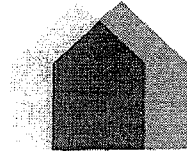


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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AG/LSC/2007/0332

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 SECTION 27A(1)

ADDRESS OF PREMISES:	FLAT 2, TROUTBECK ALBANY STREET LONDON NW1 4EG
APPLICANTS (LANDLORD):	LONDON BOROUGH OF CAMDEN
RESPONDENT (TENANT):	MS MARGARET AND MR WILLIAM NADIN
APPEARANCES FOR APPLICANT	MISS R PATEL – COURT OFFICER MR S ALAM – PROJECT MANAGER
ALSO IN ATTENDANCE	MISS V. ALRIDGE – FINAL ACCOUNTS MANAGER MR R COSSILL - CAPITAL SERVICE CHARGE OFFICER
TRIBUNAL:	MS F DICKIE (CHAIRMAN) MR T JOHNSON, FRICS MRS J CLARK JP
HEARING	13 TH DECEMBER 2007

SUMMARY OF DECISION

1. The Tribunal finds that the estimated costs of £3486.21 in respect of Community Safety Works and £1315.15 in respect of Environmental Works (in respect of which £500 has been paid) are reasonable and recoverable from the Respondents. No order is made for reimbursement of the hearing fee by the Respondents.

PRELIMINARY

2. The Landlord issued a Claim in the Central London County Court for unpaid service charges totalling £6584.32, together with interest and costs. The amount claimed comprised of £1782.96 in respect of annual service charges for the period from 31st March 2004 to 31st March 2007, and £4801.36 in respect of major works. By an Order of District Judge Hasan made on 7th August 2007 the claim was transferred to the Leasehold Valuation Tribunal. A pre trial review was held on 3rd October 2007, when Directions were issued and the Tenants confirmed that they had paid the annual service charges of £1782.96. The dispute at that stage related only to the estimated major works costs, comprised of Community Safety Works in the sum of £3486.21 and Environmental Works in the sum of £1315.15, of which £500 had been paid.
3. By virtue of a Lease dated 28th March 1991 the premises were demised by the Applicant to the Respondent for a period of 125 years from 31st March 1982. Clause 1.1 defines service charges as:

"All those costs and expenses incurred or to be incurred by the Landlord in connection with the management and maintenance of the Estate and the carrying out of the Landlords obligations and duties and providing all such services as are required to be provided by the Landlord under the terms of the Lease including where relevant the following:

Category A Services
Category B Repairs
Category C Improvements"

The Tenants covenant in Clause 3.1:

"To pay to the Landlord the Ground Rent and all other monies due under the Lease at the times and in the manner specified without any deduction set off or counterclaim"

and in Clause 3.2.1:

"To pay to the Landlord at the time and in the manner specified SUBJECT TO the restrictions set out below at Clauses 3.2.2 and 3.2.3 such annual sums as may be notified to the Tenant by the Landlord as representing the Specified Proportion of the Service Charge calculated in accordance with the Fourth Schedule."

Paragraph 5 of the Fourth Schedule provides:

"The expression "the expenses and outgoings incurred by the Landlord" as hereinbefore used shall be deemed to include not only the Items of Expenditure which have been actually disbursed incurred or made by the Landlord during the Specified Annual Period in question but also such reasonable part of all such expenses outgoings and other expenditure herein included with the Items of Expenditure which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made and whether prior to the Commencement of the

Term or otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Landlord may in its discretion subject to statutory restrictions (if any) allocate to the year in question as being fair and reasonable in the circumstances”

INSPECTION

4. The Tribunal inspected the property in the presence of the parties on the afternoon of the hearing. Troutbeck is a long block on the Regents Park Estate, with commercial workshops at basement level, residential flats above, and several points of entry.

