SOUTHERN RENT ASSESSMENT PANEL LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/19UH/LVL/2010/0001

Application under Sections 35 and 38 of the Landlord and Tenant Act 1987

Re: Southfield House, South Walks Road, Dorchester, Dorset DT1 1AD

Applicant Raglan Housing Association Ltd

Respondents: Mr J A Payne & all other Lessees of 63 Flats at

Southfield House

Date of Application 28 January, 2010

Date of Inspection 12 May 2010

Date of Hearing 12 May, 2010

Venue The Pavilion, Weymouth Avenue,

Dorchester

Appearances for the Applicant Ms Nicola Muir of Counsel; Stephen

Daniels, solicitor and Mr Joe Waters of the

Applicant

Appearances for the Respondent

Mrs M Guppy Flat 17
Miss D Ede Flat 27
Mr J Payne Flat 54
Mrs K Harte Flat 62

Other persons attending Mrs J Fox Flat 13

accompanied by her son Mr Fox

(Observer)

Mr N & Mrs J Lees Flat 28
Mr R G Randall Flat 40
Mrs M Bowtle Flat 44
Miss D Hanniford Flat 46
Miss V Tett Flat 50
Mr D L Rees Flat 51

2010

Members of the Leasehold Valuation Tribunal:

M J Greenleaves Miss RBE Bray BSC MRICS

Mr J Mills

Lawyer Chairman Valuer Member Lay Member

Date of Tribunal's Decision: 21 May

Decision

Preliminary

- References to any Clause or Schedule to a lease are references to the Lease dated 21 March, 1999 of property described in the lease as numbered G. 18 made between Wimpey Homes Holdings Limited (1) Dolphin Housing Association Limited (2) and Joyce May Hanscomb (3) (hereafter referred to as the Standard Lease)
- 2. The following decision applies to each flat in Southfield House, South Walks Road, Dorchester (the property) and the leases of each flat shall be varied in the same way as variation of the Standard Lease.

Determination

3. The Tribunal determines under Section 38 of the Landlord and Tenant Act 1987 (the Act) that the Standard Lease shall be varied so that there shall be inserted as Paragraph 12 in Part II of the 6th Schedule a paragraph in the following terms:

"The costs of and incidental to compliance by the Association with every statutory notice regulation or order of any competent local or other authority in respect of the Development with which the Association is required to comply".

- 4. Pursuant to Section 38(8) of the Act, the Tribunal directs the Applicant and the present Lessees to the leases of all flats in the property to vary them in accordance with the above terms.
- 5. On the basis that the Applicant undertakes to prepare the necessary documents for signature by all parties, to deal with their registration at HM Land Registry and pay any relevant Land Registry fees, (as it has agreed to do) no compensation is payable under Section 38 (10) of the Act
- 6. In the event of any dispute arising in implementation of the above, the parties to the relevant lease may apply to the Tribunal, under this present application, for determination of those issues.
- 7. Pursuant to Section 20C of the Landlord and Tenant Act 1985, the Tribunal orders that all or any of the costs incurred or to be incurred by the Applicant in connection with the proceedings before the Tribunal shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the Lessees affected by this application and decision.

Reasons

Introduction

- 8. This is an application made by the Applicant under Section 35 (2) (e) of the Act of the Act for variation of the leases of the 63 flats at the property on the ground that the leases do not make satisfactory provision for the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by it for the benefit of that other party or the number of persons who include that party
- 9. The application arises because work needs to be carried out to the property in order to comply with fire safety. In that respect, the Dorset Fire Authority served an enforcement notice dated 22 March 2010 on the Applicant requiring, in particular, the installation of cross corridor doors on the first floor to separate the storey exits to safeguard the escape route from smoke travel.
- 10. The Applicant apprehends that further statutory requirements may be imposed on it in relation to the property in future and that the present provisions of the Standard Lease do not enable it to recover from the Lessees as service charge the costs of the present required works and future statutory requirements.

Inspection

- 11. We inspected the property in the presence of representatives of both the Applicant and the Respondents.
- 12. The property,, constructed about 20/30 years ago, comprises a block of 63 residential flats and other accommodation for guests, warden, residents lounge and other facilities laid out on 4 floors. It is built of brick under a pitched roof and is laid out in grounds and car parking areas. The property appears to be in good condition for its age and character.

Hearing

- 13. The hearing was attended by those referred to above.
- 14. Counsel for the Applicant submitted a skeleton argument in writing dated 11 May 2010. The Respondents had only received a copy, including copies of the cases referred to, at the inspection and submitted they had not had sufficient time to consider it. Having also considered the representations from Counsel we, the Tribunal, decided that the interests of justice required that the Respondents should have sufficient time to consider it before the hearing commenced. The Respondents requested 30 minutes and we adjourned for 45 minutes for that purpose.
- 15. We also received, in advance, written copies of the Applicant's case dated 25 February, 2010 and of the Respondent's Case dated 23rd March 2010.
- 16. In summary, the Applicant's case is
 - a. that there are no clear provisions in the Standard Lease enabling it to recover the cost to It of carrying out works required by authority of statute, not only in relation to the present work but other work which might so result. In coming to that conclusion it had considered relevant terms of the Standard Lease, in particular 5th Schedule paragraph 13, 6th schedule part II, paragraphs 1 and 6;
 - b. that the Lessees accept that they would not be prejudiced by the variation proposed in the application;
 - c. that the Applicant considered the Lessees would not be prejudiced because the proposed variation would only cover statutory requirements with which the Applicant had to comply;
 - d. in relation to the present required work, the Lessees want it done and do not object to paying for it;
 - e. that it is important that the Applicant should know that in carrying out the present work and complying with future statutory requirements, it would be entitled to recover the cost from the Lessees;
 - f. that the proposed variation is in the interests of both the Applicant and the Respondents for certainty rather than leaving the matter unclear or ambiguous.
- 17. The Respondents had a number of issues concerning the Applicant's conduct in dealing with works required by the Fire Authority and the way the application had been made to this Tribunal. We explained to the Respondents that, while it noted those issues, they did not affect the issues which we had to determine. In particular, that if there were in due course any issues as regards the cost of carrying out the present required work, they would have to be dealt with at that time and could not be considered by this Tribunal.
- 18. In respect of the issues, the Respondent's case may be summarised as follows:
 - a. they want the present work done and are happy to pay for it, subject to any issue in due course as to the actual cost;
 - b. they do not want their leases amended and consider that the present lease provisions are sufficient to provide for the Applicant to recover such costs. They referred us to the Clauses referred to at paragraph 16a above;

