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Residential
Property
TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 – SECTION 27A

Ref: LON/00AK/LSC/2010/0758

Property: 12, Romney House, Ayley Croft, Bush Hill Park,
Enfield, EN 1 1XS

Applicant: Mr D D and Mrs K D Patel

**Appearances for
the Applicant:** Mr Patel

Respondent: London Borough of Enfield

**Appearances for
the Respondent:** Mr Bhose (Counsel)

Date of Hearing: 9th May 2011

Tribunal: Mrs H C Bowers (Chairman),
Mr K M Cartwright JP FRICS
Mrs G Barrett JP

DECISION

The Tribunal determines that the following items are reasonable and payable by the Applicants.

- Staircase screens – Block costs £20,645.86 and Applicant's contribution £1,146.99.
 - Renewal of doors, windows and under - panels - £8,337.78
 - Extractor fans – Applicant's Contribution - £338.19
 - Fees (Block fees £3,282.64 – Applicants' share £182.37 and Flat fees - £694.32) Access Costs – Applicants' share - £559.33.
 - Sealing of Heating Cowl - £13.10.
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Introduction

1) An application was received from the Applicants in respect of the subject property, this was dated 5th November 2011. An oral pre trial review was held and Directions were issued on 8th February 2011. The issues that have been identified are that the Applicants seek a determination as to the reasonableness of costs and standard of works and their liability to pay service charges in respect of major works that were carried out and completed in 2005.

Background

2) The Applicants hold the leasehold interests (as Lessee) in 12, Romney House (the subject flat). The Respondent is the freeholder of a large residential estate that includes Romney House. Major refurbishment works were undertaken at four blocks on the estate and included Romney House. The contract was awarded to Connaught Property Services Limited and a contract for the works was dated 23rd February 2004. Practical completion was certified on 11th March 2005. The 12 months' defects inspection took place on 28th March 2006 and the Final Certificate was issued on 7th July 2009. The major works were extensive and the Applicants' contribution to the works was £13,870.42. However, it was identified that only the following items were in dispute:

- Staircase screens – Block costs £20,645.86 and Applicant's contribution £1,146.99.
- Renewal of doors, windows and under - panels - £8,337.78
- Extractor fans – Applicant's Contribution - £338.19
- Fees (Block fees £3,282.64 – Applicants' share £182.37 and Flat fees - £694.32) Access Costs – Applicants' share - £559.33.
- Sealing of Heating Cowl - £13.10.

The Lease

3.) The Tribunal was provided with a copy of a lease of Flat 12, Romney House that was dated 12th September 1988 which is between The Major and Burgesses of the London Borough of Enfield as the Council and Deepakkumar Patel and Kantaben Patel the Lessees.

4.) The lease defines the Estate where Romney House is situated and “the Block” (Romney House) is defined for service charge purposes as the block edged red on the lease plan. Flat 12 Romney House is shown in the lease to be a second and third floor maisonette. Under the lease “the common repairs and services” are defined as the repairs and services specified in the Fourth Schedule. The “Proper proportion” is noted to be 1/18th of the costs and this relates to the proportion of the rateable value of the subject property in comparison with the rateable value for the whole block (£266/£4,788).

5.) The Council covenants to repair the structure and the exterior and to provide common repair and services. Fourth Schedule details the items to be regarded as “common repairs and services” and amongst other matters includes in paragraph 5 *“The painting of all outside wood iron stucco and cement work of the block (including the Flat) and (subject to the provisos contained in Clause 3(2)(B) hereof the repair maintenance and decoration of all such parts of the block as are not wholly included in any flat or dwelling which shall belong to or be used in connection therewith or in common with other adjoining or neighbouring land or premises (whether the same shall be owned by the Council or not).”*

6.) The lessees covenant to repay to the Council on demand for *“any repairs maintenance or servicing to the Garchey the Security-Comm the Ventilation system Communal TV aerial outlet any Heating Appliance or to the windows (including both the window frames and the glass panes thereof) and the external doors in the Flat”*. Additionally, the lessees covenant to pay a proportionate part of any costs of alterations.

