*". Similarly at clause 6(iv) the Landlord will maintain and decorate the Cycle Store, car parking spaces, visitors car parking spaces and the patios and balconies at its "*reasonable discretion*".
14. There is no argument advanced by the leaseholders that the s20 procedure was not followed correctly nor did any leaseholder put forward an alternative contractor. There is a full specification and tender process which appears to have been followed. The lowest quote is from R & B Decorators and Refurbishment Limited in the sum of £16,648.20 plus VAT, which has been accepted. This contrasts with the alternative quote from P J Harte (Decorating Contractors) Limited in the sum of £26,581.25 plus VAT.
15. The Respondents' case appears to rest with an argument that the failure to carry out these works before now has somehow resulted in the costs of the Works increasing. There is no evidence to support this proposition. The photographs do not, in our finding support the allegations. The complaint also refers to matters that are not within the application, being day to day service charge costs such as cleaning and gardening. If the Respondents wish to challenge such matters they should bring their own application raising these issues. As a matter of

comment we would say that the extent of the demise appears to include both the interior and exterior of the windows and clause 5 (iii) includes a requirement on the lessee to clean both the inside and outside of the flat windows.

16. It should also be noted that MLM are not the liable party in this case. The Landlord is the Applicant.
17. There is evidence before us, in the form of the invoices supplied, show that the Applicant has spent money over a period of time carrying out works of repair.
18. In any event there is merit in the point made by the Applicant that the alleged lack of repair and maintenance has avoided additional costs being charged to the lessees. There is no evidence that the alleged lack of repair and maintenance has resulted in an unexpected or excessive deterioration in the Property, which has in turn resulted in additional, unwarranted costs.
19. The lease requires the Landlord to exercise reasonable discretion in the repairs and decorating of the Property, both internally and externally. It sets down no specific time frame.
20. In the light of the papers before us and considering the law we find that the sum being sought by the Applicant in the amount of £22,675 is reasonable and payable in respect of the Works, which are themselves required.

**Name:** Tribunal Judge Dutton      **Date:** 26<sup>th</sup> February 2018

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

### **Appendix of relevant legislation**

#### **Landlord and Tenant Act 1985 (as amended)**

##### **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 the appropriate 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 the appropriate 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) 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.
- (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.