c. they considered that there was no dispute between them and the Applicant.

Consideration

19. We considered all the case papers, the evidence and submissions received.

The Law

- 20. Under Section 35 of the Act, a party to a long lease may apply to the Tribunal for an order varying the lease on the ground that the lease fails to make satisfactory provision with respect to..(inter alia).... the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by it for the benefit of that other party or the number of persons who include that party as referred to in Section 35 (2) (e) of the Act.
- 21. We do not need to consider the terms of the lessee's covenants to pay maintenance charges: the issue is whether the covenant to pay includes contribution towards the present requirements of the Fire Authority and any future statutory requirements imposed on the Applicant. In that respect we have considered the terms of the lease as a whole and in particular the provisions upon which the Respondents rely. We consider those as follows.
- 22. <u>5th Schedule paragraph 13.</u> "To pay all rates taxes assessments and outgoings charged or imposed or assessed in respect of the common parts and the warden's residence".
 - a. This is a covenant by the Applicant in respect of which it can recover any of those costs through service charge.
 - b. In our opinion: rates would cover such sums as water rates; the use of the word "taxes" is inappropriate to cover the carrying out of work and the recovery of the cost of work required by statute: taxes may be a levy by central or local government towards the cost of public expenditure but not the costs the subject of this application; these costs do not constitute an assessment nor are they outgoings charged or imposed or assessed in respect of the common parts and warden's residence.
 - c. If our opinion in those respects is wrong, at the very least we find that the terms of this paragraph are at best unclear or ambiguous.
- 23. 6th Schedule Part II Paragraph 1. "The sums spent by the Association in and incidental to the observance and performance of the covenants on the part of the Association contained in the 5th Schedule and Part I of This Schedule".
 - a. We have considered all the Applicant's covenants in the 5th schedule. The closest we come to being able to find that there is provision covering the cost of the present work is that there are provisions to keep structure etc in good and substantial repair; to keep common parts clean and tidy and in a good state of repair and condition.
 - b. The provision of the additional fire doors in corridors would constitute an improvement and not simply a repair and it is plainly not covered by the provision to keep the common parts clean and tidy.
 - c. There is no provision in Part I of the 6th Schedule which could in any way be regarded as covering these costs: that Part deals with accounting matters and payments on account of service charge.
 - d. We therefore came to the conclusion that paragraph 1 of part II of the 6th schedule does not enable the Applicant to recover its costs of the present work.
- 24. The 6th Schedule Part II Paragraph 6. "All sums paid by the Association in and about the repair maintenance decoration and cleaning lighting and running of the common parts—the warden's residence and the residents lounge whether or not the Association was liable to incur the same under its covenants here in contained".

- a. The present works plainly do not constitute decoration, cleaning or lighting. Further, it is not simply repair or maintenance: as mentioned above it constitutes improvement which is not covered by this paragraph.
- b. Equally we are not at all satisfied that the word "running" clearly includes the present costs. "Running" is more in the nature of managing and operating. The present cost is not of that nature.
- c. We therefore came to the conclusion that this paragraph also does not enable the Applicant to recover its costs of the present work.
- 25. For the above reasons we therefore concluded that the present costs which will fall on the Applicant by reason of the requirements of the Fire Authority are not recoverable by way of service charge from any of the Lessees, so to that extent the Standard Lease does not make satisfactory provision within the meaning of Section 35 of the Act.
- 26. However, we are also asked to consider a provision to be included in the Standard Lease which would cover any similar situation in the future. We consider it right to do so, failing which similar situations may well arise and further applications to the Tribunal might be needed.
- 27. In the course of the hearing the Tribunal considered the terms of the draft clause as originally submitted with the application. Both parties agreed that if the Tribunal decided to make an order under Section 35 (2) (e) of the Act, that draft should be amended so that its terms would be those set out in the decision at paragraph 3 above.
- 28. The inclusion of this paragraph will provide clarity and certainty for both now and in the future; we are satisfied that the grounds on which the application was made have been established and that the variation referred to in the decision should be made.
- 29. We also considered the question of payment of any compensation to the Lessees for this variation. We found that the variation would not prejudice the Lessees; indeed, they could be prejudiced if the variation was not made. Further, on the basis of the Applicant complying with paragraph 6 of the decision, there is no reasonable likelihood of the Lessees suffering expense from giving effect to the variation.
- 30. Section 20C. The Applicant accepted that it would not seek to charge its costs in relation to these proceedings to service charge. We decided to make an order under this Section, considering it just and equitable to do so in the circumstances.
- 31. The Tribunal made its decisions accordingly.

[signed] M J Greenleaves

Chairman

A member of the Southern Leasehold Valuation Tribunal appointed by the Lord Chancellor