

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985: SECTION 27A

LANDLORD & TENANT ACT 1985: SECTION 20C

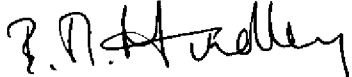
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	CHI/45UH/LSC/2007/0094
Property	Burlington Court, George V Avenue, Worthing, West Sussex, BN11 5RG
Applicant:	Christine Pamela Allingham
Respondent:	Burlington Court (Worthing) Ltd
Date of Applications:	17 October 2007
Hearing:	13 March 2008
Members of the Tribunal:	Mrs B Hindley Mr N Robinson FRICS Mr T W Sennett MA MCIEH
Date decision issued:	2 April 2008

1. Applications, dated 17 October 2007, under Sections 27A and 20C of the Landlord and Tenant Act 1985 were made in connection with major works carried out at the property.
2. At a preliminary hearing, on 14 January 2008, it was established that the applicant wished to contest only charges imposed since 2004.
3. After the preliminary hearing Directions were issued seeking, amongst other things, a history of the works together with copies of service charge demands for the years ending 31 March 2004, 2005, 2006, 2007 and the budget for 2008.
4. The Tribunal inspected the property, a block of 12 flats and garages, on the morning of the hearing in the company of Mrs Ritchie and Mr Goacher who pointed out to them the major works which had been effected and were planned.
5. At the hearing Mrs Ritchie explained that Crawfords had taken over the management of the property in December 2004 and had immediately commissioned a survey from Philip Goacher Associates in order to establish what major works were required.
6. Mr Goacher said that the survey had been provided on 9 February 2005 and he had subsequently drawn up a specification which had been sent to Beaumont Building Contractors Ltd for indicative pricing so that a budget for the works could be agreed. He was to act as the contract administrator for the works.
7. Mrs Ritchie said work relating to the columns at the abutment of two elevations of some three flats had been regarded as immediately essential and had been carried out, in 2005, by Beaumont Building Contractors Ltd at a cost, invoiced in March 2005, of £11,699 61p, inclusive of VAT but exclusive of professional fees. No Section 20 notice had been served and no request for a dispensation had been made.
8. Mr Goacher explained that the remaining works had been divided into phases according to their perceived priority rating and had either been carried out or were planned for the ensuing calendar (rather than service charge) years.
9. In 2006 phase 1 – comprising works mainly to the west elevation - were carried out by Nutbourne Construction Ltd at a cost of £23,776. 43p, inclusive of VAT but exclusive of professional fees.
10. It was explained to the Tribunal that, at that stage, it had been considered by some of the leaseholders that work to the soffits was also required. This was organized by Mrs Hurcoe, the leaseholder of Flat 4, with a company called LDPM, who had carried out similar work at a block across the road which was a mirror image of the subject. The cost of the work was £5,795 exclusive of VAT. Mr Goacher had not been involved in any supervision.
11. In 2007 phase 2 – comprising works mainly to the east elevation – were carried out by Beaumont Building Contractors Ltd at a cost of £35,227. 68p, inclusive of VAT but exclusive of professional fees.
12. Mrs Ritchie said that whilst the contractors were on site in 2007 it had been thought prudent also to do necessary works of repair to the three garages which, unlike the other nine, were attached to and formed part of the block. The cost of this work had been £2,723.65p inclusive of VAT but exclusive of professional fees. The works had been carried out by Beaumont Building Contractors Ltd under a separate contract but no alternative estimates had been obtained.
13. Phase 3, planned for 2008 comprised works to the separate nine garage block

14. Questioned by the Tribunal Mrs Ritchie accepted that Section 20 notices had not been served in connection with any of the works nor had Section 20 procedures been followed. She expressed the view that adherence to the Section was unnecessary since all the leaseholders had been kept fully informed and had been in agreement with the plans.
15. Questioned by the Tribunal the applicant stated that she was not questioning either the cost of the works or the standard achieved. She accepted the need for all of the works but reiterated her long expressed concerns surrounding the respondents' failure to adhere to the procedures laid down by Section 20.
16. The Tribunal considered that the phasing of the works meant that four Section 20 notices should have been issued to cover (a) the emergency works, (b) phase 1, (c) phase 2, and (d) the works to the soffits. Mr Goacher confirmed that Phase 3 works to the garages had not yet commenced and that it appeared that notice of intended work had not yet been served.
17. The Tribunal accepted that the works to the three garages formed a separate contract from the works carried out under phase 2. They, therefore, concluded that this cost should be regarded as a stand alone cost rather than as a variation to the contract effected as phase 2. With a total cost, exclusive of professional fees, under £3000 no Section 20 notice was required.
18. Despite the Tribunal's Directions no service charge invoices for the years in question were provided. Mrs Ritchie said that none were produced and that only a profit and loss account for the respondent company was produced.
19. Mrs Sewell (Flat 1) offered to obtain copies of these from the accountants – Spofforths LLP and these were provided after a short adjournment.
20. The account for the year ending 25 March 2005 showed no expenses in connection with major works. In the years ending 25 March 2006 and 2007, respectively, expenses of £12,453 and £30,223 were shown, making a total of £42,676 exclusive of professional fees.
21. At the hearing Mrs Ritchie agreed that the total expenditure to date on major works was £80,236. 49p and that, therefore, the accounts for 2008 would include expenses in connection with major works of £37,560. 49p.
22. The Tribunal determines that the result of the respondents' non compliance with required Section 20 procedures is that the applicant's liability in respect of costs totalling £80,236. 49p is restricted to £1000 - £250 for each of the 4 necessary Section 20 notices.
23. Additionally, the applicant is liable to pay her share of the £2,723. 65p cost of the works to the three garages.
24. At the hearing neither Mr Goacher nor Mr Ritchie was able to give the Tribunal an account of the professional fees he had charged in connection with the major works and it was not possible for the Tribunal to establish these from the company's profit and loss accounts. These showed legal and professional fees in the years 2005, 2006 and 2007 as, respectively, £752, £3,605, and £0. but the Tribunal was unable to attribute these to specifics.
25. In view of the Tribunal's decision concerning the limitation to £250 of the applicant's liability for each segment of the major works, she is also not liable for professional fees to the extent that they relate to the same major works.
26. It is, therefore, necessary for the respondents to produce an account of all the professional fees for the years in question broken down to show the fees relating solely to the major works. If the account produced is disputed by the applicant she has liberty to apply to the Tribunal.

27. The Tribunal noted that the applicant had also made an application under Section 20C of the Landlord and Tenant Act 1985 with a view to preventing the respondents from charging their costs in connection with these proceedings to the service charge account.
28. The Tribunal is not persuaded that the lease would enable the respondents to make such a charge but, for the avoidance of doubt, they consider that it is just and equitable to make an order preventing the respondents from making such a charge.

Chairman 

Date 26/3/08 .