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**HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : Flats at Elliott Gardens, Lickey Road, Rednal, West Midlands, B45 8US.

Applicants : Lessees of 28 Flats Represented by Mr T.Corbett of Flat 5

Respondent : Anchor Trust

Case number : BIR/00CN/LIS/2012/0053

Date of Application : 3rd July 2012

Type of Application : (1) Application for the Leasehold Valuation Tribunal ('LVT') to determine the liability to pay and reasonableness of service charges under s.27A of the Landlord & Tenant Act 1985 comprising the single issue of the cost of a new fire alarm system proposed to be charged from 1st April 2013 and

(2) whether the Lessor's costs in connection with the proceedings should be included in future service charges under Section 20C of the Landlord & Tenant Act 1985.

The Tribunal : I.D. Humphries B.Sc.(Est.Man.) FRICS (chair)
J.H.L. DeWaal QC

Date of Decision : 9 May 2013

DECISION

- 1 The Tribunal determines that the amount requested from the Lessees is unreasonable and not payable.
- 2 Furthermore, the Tribunal grants a s.20C Order that no part of the landlord's costs of dealing with this application should form part of the service charge.

REASONS

Introduction

- 3 The Application is for the Tribunal to determine the Tenants' liability to pay and reasonableness of service charges proposed to be introduced by the landlord from 1st April 2013, in respect of a proposed new fire alarm system at the development known as Elliott Gardens, Lickey Road, Rednal, B45 8US.

Background

- 4 The development is a retirement complex of 36 residential units fronting the A38 near Longbridge on the southern outskirts of Birmingham. It comprises 28 flats and 8 bungalows. The flats are in two storey blocks with brick elevations and pitched tile roofs surrounded by communal gardens and parking areas. It is an older style possibly 1960s scheme, there are no communal rooms or facilities other than the gardens but there is a visiting warden service. All the flats are self contained, some are on the ground floor and some on the first accessed from shared staircases.
- 5 The development had been built by Licenced Victuallers National Homes and had been planned to meet the special needs of retired people as stated in the tenancy agreements (clause 2a). In 2001 the Freehold was acquired by Anchor Trust and although all the tenants now hold Anchor leases, the basic residency requirements remain as before. They all hold Assured Monthly tenancies with a requirement to pay rent and a service charge.
- 6 In August 2010 Anchor contacted the tenants to advise that the fire alarms in the development did not comply with the latest standards and they wished to upgrade the system at a cost of £50,340. They were not proposing to charge all the money at once but spread the cost among the tenants over the following 15 years that would result in an extra service charge of £7.77 per month to each resident.
- 7 The work has now been carried out and the total cost has risen to £57,311, resulting in a proposed charge of £8.85 per month for each resident for the next 15 years.
- 8 The tenants objected and have made the present application to the Tribunal to determine whether the amount requested is reasonable and in accordance with legal requirements. They also applied for a s.20C Order to request that the landlord's costs of dealing with the reference should not be added to the service charge.
- 9 The application was made by one of the residents, Mr T.Corbett, on behalf of the 28 tenants listed in the attached schedule.

The Relevant Law

- 10 The tenants' liability to pay service charges is governed by the tenancy agreement, statute and common law principles.

Contractual Liability

- 11 In respect of the tenancy agreements, the tribunal have been provided with copy agreements for Flats 3/5/9/11/17/19 and although there are minor differences in the wording of some of the agreements the substance is similar. Clause 3(b) of the agreement says that the monthly charge is made up of three elements, rent, service charge and rates although the present application is only in respect of this one item of the service charge.
- 12 The paragraph covering service charge says:
"This is your contribution towards the costs we incur, or expect to incur, providing services for your home. These costs may be incurred before, during or after the month we are charging you for. An explanation of these charges is attached. They include a contribution of a *reasonable* amount to a sinking fund to cover future costs.
- 13 We review the service charge each year according to the income we received and the costs we incurred during the previous 12 months. We may also take account of any *reasonable* known or expected costs for the next 12 months. When we review the service charge, any variation in the cost of any of the services provided to your

home will be divided equally between you and other tenants receiving the services in question and living in similar Anchor homes ... ' (our italics in both paragraphs).

- 14 The Schedule to the Agreement says:
'The range of services provided will depend upon the nature of each particular scheme. ... '
and under clause 5,
'Provision for renewal of equipment' (among other items)
- Fire detection alarm and smoke dispersal system
 - Fire-fighting equipment'

Statutory Liability

- 15 In respect of the statutory provisions, section 27A(1) of the Landlord & Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal to determine whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.
- 16 Section 18 of the Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 17 Section 19 of the Act provides that relevant costs shall be taken into account in determining the 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 carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.

