SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/19UH/LSC/2008/0037

Applications under Section 20C and 27A of the Landlord and Tenant Act 1985

Re: 46, 53 AND 56 St Swithins Road, Bridport, Dorset

Applicants	Mr A J Legg, Mr & Mrs A J Legg (Flat 53) Mr & Mrs Robert Davis (Flat 56) Mr N F Weaver (Flat 46)
Respondent	Magna Housing Association

Date of Application	16th April 2008
Date of Inspection	12th August 2008
Date of Hearing	12th August 2008
Venue	Bridport Town Hall
Appearances for the Applicants	In person
Appearances for the Respondent	Mr Crorie of Counsel
Also in attendance	M Taylor for the Respondent's solicitors
	Ms C McQueen & Mr M Allen of the Respondent

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
K Lyons FRICS	Valuer Member
A Mellery-Pratt FRICS	Valuer Member

Date 5th September 2008

Decision

1. The reasonable sums recoverable by the Respondent from each of the Applicants per flat in respect of re-roofing charges is the sum of £5,522.78.
2. It is not within the jurisdiction of the Tribunal to require the Respondent to seek payment of or recover the whole of that sum from each flat affected by the re-roofing charges or to determine that the Respondent should recover only equal sums from each such flat.
3. The Tribunal, by agreement of the Respondent, makes an Order under Section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs incurred in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge.

Reasons

Introduction

4. This was an application made by the Applicants under Sections 20C and 27A of the Landlord and Tenant Act 1985 (the Act) to determine, in respect of Flats 46, 53 and 56 St Swithins Road, Bridport
    a. whether certain service charges relating to re-roofing works for the accounting year 2007 are reasonable.
    b. that the charge per flat should be paid equally
    c. To determine under Section 20C of the Act that the Respondent should not be allowed its costs incurred in respect of these proceedings.
5. The Tribunal had a copy of the lease of 53 St Swithins Road("the lease") dated 25th October 1982 made between West Dorset district Council (1) and Arthur James Legg, Doris Mary Legg and Adrian James Legg (2), it being understood that all the leases of the flats affected by the re-roofing works in question were in similar terms so far as material to the issues in this case.

Inspection

6. On 12th August 2008 the Tribunal inspected the Property in the presence of the Applicants or representatives and the Respondent's representatives and advisers.
7. The Respondent's estate in St Swithin's Road, Bridport comprises seven blocks of four flats each, each block comprising two ground floor and two first floor flats. The re-roofing contract affected only six of those blocks. The blocks are each laid out in their own gardens. Each flat is self-contained, access to the first floor flats being by means of external staircases. The blocks are constructed of brick under sloping roofs and are generally in reasonable condition for their age and character. The re-roofing work had been completed.

Hearing

8. The hearing of the matter took place on 12th August 2008 and was attended by those set out above.

Summary of relevant evidence and submissions given by the parties

9. The Applicants' case.

   a. The total cost of the works on the basis of the lower estimate received by the Respondent was £133,266.62 which, divided between 24 flats, would mean equal contributions of £5,522.78 ("the equal sum") per flat. The consultation requirements of the Landlord and Tenant Act 1985 (the Act) had been carried out on that basis and they did not argue either with the procedure or the total cost of the works and had been happy to pay the equal sum. The Respondent had not stated, in the consultation, that its purpose was to establish the upper limit payable per flat.

   b. However, subsequently the Respondent had decided, on the basis of a formula, to seek contribution to the cost of the work from the 24 flats such that some flats would be asked to pay varying amounts less than the sum of £5,522.78. They could not see any sense in that formula.

   c. They considered that whether each flat was asked to pay the full contribution or a lower one, each flat should be required to pay the same contribution as each other. Each flat was the same size and of the same rateable value and costs had hitherto been charge equally.

   d. When they had questioned the Respondent about the unequal apportionment, they were told that consultation had taken place and that the Act did not prevent the Respondent from waiving any part of the equal sum payable for any individual flat.

