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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Property	: Oaklands House, Holly Drive, Waterlooville PO7 8HS
Case Reference	: CHI/2UH/LSC/2016/0115
Applicant	: Hanover Housing Limited
Respondent	: The Lessees
Type of Application	: Payability of service charges under s.27A Landlord and Tenant Act 1985
Tribunal Members	: Judge A Johns QC (Chairman) Derek Barnden MRICS (Surveyor Member)
Date of inspection	: 27 April 2017
Date of Decision	: 28 April 2017

DECISION WITHOUT A HEARING

Introduction

1. Oaklands in Holly Drive, Waterlooville ("the Building") is a retirement development of 37 flats plus a resident manager's flat. The landlord, Hanover Housing Limited ("Hanover"), proposes to carry out works to improve the fire safety at the Building. The question is whether the cost of those works is recoverable as service charge under the long leases of the flats.

Factual background

2. The proposed works are said to be necessary to comply with Hanover's obligations under the Regulatory Reform (Fire Safety) Order 2005 following fire risk assessments undertaken for Hanover in May 2014 and April 2015.
3. The works comprise (i) a range of fire stopping measures designed to better compartmentalise the Building, and (ii) the provision of a new fire alarm system.
4. The fire stopping works include, amongst other things, packing additional fire proof mineral wool between rafters in the roof space, fitting door selectors to the doors in the common access ways, adding plasterboard to the back of loft hatches, and fire stopping holes in ceilings and walls through which pipes and cables pass. It is also proposed to fit smoke seals and new fire rated letter plates to the front doors of each of the flats.
5. As to the fire alarm system, the Building currently has the benefit of what is called an LD3 system. Hanover intends to replace that as part of the works with what is referred to in the breakdown of works as an L3 system. One of the advantages of such a system is said to be that it better pinpoints the source of a fire.
6. The total cost of the proposed work is in excess of £45,000. Around £23,000 of that cost is referable to the new alarm system.
7. The Tribunal has been provided with 2 sample leases of flats in the Building. They are in the same terms and there is no suggestion that any other flat leases have materially different terms.
8. The focus in this application is on clause 5(1) of the leases. That clause is in these terms:

   "*During the said term to keep in good and substantial repair the roof main structure external walls and the common parts of the property and all common drains and water pipes and sanitary and water apparatus ... and*

all passages drives paths and ways thereof and not to do or permit or suffer to be done by any occupant of any other dwellings on the property anything which may become a nuisance or annoyance to the lessee".

9. Save for the closing words which are not relevant, it will be seen that the covenant is simply one for repair. The covenant does not include an obligation of the sort often found in leases to comply with notices served by a competent authority, or to comply with statutory requirements or regulations. Nor are any such obligations found elsewhere in the lease.

10. The matters in respect of which service charge are payable are set out in the schedule to the lease. Paragraph 2(b) of the schedule reflects the landlord's repairing obligation, referring to "*the cost and expenses of maintenance of the structure exterior and common parts of the property and reasonable provision for a reserve against expenditure on maintenance and repairs and replacements*".

11. There is an obligation on the lessee at clause 4(v) to keep 'the demised premises' in repair. There is no detailed definition of 'the demised premises' in the leases. Rather, clause 1 (of the sample lease of flat 1) introduces that defined term in this way: "... *all that flat on the ground floor of the said block known as number 1 aforesaid which is for the purpose of identification delineated and edged red on the plan annexed hereto (hereinafter referred to as 'the demised premises')* ...". Neither of the sample leases provided has the plan attached. The Tribunal sought a copy of such a plan but it seems none is available.

Law and procedure

12. This application is made by Hanover under s.27A of the Landlord and Tenant Act 1985. As amended by the Transfer of Tribunal Functions Order 2013, such section provides that the Tribunal may determine whether service charge is payable and in what amount.

13. In accordance with directions made on 12 January 2017 and there having been no objection, the application is to be determined without a hearing.

14. Those directions also made provision for a statement of opposition from the lessees and a reply to such opposition from Hanover. The parties submitted those statements and the Tribunal has considered them carefully. The lessees also sought to make further submissions by a letter received by the Tribunal

on 21 April 2017. This was not provided for in the directions and came too late for Hanover to respond. The Tribunal has not therefore had regard to those further submissions in arriving at its decision.

Inspection

15. The Tribunal had the benefit of inspecting the Building on the morning of 27 April in the company of Tracey Smith, Regional Manager, and Brian Cain, resident Estate Manager, of Hanover.

16. The Building is a purpose built 3-storey block of 38 flats (including the resident manager's flat), built in the early 1980s. It is constructed of brick with an interlocking tile roof, UPVC windows, gutters and rainwater pipes. It is well maintained by Hanover. Externally the Building is in a good state of repair and the common internal areas are in good decorative order.

17. The Tribunal was shown some of the holes through which cables and pipes passed and one of the loft hatches. It also accessed one of the flats in order to inspect the front door.

Parties' cases

18. Hanover's case is that, subject to one point, the proposed works "are covered by 5(1) in the lease" and the cost is therefore recoverable as service charge. The one exception is the work to the flat doors. As to that, Hanover invites the Tribunal to confirm that the cost of such works would not be recoverable as service charge on the basis that the flat doors are within the lessees' obligation to repair rather than the landlord's obligation under clause 5(1).

19. The lessees do not accept the need for, at least, the new alarm system. But their principal point is that these works are not covered by clause 5(1) at all as the proposed works are not repairs. Like the landlord, they take the view that the works to the flat front doors cannot in any event be within clause 5(1) as the doors are demised to the lessees.

Discussion

20. As already noted, clause 5(1) of the leases is simply an obligation to repair. The key question is therefore whether the proposed works are works of repair.

21. In order to constitute repair, works must address disrepair. And property or plant is only in disrepair if there is some deterioration in it which takes it below the required condition. As it is put, for example, in *Dowding & Reynolds – Dilapidations, The Modern Law and Practice, 5th Ed* at 13-03 in

respect of mechanical and electrical services, "*No work is required under the general covenant to repair and keep in repair until there is damage or deterioration to the relevant item of plant or equipment which is the subject-matter of the covenant, which has caused it to fall below the standard contemplated by the covenant.*"

22. It is no part of Hanover's case that the fire safety works are required by reason of a deterioration in the Building or the file alarm system serving the Building. Rather, Hanover believes they are necessary in order to upgrade the Building and alarm system in line with modern standards of fire safety.

23. That being so, these works are not works to address disrepair and so are not, in the judgment of the Tribunal, works of repair.

24. It follows that the Tribunal agrees with the lessees. The proposed works not being repairs, they do not form part of the landlord's obligation in clause 5(1) with the result that the lessees are not liable for the cost of them by way of service charge.

25. As to the works in relation to the front doors of the flats, the Tribunal agrees with both sides that the cost of these works is not recoverable as service charge for the further reason that such doors are not within the scope of clause 5(1) at all.

26. Clause 5(1) is concerned with the structure of the Building and the common parts. The front doors of the flats would not fall naturally within either. They would fall more naturally within a demise of a flat and, certainly without a lease plan (which is in any event only for identification), there is nothing in the leases to point away from such an interpretation.

27. Accordingly, had the works proposed been works of necessary repair (contrary to the Tribunal's conclusion), then they would have been the responsibility of the lessees rather than the landlord.

Summary of decision

28. From the above, the Tribunal determines that the cost of the proposed fire safety works is not payable as service charge.

Appeal

29. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) 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.

30. 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.

31. 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 allow the application for permission to appeal to proceed.

32. 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 the party making the application is seeking.

Judge A Johns QC (Chairman)
Dated 28 April 2017