Common Law Liability

- 18 There is an over-riding requirement that the cost has to be fair and reasonable.

Facts Found

- 19 The Tribunal inspected the development on 7 February 2013 with representatives of both parties. We were unable to progress the case at that stage without further information from the parties and the most recent comment arrived at the Tribunal office on 8 April 2013.

Submissions

Applicants

- 20 The Applicants' case is based on five points:

- 1 Proposal Unnecessary
that the new alarm was unnecessary as the existing system had been upgraded in 2009;
- 2 Consultation
that the landlord had failed to consult the tenants;
- 3 Cost
that the work represented poor value for money;
- 4 Guidelines
that Anchor had ignored their own guidelines and
- 5 Cost Increase
that the proposed charge represented a 25% increase in service charges and would make the flats too expensive for their target market.

Each of the points was expanded in written submissions but this summarises the essence of their case.

Respondent

21 Anchor's response to the points is as follows:

1 Proposal Unnecessary

Anchor advised that fire safety standards had increased over the years and was now governed by The Regulatory Reform (Fire Safety) Order 2005 and Sleeping Accommodation and British Safety 5839 parts 1 and 6. A fire risk assessment had been carried out in 2010 when it was found that the previous fire detection equipment at Elliott Gardens did not comply with the latest statutory requirements and a number of areas needed upgrading including the fire detection and warning system, smoke detectors in common areas, emergency lighting, illumination to show alarm points and other matters.

Anchor's view was that as a responsible landlord and Housing Association they had no alternative but to comply with the report's recommendations and upgrade the system.

2 Consultation

Anchor advised that they had consulted the tenants fully in compliance with s.20 of the Landlord & Tenant Act 1985 as amended by s.151 of The Commonhold & Leasehold Reform Act 2002 and The Service Charges (Consultation Requirements) (England) Regulations 2003. They had issued a Notice of Intention to enter into a Qualifying Long Term Agreement on 13 August 2010 and given the tenants the required 30 days to make any observations. Following the tender process Anchor served a Notice of Proposal on all the tenants in February 2011 that included a second Notice of Proposal providing responses received from the tenants during the consultation period. The Tenants were then given a further 30 days in which to make observations. On 17th October 2011 all the tenants were sent a Notice of Intention describing the Qualifying Works and again inviting comment within 30 days. Anchor therefore believe that they fully complied with all the consultation they were required to carry out before instructing their appointed contractors.

3 Cost

The work had been advertised and put to tender. This was one of a number of Anchor developments around the country where the fire systems required upgrading and the total cost nationally was £22,240,400 of which the cost for Elliot Gardens was £57,311.98.

4 Guidelines

Anchor made no comment on the Applicants' claim that they had not followed their own guidelines.

5 Cost Increase

Anchor did not comment on the Applicants' claim that the service charge would increase by 25% as a result of the work.

Decision

22 Having carefully read all the submissions and inspected the development the Tribunal considered each of the relevant points as follows:

23 Points in the Applicants' Submission

1 Proposal Unnecessary

We have no special expertise in fire detection systems and although the Applicants assert that the previous system had been improved in 2009 and was perfectly satisfactory, we prefer to rely on the landlord's specialist report advising that the system needed renewal and improvement.

2 Consultation

We find that the landlord carried out full consultation with the tenants in accordance with statutory requirements.

3 Cost

The Respondent advises that the work was put to tender. The Tenants have not provided an alternative quote from suitable qualified contractors and we therefore have no evidence to suggest that the amount paid to the contractors was excessive.

4 Guidelines

The Respondent did not comment on the Applicants' assertion but in any case we find that any internal guidelines are for Anchor only and not part of our remit.

5 Cost Increase

The Applicants' claim that the service charge would increase by 25% is relevant and on which we comment further below (please see para. 29 et seq.).

Contractual Liability

24 It is clear from the terms of the tenancy agreement that replacement and improvement of the fire alarm system is included in the service charge provisions of clause 3(b) of the Agreement and clause 5 of the Schedule to the Agreement and in principle is an expense capable of recovery by the landlord. However, we note that the Tenancy Agreement includes the word 'reasonable' twice on which we comment below.

Statutory Liability

25 We find that the work falls within the definition of a service charge item in s.18(1) of the Landlord & Tenant Act 1985.

26 In respect of s.19 of the Act, we find that the work was 'reasonably incurred' since it was identified during a fire assessment survey and was necessary to bring the development up to current statutory standards.