10. The Respondent's case

   a. Mr Allen referred to a petition having been received from a number of tenants challenging the equal sum apportionment. The outcome had been that he and the Respondent decided to use a formula, which they had adopted in another development, to decide on the level of waiver of part of the equal sum from which some leaseholders would benefit. This resulted in each of the three Applicants having differing percentages of their equal sum waived.

   b. Mr Allen confirmed that the resulting balance of the costs which would not be recovered from tenants would be paid out of Respondent's funds and not from any sinking funds held for leaseholders or in any other way from leaseholders.

   c. Counsel submitted that the Respondent was entitled to apply the waiver under Clause 2(21)(b) of the lease, but that if the Tribunal found that it could not do so under that clause, the Respondent could nevertheless make the waiver outside the terms of the lease.

Consideration

11. The Law. The effect of the provisions of the Act so far as pertinent to the issues in this case are contained in Sections 18, 19 and 20. They may be summarised as follows:

   a. Service charges are payable so far only as they are reasonably incurred and the work is carried out to a reasonable standard.

b. Consultation with tenants is normally, and in this case was, required for any major works to which they would contribute under service charge to enable tenants to make comments on the proposals, to nominate a contractor from whom to obtain an estimate and inform tenants of the estimates received. There is no requirement to specify in that consultation the sum which a tenant would therefore have to pay.

c. The Tribunal's jurisdiction is to determine the amount payable, by whom and to whom, when and how – so far as any of these issues arise

12. The Lease. So far as material to the issues in this case the relevant provisions are set out in Clause 2(21) which, in terms, requires the tenant to pay to the landlord that proportion of the landlord's expenses (calculated in accordance with the Sixth Schedule) apportioned as being attributable to the flat.

13. The Applicants do not dispute in this case:

    a. that the re-roofing costs qualify as landlord's expenses so to be apportioned;

    b. that the total cost of the work was reasonable;

    c. that the equal sum, as originally indicated by the Respondent, would have been reasonable; or

    d. that the consultation requirements of the Act were not complied with save that in the course of those the Respondent indicated payments by all 24 flats of the equal sum.

14. Clause 2(21)(b) of the lease. The Tribunal considered that (although it could be open to differing interpretations, logically it means that there should be equal apportionment because all the flats are of similar size and historically all service charges had been apportioned equally. The Tribunal does not think it is open to the Respondent to depart from equal apportionment under the terms of that Clause in respect of the works in question.

15. The Tribunal particularly noted that the Applicants' complaint is not that they are being asked to pay more than indicated in the consultation procedure, but that some are being allowed to pay lower figures, albeit different figures.

16. In terms of the Tribunal's limited jurisdiction (see Paragraph 11c. above) the Tribunal determined from its own expert knowledge and experience and as there were no submissions to the contrary from the parties:

    a. That the consultation procedure required by law was carried out correctly. The fact that the equal sum was quoted in the course of the consultation does not negate the validity of the consultation procedure carried out by the Respondent: they are not now being asked to pay more than the equal sum.

    a. That the overall cost of the works was reasonable and the work had been carried out to a reasonable standard;

    b. The amount payable by each tenant to the Respondent under Clause 2(21)(b) of the lease is not more than £5,522.78.

17. However, while the sum is payable as a matter of law by the terms of the lease if demanded, it is not open to any tenant or the Applicants to require the Respondent not to give rebates to individual lessees.. If a landlord chooses for whatever reason to do

so, that is the Respondent's prerogative outside the provisions of the lease. The Tribunal is not aware of any other such case coming before it, because invariably Landlord's do not want or are not able to bear the cost themselves and the leases provide for tenants to reimburse them in full. If it is however prepared to contribute out of its own funds, there is nothing to prevent it taking that course, even if that results in tenants paying differing amounts on whatever basis that may be calculated. That, in any event, is not something over which the Tribunal has jurisdiction.

18. The Tribunal made its decisions accordingly.

19. *This does not form part of the Tribunal's reasons for its decisions*, but the Tribunal would like to add the observation that the Respondent may have been unwise in not providing for a sinking fund for the roof in the past, while noting that it is considering doing so for the future. Also that it is unfortunate that the Respondent decided to change the sums it intended to recover from tenants for the works rather than considering that at a much earlier stage.

M J Greenleaves
Chairman

A member of the Southern
Rent Assessment Panel
appointed by the Lord Chancellor