Inspection

7.) The Tribunal did not consider that it was necessary to make an inspection of the property as the subject works had been completed in March 2005 with the issue of the certificate of practical completion on 11th March 2005. Mr and Mrs Patel were sent an invoice for the major works and this was dated 8th September 2005. We were provided with photographs of the subject property in the trial bundle and Mr Patel provided copies of photographs of the interior of his flat taken during the previous week. Although Mr Patel asked that the Tribunal to inspect, we concluded that there was a matter that could

be an ongoing maintenance issue between landlord and tenant and LVT reluctant to become involved. There was no expert report from either side that would assist the Tribunal as to the nature of the defect

The Law

8.) Section 18 of the Act provides:

- “(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-*
- (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord’s costs of management, and*
 - (b) the whole or part of which varies or may vary according to the relevant costs*
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.*
- (3) for this purpose*
- (a) costs includes overheads and*
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period”*

“Section 19

- (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; and*
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.*
- (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.”*

“Section 27A

- (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-*
 - (a) *the person by whom it is payable,*
 - (b) *the person to whom it is payable,*
 - (c) *the amount which is payable,*
 - (d) *the date at or by which it is payable, and*
 - (e) *the manner in which it is payable.*

- (2) *Subsection (1) applies whether or not any payment has been made.*

- (3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*
 - (a) *the person by whom it would be payable,*
 - (b) *the person to whom it would be payable,*
 - (c) *the amount which would be payable,*
 - (d) *the date at or by which it would be payable, and*
 - (e) *the manner in which it would be payable”*

Representations

9.) There were submissions from both parties. Whilst the full details of the parties' submissions were considered by the Tribunal, a brief summary of each case is detailed in the following paragraphs.

Applicants' Case

10.) Mr Patel stated that whilst they were informed that there was to be a refurbishment programme to the block, there had been no feedback process from leaseholders in respect of what was wanted, the design and the materials to be used. At the time of the refurbishment, Mr Patel had not been in occupation of the flat as it had been let out on a short term basis. Neither Mr Patel nor the occupier of the flat had been informed of the defect inspection and that whilst Mr Patel had received the invoice for the works, there had been no warranty letter. Mr Patel's issue related to the quality of the workmanship. It was stated that the panelling and walls were already cracking. Mr Patel stated that these defects had been reported to Mr Homer of

F.E.C.A. Mr Patel had assumed that Mr Homer had made direct contact with the Council. Mr Homer had not made an internal inspection of the subject flat.

11.) In a letter dated 11th March 2011 Mr and Mrs Patel set out the particular issues that are in dispute, namely the staircase screens, the replacement windows and door of the flat, the cost of the extractor fans, the fees and the scaffolding costs. Additionally they considered that the work was of substandard quality, poor quality materials and that the finishing was poor. In support of Mr Patel's case there was a letter dated 27th March 2011 from Mr N Homer of the F.E.C.A. Mr Homer raises the issue that the pre-tender estimate provided by the Council was significantly higher than the tender price submitted by Connaught Property Services Limited and as such there was a doubt regarding the commercial background of those employed by the Council.

12.) Staircase screens – Block costs £20,645.86 and Applicant's contribution £1,146.99.

In respect of the staircase screen replacement by the entrance doors, the cost was £20,645 and the Applicants' contribution would be £1,146.99. Mr Patel felt that the cost was excessive. In support Mr Homer stated that originally the screens were wooden and to replace with metal screens was excessive and to fit a heavy metal door without access control was also excessive. It was stated that wooden doors and screens would have been an adequate solution and would have been cheaper.