APPLICANT'S CASE

5. The Applicant relied on a Statement of Case made by Miss R Patel, as well as on statements from architect Jason Rivers and from Mr. Alam, its Project Manager, in which the design and rationale for the scheme of works were described. Mr. Alam amplified on the contents of his statement in oral evidence at the hearing. He explained that the original design for the Community Safety Works had been revised after a meeting with the Police crime prevention officer on site. He presented 7 photographs and described how access in and out of gates to residential areas was controlled by fobs issued only to residents. Exit from the stairwell at basement level was by push button for health safety reasons.
6. A glass fan panel had been installed adjacent to the gate near no.10 Troutbeck to prevent intruders scaling the railings at that point. Mr. Alam said that Camden Council could not install spikes in the railings, which the police had recommended be 1.8 metres high to prevent people scaling them and had actually been made 30 centimetres higher than that.
7. Mr. Alam believed some of the youths still getting through the gates live on the estate and let their friends in, which was difficult to prevent unless housing management were informed so they can take action. He emphasised that the Community Safety Works could not present an impenetrable barrier against intruders.
8. Mr. Alam said there was no record of these Tenants having attended any consultation meetings or having submitted a defect questionnaire after practical completion. This was sent out nearing the end of the defect period (which ended 11th September 2006 – 1 year after the works were completed). The Applicant denied that the Respondents, who had not raised any dispute by letter or complaint, had been victimised by the Council by virtue of the decision to take these proceedings. A Member's query on behalf of Mr. and Mrs Nadin that has been responded to. After taking time to check the Council's records, Miss. Patel said that 198 leaseholders had been invoiced for the Environmental Works (which had related to more than 1 block), 39 of whom had not paid. She said 90 leaseholders had been invoiced for the Community Safety Works (which were also part of a larger contract), 14 of whom had not paid, 2 of these

being Troutbeck leaseholders. The Council was not aware of any other proceedings before the Leasehold Valuation Tribunal regarding these works.

9. The Applicant produced a list of works to the commercial premises not chargeable to leaseholders. Referring to the provision of the Lease, Mr. Alam said that service charges were divided amongst the residents based on rateable value. The Council applied a management charge of 10%.
10. The Applicant sought to recover the Leasehold Valuation Tribunal's hearing fee, but confirmed that as a gesture of goodwill it was not seeking to recover any costs from the Respondents (who consequently did not make an application under section 20C of the Landlord and Tenant Act 1985).

RESPONDENTS' CASE

11. The Tenants relied on a letter they had written dated 23rd October 2007 as their Statement of Case. By way of background Mr Nadin explained that the Council had taken a very long time to make a £500-600 credit for an irrecoverable service charge levied for 1999-2000, and that he and his wife felt they had to use non-payment of their service charges as a lever in the circumstances. However, their annual service charges had been brought up to date and were no longer in dispute.
12. The Tenants did not dispute the cost of the work carried out to the block. They challenged only the standard and extent of the work. They believed that the Community Safety Works had not been carried out to a satisfactory standard, having badly designed at the level of flats 1-10, outside the entrance to no.24 Troutbeck. They clarified that they did not dispute the Environmental Works. The Tenants felt they were being "picked on" because other leaseholders had not paid their service charges (they alleged flats 42 and 56 had not been invoiced for them) but proceedings had not been brought against them.
13. The Tenants raised several points about the design of the Community Safety Works (to which the Council was given the opportunity to respond):
 - a. The stairwell gate at basement level underneath flats 9 and 10 can be opened with a long piece of wood. Mr. Alam said that the Council now understands the location of the gate in question and will install a shield around the exit button to prevent its operation by a pole from the other side of the gate.
 - b. The gates outside flat 1 and between flats 9 and 10 open outwards rather than inwards. Mr. Alam said this is so it is harder for people to kick it in, and because the gates open onto a staircase going down and must therefore open outwards for safety reasons.