27 We further find that the second limb of s.19 is satisfied as neither party has suggested that the work carried out was not of an acceptable standard and although we are not experts in fire detection systems, we have no evidence before us to suggest that the work was not of a reasonable standard.

28 The new fire detection system therefore passes the first two tests of contractual and statutory liability subject to the qualification of 'reasonable' in the agreement.

Common Law Liability

29 However, in addition to these tests, the work also needs to satisfy the over-riding requirement of a service charge that the expenditure has to be fair and reasonable in accordance with *Finchbourne v Rodriguez* [1976] 3 All E.R. 581 to be recoverable from the tenants.

30 We find that it fails the test because the parties cannot have intended that the tenants should pay such a high sum when entering into the Tenancy Agreement. The sum of £8.85 per month may be a minor amount to employed members of the public but to the retired tenants living at the property who are required to be on low income to satisfy Housing Corporation requirements (per para.1 definitions in the Agreement), it could be a substantial sum. This was one of the points made by Mr Corbett for the Applicants and on which Anchor had not responded. We further note (although not referred to by the parties' submissions) that it represents around 2% of the current single person's national pension.

31 The Agreement twice referred to 'reasonable' costs in connection with the sinking fund and to give efficacy to the agreement, we import a further implied term of reasonableness to the costs referred to in the present application.

32 Unlike most of the other items of service charge in clause 5 of the Schedule (e.g. cleaning equipment, refuse containers, laundry equipment), we note from our own inspection that the fire detection equipment is hard-wired and effectively a fixture and fitting that is part of the building. It is not a weekly consumable item and on the landlord's claim it would be expected to last 15 years. It would therefore be unreasonable to expect the tenants to pay for renewal of part of the landlord's structure, even though it may be reserved by the lease.

- 33 We also note that there has to be a check on costs to ensure they are kept within reasonable limits, otherwise, as pointed out by the Applicants' submission there would be a risk that the cost could become excessive and too expensive for the tenants, what Mr Corbett described in his Statement of Case as the 'target market'.
- 34 For all these reasons we find the amount requested by Anchor for the improvements and replacement of the fire detection service of £8.85 per month for 15 years from each tenant to be unreasonable and irrecoverable.

Section 20C Determination

- 35 As the cost of the work is irrecoverable we grant a s.20C Order in the tenants' favour that no part of the costs of the landlord's costs in these proceedings should form part of the service charge.



I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date 14 MAY 2013

We the undersigned agree that Tom Corbett (No 5)
represent us at the Appeal.

Elliott Gardens Residents party to the Appeal

No	Resident's name	Amount appealing against	Signed
1	Joan Russell	£1,398.34	J. Russell
2	Arthur Grainger	£1,398.34	A. Grainger
3	Mr & Mrs Dolphin	£1,398.34	M. Dolphin
4			
5	Tom Corbett	£1,398.34	
6	Vacant		
7	Elizabeth Turner	£1,398.34	E. Turner
8			
9	Roy Gillespie	£1,398.34	R. Gillespie
10	Mrs M Hewson	£1,398.34	M. Hewson
11	Terry Long	£1,398.34	T. Long
12			
13	Mr & Mrs Drew	£1,398.34	R. Drew
14	Ann & Alan Baldwin/Barnes	£1,398.34	A. Barnes
15	Mr EH and Mrs A I Ward	£1,398.34	A. I. Ward
16	PT & BJ Simpson	£1,398.34	B. J. Simpson
17	Mrs Rita Podmore	£1,398.34	R. Podmore
18			
19	Mrs Hazel Jones	£1,398.34	H. Jones
20	Joan Whitaker	£1,398.34	J. Whitaker
21	Christine & Peter Gauntlett	£1,398.34	C. Gauntlett
22			
23	Maureen Hickey	£1,398.34	M. P. Hickey
24	Tom Thompson	£1,398.34	T. Thompson
25	Beryl Jean Turner	£1,398.34	B. Turner
26	Dave Edwards	£1,398.34	D. Edwards
27	Mr D & Jean Wright	£1,398.34	J. Wright
28	Pauline Edmonds	£1,398.34	P. Edmonds
29			
30	William Higgins	£1,398.34	W. Higgins
31	John & Marlene Watts	£1,398.34	J. Watts
32	RV Rowley	£1,398.34	R. V. Rowley
33			
34	Mr & Mrs Ratledge	£1,398.34	M. Ratledge
35	DJ Hawkins	£1,398.34	D. J. Hawkins
36	Mr & Mrs Wallace	£1,398.34	R. Wallace
	Totals	£39,153.52.	

RECEIVED

10 SEP 2012

W AND R A P