13.) Renewal of doors, windows and under - panels - £8,337.78

A sum of £8,337.78 was being sought for the replacement windows and doors. It was considered that the sum was excessive. The market cost should be 50-60% and it was stated that the installation was poor with gaps around the windows. Mr Patel produced photographs that had been taken in the week prior to the hearing and this indicated some defects to the internal finishes around the windows. Mr Patel did confirm that when the works were first completed that there had been no issues, but the defects that he was now complaining about, arose some time after the works were complete. However, he does not take any issue on the fact that the windows were replaced with aluminium framed. Mr Homer states in his letter that the leaseholders were not given a choice of the materials used for the replacement windows and doors in the individual flats. It is stated that the Applicants' tenants had complained of excessive cold draughts blowing around the gaps around the doors and windows.

14.) Extractor fans – Applicant's Contribution - £338.19

In respect of the extractor fans at a cost of £338.19, Mr Patel considered that the retail price for two fans would be £70. Mr Homer stated that replacement

fans could be sourced at a cost of £38 each and that the costs to supply and fit the units was excessive. Extractor fans had been put in the bathroom and kitchen at a cost of £318, but the bathroom extractor was not working and the one in the kitchen was unsafe to use. In response to questions from Mr Bhose, Mr Patel stated that he had erroneously not mentioned that the fans were un-operational in his statement of case. Mr Homer had been aware of the defective fans but had not made reference to them in his letter of 27th March 2011.

15.) Fees (Block fees £3,282.64 – Applicants' share £182.37 and Flat fees - £694.32) Access Costs – Applicants' share - £559.33.

Mr Patel also questioned the high level of fees namely the sums of £694.32 and £182.37 and the access scaffolding costs of £559.33.

16.) Sealing of Heating Cowl - £13.10

Mr Homer makes reference to the sealing of an external heating cowl at a cost of £13.10. Mr Homer refers to a photograph taken in March 2011 that shows a newspaper pushed into the cowl area and suggests that this is an indication of the poor workmanship of the contract.

17.) Mr Patel acknowledged that the work had been subject to competitive tender. It was confirmed that the flat is now no longer sub-let, but that the Applicants' son took occupation of the flat in 2006. Mr Patel confirmed that he had not written to the Council to set out the issues that he was now complaining about. There was no copy of any letter of complaint from Mr Homer about the issues currently under consideration.

18.) In respect of the 12 months defects inspection, Mr Bhose referred Mr Patel to a record of the inspections carried out on 28th March 2006. A couple of flats were recorded as having "Nil Access". However, flat 12 was recorded as "Nil Defects Recorded". Mr Bhose made a distinction between the two recorded comments and asked Mr Patel of his views. Mr Patel stated that he was not informed of the inspection by his tenant.

19.) Mr Patel stated that he did not want to prejudice any payment scheme that was offered by the Council for the payment of the works.

Respondent's Case

20.) The Tribunal heard from Mr Madigan, a Chartered Building Surveyor and at the time of the major works was employed by the Council within the London Borough of Enfield's Construction Technical Services Department and now continues to provide consultancy services to the Council. It was confirmed that six contractors were approached regarding tendering for the major works and that Connaught Property Services Limited were the

cheapest, overall tender. We were provided details of an elemental breakdown of the tenders of the four lowest contractors. Mr Madigan explained how the contract administration was undertaken and how additions to the contract were processed.

21.) Staircase screens – Block costs £20,645.86 and Applicant's contribution £1,146.99.

In respect of the staircase screens, it was explained that previously the staircase screens, the windows and panels below the window frames were of timber construction, but had been replaced with aluminium frames. A cost benefit analysis had been undertaken and as a consequence aluminium had been chosen due to the anticipated reduced maintenance costs during the life cycle of the structural element. Consideration was also given to the issue that aluminium was a safer option in respect of fire hazards and vandalism. If timber had been selected then there would have been ongoing maintenance costs that would have entailed the necessity the erection of scaffolding every few years.

22.) Renewal of doors, windows and under - panels - £8,337.78

Regarding the window replacement, the same issues were involved as the replacement of the staircase screens. As Romney House was a four storey block, regard had to be had for ongoing maintenance. It was necessary to obtain planning permission for the replacement of the windows and panels and there would be a requirement for a consistent finish on all the blocks within the estate. The window frames selected were hinged to allow the windows to become easily reversible and that facilitated easier cleaning. Due to the structural element of the infill panels below the windows, it was necessary to select aluminium as a stronger element rather than the UPVc equivalent.

