

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF THE LANDLORD & TENANT ACT 1985

Case number	CHI/45UG/LSC/2008/0111
Property	137 London Road Burgess Hill West Sussex RH15 8LU
Applicant	Sevenbuild Ltd C/o Coole & Haddock
Respondents	Ms A C Goodman (Flat A) Mrs P E Adcock (Flat B) Mr F & Mrs E Bodeau (Flat C)
Date of decision	5 February 2009
Date of hearing	16 January 2009
Tribunal members	Ms H Clarke (Chair) Mr R Wilkey FRICS Ms J Dalal

1. THE APPLICATION

The Applicant landlord asked the Tribunal to determine whether the costs to be incurred in respect of prospective works to the property, in particular the roof, were payable by the Respondents as service charges in respect of the service charge year ended June 2008.

2. THE DECISION

The Tribunal decided that the costs were payable by the Respondents.

3. THE LAW

Section 27A Landlord & Tenant Act 1985 states:

“Liability to pay service charges: jurisdiction

(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...

(c) the amount which is payable”

4. Section 19 Landlord & Tenant Act 1985:

“(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,...*

(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."

5. THE LEASES

The Tribunal saw a Lease of Flat A and was told that all 3 flat leases were in the same form, so far as was relevant. The landlord was obliged under the lease to repair the roof and exterior, in the course of which it could employ a surveyor and managing agent, and the tenants were obliged to pay service charges in respect of those costs. Nothing turned on the leases in this case.

6. THE INSPECTION

The Tribunal inspected the exterior of the property before the hearing. It consisted of a large detached building converted into a number of flats, of which 3 were within the part of the property known as 137 London Road which was the subject of the application. The building had a pitched tiled roof and there was a single storey back addition, also with a tiled roof. There were a number of slipped and damaged slates, vegetation growth in the guttering, and some loose and sagging guttering. Otherwise the building generally appeared to be in reasonable repair and condition.

7. THE HEARING

At hearing the Applicant was represented by Counsel, Mrs Calder. The hearing was attended by Mr and Mrs Bodeau, tenants of Flat C, and by Mrs Adcock, the tenant of Flat B. Mrs Adcock was assisted and represented by her daughter-in-law, Mrs Lebrument.

8. THE SUBMISSIONS

The Applicant submitted a statement of case prepared by the Applicant's solicitor, and a bundle of documents including specifications of works, correspondence, service charge accounts and tender information. The case for the Applicant was that proper consultation had been carried out, and comments made by the tenants were taken into account during the consultation process. A full specification was drawn up by a properly qualified surveyor. No objections were received to the specification. The tenants nominated a contractor (Kaycee Roofing) who was asked to quote. The quote had to be re-made as it did not address some of the work required by the specification. A slightly lower quote was then obtained from the tenants' nominee, because the landlord agreed to take on board the tenants' wish that tiles be re-used where possible. That lower quote

was the final figure on which service charge demands were based. The total contract price for the job was £27,833 inclusive of VAT plus surveyor's supervision fee at 8% to be divided between the 3 flats.

9. The case for the Respondents was set out in statements prepared by Mr & Mrs Bodeau, tenants of Flat C, and by a further statement signed by Mr & Mrs Bodeau and also by Mrs Lebrument on behalf of Mrs Adcock, the tenant of Flat B. The tenant of Flat A did not make any submissions and the Applicant said that her part of the charges had been paid in full.

10. The Respondents agreed that repair work needed to be done to the roof. They referred to water coming into the building through the roof. However, they had purchased their flats at around the same time in late 2006 and had been given to understand that the cost of the necessary work would be in the region of £13,000 - 15,000 in total. This figure had been quoted to them by the Applicant's estate agent on the sale, but was understood to have been obtained from the roofing contractor who eventually became their nominated contractor and from whom the final quotation was obtained. The reserve fund then stood at around £7,000, so they had not expected to have to find more than about £3,000 each at most. They argued that the cost of the work should be limited to £15,000. They accepted that the price now quoted was reasonable for the specification: the problem lay with the specification, which was more detailed and extensive than necessary. They also objected to the inclusion of a contingency provision, which they feared was to cover inadequate or unprofessional work.

11. REASONS FOR DECISION

The Tribunal noted that it had not been provided with any evidence by way of alternative quotes or specifications for the work. It was agreed by all parties present that work needed to be done. The specification had been prepared by Stuart Radley Associates, an experienced local firm, and was sent to the tenants as part of the consultation process in November 2006. Whilst the Respondents said to the Tribunal they would have been happier with a 'simplified' specification, they had not provided one for consideration, and did not appear to have made this observation in the course of the consultation. There was no evidence or detailed challenge which gave the Tribunal any reason to reject the specification or the survey upon which it was based.

12. The Tribunal considered the evidence that the Respondents gave concerning the predicted cost of works. However the Applicant drew the Tribunal's attention to a letter sent by the landlord's managing agents to the solicitors acting for the vendor of Flat B, dated 16-8-06. The letter was sent in response to standard purchaser's enquiries. In