- c. There are loose paving slabs at the top of the steps outside the property. The Council produced report from clerk of works that the staircase is fit for purpose, the movement being of a millimetre or so and not considered dangerous.
- d. The Tenants were not happy with apportionment of the costs between residents and commercial units.
- e. The Tenants described how intruders could access the basement level by climbing between a small gap between the railing and the fan adjacent to the gate outside flat 10, whereupon they would climb across to the residents' walkway outside flats 1-10, and drop down to access the whole of the basement level.
- f. In November 2005, after the work had been completed in September, they had a meeting and walkabout with the Police and Council, as a result of which the Police made recommendations to which the Council had never attended. Since the Police had taken up these matters, the Tenants explained they had not felt it necessary to submit a defect questionnaire. The Tenants produced a letter from the Council dated 28th February 2006 attaching diagrams of the following changes proposed by the Police Crime Designers:
 - (1) Existing screens on the left will be increased in size by adding panels behind to extend security
 - (2) New perforated screen fixed to existing railings.
 - (3) Existing sign light box removed and replaced with flat sign to remove a feature which is possible to climb upon.
 - (4) Angled piece of metal fixed to frame and ledge to remove ledge and prevent possible means of entry into secure area.
 - (5) Replace Georgian wired glass in new panels with clear laminated glass and reuse Georgian wired to replace damages / marked panels elsewhere.

The letter also included 6 items of work the Council was proposing to carry out:

- (6) The door exit button to flat 24 – Relocate next to the exit door and similarly on the other side of the block.
- (7) Relocate door entry / fire access control boxes at the basement level to make it harder to climb on to the shed roofs
- (8) Ease and adjust gates on the basement level – to prevent them banging
- (9) Cover existing lighting conductor with metal plates to prevent climbing
- (10) Check the time taken for doors and gates to lock and make adjustments where necessary
- (11) Reducing the noise from banging doors.

14. The Council responded that:

- (6) This item had been carried out as a defect without charging Tenants
 - (7) There is an order out to do this item as a defect without charge to the Tenants
 - (8) Item done as a defect without charge to the Tenants.
 - (9) Item done. This was not a defect as the original contractor had not done any work to the lighting.
 - (10) Item done free of charge by contractor
 - (11) The contractor had adjusted the door closers as much as possible free of charge, though the Tenants complained that the noise was still terrible.
15. Mr. Alam commented that the items listed at (1) to (5) above had not been recommended by the Police in the original design, that they were not large pieces of work, and the Tenants had not been charged at present for any of the proposed works or their management. Even if these works had been included in the original contract the original contract price would have been higher. He said that items (1) and (2) had not been done because 2 residents had objected that people would climb into their bedroom and a contract was never put out for these items, but the intention was to use the original subcontractor (the main contractor having gone into liquidation). Regarding item (3), Mr. Alam said that it was not easy for someone to use the sign as a stepping-stone, and it was the Council's intention to relocate it as part of the package of works that would include the additional screen and item (4). Regarding item (5) – replacing the wired glass with plain glass panels - an order has gone out to the contractor to do this work (for which the Tenants might not be charged), but they were stopped by a resident.

DECISION

16. Paragraphs 4 and 4.1 of the Fourth Schedule of the Lease refer to the calculation of the Tenants' proportion of the service charge costs by reference to rateable values. The Tribunal considered reasonable the apportionment of costs applied by the Council, explained in a summary for Leaseholders produced in evidence. The Tribunal finds that the apportionment of the cost of the works between residential and commercial elements of the block was reasonably and properly calculated.
17. By virtue of Clause 3.2.1 and Schedule 4 of the Lease the Tenants were required to contribute towards anticipated expenditure and improvements as well as repairs. The Applicant produced copies of the consultation notices served under s.20 of the Landlord and Tenant Act 1985 in compliance with the Tribunals Directions. This consultation was not challenged by the Respondents and the Tribunal is satisfied there has been full compliance with the statutory requirements.
18. The Respondents did not dispute the cost of the Environmental Works (which included a range of repairs and improvements to exterior parts of

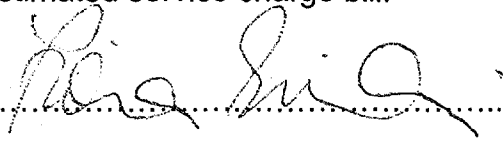
the estate including items such as railings, bollards, lighting, road surfaces and paving). That cost of £1315.15 (£500 of which has already been paid) the Tribunal therefore finds is reasonable and payable by the Respondents.