23.) There had been no record of any complaint in respect of the subject property. There was an audit trail available for any defects that were reported to the Council, but nothing had been recorded against the subject flat. It was acknowledged that the photographs produced by Mr Patel illustrated that there could be an inherent defect in respect of the windows and this would require separate investigation.

24.) Extractor fans – Applicant's Contribution - £338.19

The cost relating to the extractor fans was for the supply and fitting of the fans. The specific fans installed under this contract were "integral humidistat" units.

25.) Fees (Block fees £3,282.64 – Applicants' share £182.37 and Flat fees - £694.32) Access Costs – Applicants' share - £559.33.

The fees included within the two elements of the contract, namely for the works to the block and for the replacement of the windows, door and infill panels of the subject flat were an element of the competitive tender process. The fees were identified as representing 6.74% of the contact costs.

26.) It was acknowledged that the total access, scaffolding costs for Romney House was a fixed cost of £5,885.63 and a time related cost based on 40 weeks of £6,202.75. This was an element within the competitive tender process.

27.) Sealing of Heating Cowl - £13.10

The sum for sealing around the heating cowls was £13.10 and this was part of the tender process. The newspaper had been identified in the photograph taken in March 2011 was some seven years after the works had been completed. It was stated that there could be no reason why the contractors would have placed newspaper in the cowl.

28.) The Tribunal also heard from Mr Shaw, Head of Home Ownership Services. He confirmed that there had been no record of any complaints regarding the workmanship from Mr Patel. In 2007 Mr Patel had raised the issue of the cost of the works, but no reference had been made to the issue of the standard of the workmanship. It was confirmed that if a surveyor was to attend the subject flat and identified that there were defects and these were as arising from the major works, then the problems would be remedied at no cost to the leaseholders.

29.) Mr Bhoose submitted that the Council had acted reasonably. They had sought the lowest tender for the major works. The specification had included the replacement of the screens, windows and panels in aluminium had been a reasonable act as this had taken consideration of ongoing maintenance at the building. The tender process had ensured that the heads of costs were reasonable. Therefore the only remaining issue was as to the quality of the works. The Applicants had not produced any evidence that the works had not been carried out to a reasonable standard. The problems complained of by Mr Patel had not been replicated elsewhere on the refurbishment scheme. Mr Bhoose also confirmed that if Mr Patel made a specific complaint about the quality of the workmanship, then a surveyor would attend the flat to ascertain the cause of the problem and if relating to an inherent defect, the Council would undertake any remedial work at no cost to the Applicants.

30.) Mr Bhoose confirmed that there were no provisions in the lease for the recovery of legal fees and as such the Council would not be seeking costs in respect of the application in future service charges years and as such it was

not necessary for the Tribunal to make a determination on any section 20C application.

Decision

31.) The first issue considered by the Tribunal was that the overall costs involved in this major works scheme were regarded by Mr Patel as being excessive. However, the Tribunal were provided with evidence of the tender process and the analysis of the four lowest tenders. The contract was awarded to Connaught, who were the lowest compliant tender. Only one contract can be awarded and there will always be some elements within a tendered price which may be slightly higher than the tenders submitted from others, but it is necessary to consider the whole of the contract that is let and the total sum tendered.

32.) Staircase screens – Block costs £20,645.86 and Applicant's contribution £1,146.99.

The Tribunal had consideration to the specification, tender documentation and the external photographs. Mr Madigan explained that a cost benefit analysis had been undertaken and this had led to the decision to replace in aluminium rather than timber. The use of the aluminium would provide some structural support in the window and panel elements which UPVc would not provide. This aspect together with the issues in relation to ongoing maintenance would suggest that the choice of using aluminium was a reasonable decision. Mr Patel had not indicated there were any issues in relation to the quality of the work. His issue was that it was a more expensive solution and he did not consider he was deriving any value.

