

12001



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00HN/LSC/2016/0100

Property : 17 Malvern Road, Bournemouth,
Dorset, BH9 3AE

Applicant : Tyrrel Investments Inc

Representative : Napier Management Services
("Napier")

Respondent : The Leaseholders

Representative : -

Type of Application : Service Charges : Section 27A of the
Landlord and Tenant Act 1985 ("the
1985 Act")

Tribunal Members : Judge P R Boardman (Chairman) and
Mr P Turner-Powell FRICS

**Date and venue of
Hearing** : Decided on the papers

Date of Decision : 20 February 2017

DECISION

Introduction

1. This application, dated 14 October 2016, is for the Tribunal to decide whether works for external decorations costing £5980 are the responsibility of the landlord under the leases, and whether the cost is a reasonable service charge expense under the terms of the leases
2. The application describes the Property as a 20th century detached house, converted to provide three units of accommodation over two storeys, of which only two flats, B and C, are owned by the freeholder
3. Attached to the application is a list of the names and addresses of the leaseholders of the two flats, namely Miss F Beck and Miss H Beck of Flat B, and Miss N L Wood of Flat C
4. The Tribunal has decided the application on the papers before it, without an oral hearing, pursuant to rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”), and the Tribunal’s directions dated 4 November 2016, no party having requested a hearing in the meantime

Documents

5. The documents before the Tribunal include the following :
 - a. the application form
 - b. the lease of the ground floor flat dated 30 December 1985
 - c. a schedule of works dated April 2016
 - d. a letter dated 19 April 2016 from Napier to Miss Beck and Miss Beck, with a “notice 1” under section 20 of the 1985 Act
 - e. the following responses to invitations to tender :
 - Bluebell Decor Ltd : declined to tender
 - C A Symes £4320 plus VAT
 - D Lyle Building : declined to tender
 - Hallmark Property Services : £4495 plus VAT
 - f. a letter dated 13 October 2016 from Napier to Miss Beck and Miss Beck, with a “notice 1” under section 20 of the 1985 Act, stating that the estimate of costs was £5980, which was £1805 more than was currently in reserve, that they would be applying to the Tribunal for a determination of reasonableness, and that after the completion of the works they would send an invoice for the actual costs
 - g. a document entitled “Summarised Tender Sheet”, setting out the

tenders, stating a proposal to instruct C A Symes Limited, and setting out the total cost of the works as follows :

C A Symes	4320.00
Napier (section 20 fee)	<u>225.00</u>
	4545.00
VAT @ 20%	<u>909.00</u>
	5454.00
Surveyor	<u>526.00</u>
Total	5980.00

- h. a notice dated 13 October 2016 from Napier under section 20 of the 1985 Act entitled "Notice to Accompany Statement of Estimated in Relation to Proposed Works"
- i. a letter from Miss Wood dated 26 November 2016, stating that she consented to the application

The lease of the ground floor flat

6. The only lease copied for the Tribunal is the lease of the ground floor flat. For the purposes of this decision the Tribunal has assumed that both the leases are in materially the same terms
7. The material provisions of the lease of the ground floor flat are as follows :

Clause 2

[Covenants by the tenant]

2. To contribute and pay to the Landlord from time to time within seven days of demand and in addition to the rent hereinbefore reserved one equal half part of the costs and expenses incurred by the Lessor [sic] in

(a).....

(b) carrying out any works referred to in clause 4.....

Clause 4

[Covenants by the landlord]

(vii) [to] paint the exterior of the said property in a uniform colour scheme once in every four years of the said term or when otherwise agreed between the Landlord and the two Lessees [sic] in writing

8. Inspection

9. The Tribunal inspected the exterior of the Property on the morning of 21 February 2017
10. No one else was present. There was no answer to the doorbell of Flat B.

Miss Wood, by e-mail to the Tribunal on 12 February 2017 had indicated that she would not be able to be present at the inspection, but giving the Tribunal permission to access her rear garden in her absence

11. The Tribunal found the Property to be a detached two-storey house, with the appearance of having been built in the 1920s. The entrance doors to Flats B and C were on the front on the left, looking from Malvern Road, and there was a separate front door for Flat A, not the subject of this application, on the right. The Property had rendered elevations, and a tiled pitched roof over Flats B and C, and a separate pitched roof over Flat A. The fascias were timber, and the windows plastic. There was a single-storey extension at the rear of Flats B and C, with a flat roof. The rear garden was in three, fenced sections

12. The Tribunal's findings

13. The Tribunal makes the following findings
 - a. the proposed works are those detailed in the schedule of works dated April 2016
 - b. those works fall within the landlord's obligations under clause 4(vii) of the lease
 - c. the leaseholders are obliged under clause 2(b) of the lease to pay a contribution to the reasonable costs incurred by the landlord in doing so
 - d. the proposed costs of £5980 are reasonable, in that :
 - the quotation from the chosen contractor, C A Symes, was the lower of the two quotations received following a tendering process, and is, in any event, a reasonable figure for the works proposed
 - the proposed figure of £225 plus VAT for "Napier section 20 fee" is a reasonable additional figure in that respect
 - the proposed figure of £526 [no VAT added] for "Surveyor" is a reasonable additional figure in that respect
 - e. the consultation procedure undertaken on behalf of the landlord under section 20 of the 1985 conforms with that section and with the regulations made pursuant to that section
 - f. none of the leaseholders has notified the Tribunal of any dispute about the nature of the works, the reasonableness of the works or the cost of the works, or about the consultation procedure undertaken on behalf of the landlord under section 20 of the 1985 Act; indeed, and on the contrary, Miss Wood has indicated her consent to the application
 - g. having considered all the circumstances, the Tribunal finds that the proposed works are the responsibility of the landlord under the lease, and that it is reasonable for the proposed costs to be included in the service charges to be paid by the leaseholders

14. Appeals

15. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case
16. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision
17. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal
18. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 21 February 2017

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Judge P R Boardman