19. The parties were in agreement that all sums in respect of annual service charges included in the Claim to the Central London County Court are agreed and paid. The Tribunal was therefore only concerned with whether, bearing in mind the design, quality and extent of the Community Safety Works, the costs were reasonable and recoverable from the Respondents.
20. The Respondents were in particular concerned with the effectiveness of the major works. They alleged that the works do not provide them with adequate security, in that intruders are still gaining access to their balcony, and anti-social behaviour is occurring in that locality. They allege that the work did not achieve the isolation of the basement areas.
21. The Tribunal is satisfied that the Council reasonably took into account the advice of the Metropolitan Police Crime Design advisers in finalising the design of the security works. After the practical completion of the works, but before the end of the defects period, the Applicant again sought the advice of the Metropolitan Police Crime Design advisers with regard to various concerns raised by the residents. A scheme of amendments and improvements to the original scheme was devised by the Council's architect and sent to residents on 28th February 2006, under cover of a letter that advised of 6 further proposed modifications. Mr. Alam gave evidence that all of those 6 items had been attended to, but that all of the architects suggested improvements, described and depicted on an information sheet to residents, still remained outstanding.
22. The Respondents were in particular concerned about items (1) and (2) the Police list of recommendations, which were the addition of a panel to an existing fan screen on the steps leading to the entrance adjacent to flat no.2, and a fan screen at the entrance adjacent to flat no.10. These works were necessary, according to the Respondents, in order to prevent intruders from scaling the railings and reaching the residents' balcony or dropping down in to the basement from where the balconies could easily be reached from the stairs. The Respondents furthermore gave evidence that people accessed the first floor of the stairwell using the protruding Troutbeck sign to climb the outside of the building.
23. At the hearing and the subsequent inspection the Council agreed to carry out items (1) - (5) of the architect's proposals circulated on 28th February 2006, and in addition to placing a shield to the side of the door entry button inside a basement entrance to one of the stairwells to the block so that it could not be operated externally by unauthorised persons using a long pole.

24. The Tribunal considers that the Council carried out a full and thorough consultation process regarding the design of the security works. The Scheme was of a design created in consultation with crime prevention officers. It is a fairly conventional scheme for this type of block. Whilst there may have been alternative possibilities (and the Respondents referred to a scheme incorporating glazing panels on the balcony walkways favoured early in the planning stage), this does not detract from the overall reasonableness of the scheme as implemented.
25. With the benefit of hindsight these minor additional works are necessary to improve the effectiveness of the estate security, but this does not of itself indicate that the Council was wrong not to have included these additional works in the original Scheme. Furthermore, the Tribunal finds that had they been included it would have been at an additional costs to the overall Scheme and therefore to the leaseholders. Those costs will be incurred when the improvements are finally carried out. The Tribunal is satisfied that the additional works now identified do not affect the reasonableness of the Scheme of works already completed
26. The Tribunal understands the Respondents frustration at their liability to pay service charges for these major works to improve the security of their home, when in fact they consider it remains vulnerable to intruders and a target for anti-social behaviour. The Council was unable to provide a sufficiently cogent explanation for the delay in carrying out the recommended additional works. The fact that the Respondents did not complete the defects questionnaire does not excuse the Council from addressing the concerns of which it was already aware and in respect of which a scheme of minor improvements had already been drawn up.
27. The Tribunal has no power to compel the Council to carry out the recommended additional works, though the Council gave assurances that they would now be done. The Tribunal notes that the Respondents did not take the opportunity to raise their concerns through the Council's formal complaints procedure. It is to be hoped that these additional works will present the Respondents with the satisfactory security arrangements they are seeking. However, for the reasons given the Tribunal finds the extent and cost of the Scheme actually carried out was reasonable. The estimated costs therefore sought in the original proceedings are payable by the Respondents to the Applicants.
28. There was no s.20C application made by the Respondents on which the Tribunal was required to make a determination. In any event it was confirmed on behalf of the Council that it would not be seeking costs against the Respondent either through the service charge account or through County Court proceedings issued. The Council did however seek recovery of the Tribunal's hearing fee of £150. However, the Tribunal makes no such order in view of the Council's lack of progress on the additional recommended works, which are of genuine importance to the Respondents, and the Respondents' admission in the hearing that

these were a motivating factor in withholding payment of the major works
estimated service charge bill.

Signed

A handwritten signature in black ink, appearing to read "P. J. A.", written over a dotted line.

Chairman

Dated

23rd January 2008