33.) It is the view of the Tribunal that aluminium is an improvement this is allowed for in the terms of the lease. The use of this material will reduce maintenance costs in the future and have environmental and structural benefits. It is the decision of the Tribunal that the use of the aluminium is reasonable and as such the costs in relation to this aspect are determined to be payable.

34.) Renewal of doors, windows and under-panels - £8,337.78

As with the use of the aluminium in the staircase screens, the cost benefit analysis would indicate that the use of aluminium in the windows and under-panels would be a reasonable option. We had no alternative evidence from Mr Patel as to indicate that the costs were excessive. The work had been competitively tendered and as such we are satisfied that the cost of the work was reasonable.

35.) Next issue relates to the quality of the workmanship. Mr Patel confirmed that the internal works had been completed but that there was subsequent damage and this was demonstrated in his photographic evidence taken a week prior to the hearing. He had made no written complaint regarding these defects. However, he had phoned and reported issues to Mr Horner. Although there does not appear to be any record of Mr Horner contacting the Council about the subject flat at that time.

36.) The Respondent's evidence is that the 12 months' defects inspection recorded that there were no defects to the subject property. They also stated that they had no record of any complaint (letter or phone call) about the quality of the workmanship from Mr Patel or Mr Horner. It was acknowledged that there had been records of Mr Patel complaining of the excessive cost in 2007. Mr Bhowse submitted that even the statement of case and the response from Mr Horner had made no mention of the specific issues relating to the defective windows.

37.) The evidence given to the Tribunal was very limited and not of a nature where we could conclude the condition of the workmanship in respect of the contract from seven years ago. Given that the limited evidence we have determined that the works were carried out to a reasonable standard.

38.) The Tribunal acknowledges the comments made by Mr Bhowse and Mr Madigan that upon receipt of a formal complaint from Mr Patel, the Respondent would send a surveyor to inspect and report on the cause of the cracks around the windows and if it transpired that this was a latent defect then the Respondent would carry out the works of repair at no charge to the leaseholder.

39.) Fees (Block fees £3,282.64 – Applicants' share £182.37 and Flat fees - £694.32) Access Costs – Applicants' share - £559.33.

The fees were subject to competitive tender and represent 6.74% of the contact costs. We are of the opinion that this level of fees is at the lower end of the scale of fees that the Tribunal normally sees and we consider that these sums are reasonable and payable. In respect of the access scaffolding costs, Mr Patel stated that the costs were excessive, but he provided no evidence to demonstrate that point. We note that the costs in relation to the access scaffolding were part of the competitively tendered contract. Overall, the Tribunal note that this was a major project and involved the removal of large windows and under-panels. This is a project that would have taken some time and we conclude that the sums do not appear excessive.

40.) Extractor fans – Applicant's Contribution - £338.19

This item was included in the specification and competitively tendered price. The cost for these items included the of installation work of the fans. Although Mr Patel suggested a fan could cost £30 we were not provided with any evidence as to the specification of the fan. Mr Patel states that one of the fans is no longer working and that he has concerns about the second fan. However, the Tribunal is of the opinion that after 7 years, it is impossible to determine the cause of any defect. No evidence was produced to the Tribunal that the defects related to poor workmanship at the time of the major works. The Tribunal have concluded that the works were necessary, the costs were reasonably incurred and the work was carried out to a reasonable standard.

41.) Sealing of Heating Cowl - £13.10

The photograph of the cowl was taken in March 2011, some seven years after the major works were carried out. There is no clear evidence as to who placed the newspaper in the cowl. The Tribunal note the sealing of the cowl was included in the specification of the work and tendered price. The Tribunal are satisfied that this was carried out at a reasonable cost and to a reasonable quality of workmanship.

42.) In respect of section 20C, Mr Bhose acknowledged that the lease did not appear to allow for the collection of any costs in relation to the current application and as such the respondent would not be seeking to recover its costs in relation to this application in any subsequent service charge years. Accordingly, it was not necessary for the LVT to make an order under section 20C.

Chairman
Helen Bowers

22nd June 2011