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EASTERN LEASEHOLD VALUATION TRIBUNAL

Decision and Statement of Reasons of the Tribunal which met on the 24th August 2006 in respect of the Applicants properties 61, 63 and 64 Hornbeams, Harlow, Essex CM20 1PQ

Case Number:	CAM/22UJ/LSC/2006/0032
Applicants:	Paul Anthony McLoughlin, Susanne Dora McLoughlin, Louise May Peacock, Anna Marie Ferguson
Respondent:	Harlow District Council
Members of the Tribunal:	Mr D. Robertson (Chair) Miss M. Krisko BSc (EST MAN) FRICS Mrs J. Clark
Appearance for the Applicants:	All of the Applicants appeared in person and were supported by Councillor Mr Jollies
Appearance for the Respondent:	Mr R. Butcher, Barrister, Mr J. Driscoll, Ms L. Potter (Various other representatives of Harlow District Council in support)

1. The Application

The Application was received on the 22nd June 2006 under Section 27(A) of the Landlord and Tenant Act 1985 to determine service charges relating to works carried out by the Respondent pursuant to a Section 20 Notice dated the 1st March 2002. The Section 20 Notice refers to re-pointing of roof, external repairs, external re-painting, renewal of rainwater goods and facia boards, brick work re-pointing and repairs, chimney repairs, window renewal, shed repairs and carpentry repairs. It was decided not to pursue shed repair. The Application also included an application by the Applicants under Section 20(C) of the Landlord and Tenant Act 1985. There are now alleged outstanding and claimed by the Respondent the following:-

(a) 64 Hornbeams £2,805.93. The original invoice was for £3,646.51. Reductions already made by the Respondent are £100 for damage to gate and post, £77.81 for additional scaffolding costs and £662.77 for a window charged in error

(b) 63 Hornbeams £582.51. The original invoice was for £3,091.12. Reductions already made by the Respondent are of £77.81 for additional scaffolding costs

and £430.80 for a window charged in error. The Applicant Louise May Peacock has already paid the Respondent £2,000.

(c) 61 Hornbeams £2,649.18. The original invoice was for £3,389.76. Reductions already made by the Respondent of £77.81 for extra scaffolding costs and £662.77 for a window charged in error.

From these sums at the Hearing the Respondent offered to make the following concessions:-

(a) £117.83 for each property because 61 Hornbeams had not had any work undertaken above the patio doors to include helix bars and

(b) £61.51 for each property for additional helix bars for the same reason

2. The Building

The members of the Tribunal inspected the building of which the Applicant's properties form part. It is a block of eight flats and maisonettes constructed probably in the 1950's as part of the development of Harlow New Town. Representatives of the Respondent were present at all times during the inspection. The Tribunal found that the exterior of the building was in reasonable condition. None of the interior nor the stairwells to the upper floor flats were inspected. The Tribunal's inspection was brief and should not be regarded as a survey. They invited the Applicants to show them what was wrong and this was done.

3. The Leases

The Tribunal considered the three Leases. These are in a fairly standard form used by local authorities when leasehold properties have been acquired under the right to buy provisions of the Housing Act 1985. Clause 4 provides the tenants covenant to pay the service charges. Clause 7 includes the Landlord's covenant to repair and provide services and then Schedule G contains further details relating to the regulation of service charge payments. The Leases for 61 and 64 Hornbeams were entered into in 1988 and 1989. The Lease for 63 Hornbeams was entered into in 1998 and is in a more modern format including a provision for the Respondent charging for improvements. There is no allegation by any of the parties that the work undertaken under the Section 20 Notice is an improvement and therefore the difference between the Lease for 63 Hornbeams and the other two Leases is not relevant to this case. The Tribunal also considered the Leases so far as the Section 20 (C) Application is

concerned and decided under the terms of the Leases that it would be possible for the Respondent to add costs to future service charges.

4. Issues

The cases for both the Applicants and also the Respondent were well presented in writing and also by evidence at the Hearing. The written representations involved two bundles totalling over 800 pages. The main written representation for the Applicants was their Statement of Case which runs for 34 pages supported by a Witness Statement from Alan Harman a construction site manager. The written representation of the Respondent relies mainly on witness statements from Lynn Potter of the management of house sales and leasehold services team and Mr J. Driscoll a building surveyor both employed by the Respondent. There is a lot of evidence provided in the written representation concerning issues relating to the problems between the Applicants and the Respondent some of which is not relevant to matters to be determined by the Tribunal. The Tribunal as part of the Hearing quantified the main issues of the Applicants case which are as follows:-

(a) Work not done

(b) Work not done to an acceptable standard

(c) Bad management, this not being undertaken efficiently and not cost effectively

(d) Excessive charges involving unnecessary work and work that was too expensive

(e) Charges unfairly passed onto the Applicant

(f) Ancillary issues.

5. Evidence

(1) **Work not done and work not done to an acceptable standard**

(a) Work to the roof and chimney areas was considered. Mr Harman reports that the roof works have been poorly completed. The eaves pointing is cracked and gaps are visible. A ridge tile to gable looks broken and tilted. A ridge tile adjacent to a chimney is out of line. There are gaps in pointing to a chimney. The Respondent says that the work is done to an acceptable standard. Mr Butcher on behalf of the Respondent argues on this point and also all of the evidence given by Mr Harman that it should be considered in

the context that he is not at the Hearing and therefore cannot be tested. Mr Driscoll's evidence is being tested and is therefore better.

(b) Front Doors. The Applicants argue that the decorating specification was not complied with. The Respondent says that it has already conceded this point and provided a discount.

(c) Work above the patio doors was the main point of contention. Site inspection revealed that no work had been undertaken to the area above the patio door for 61 Hornbeams which resulted in the concession being offered referred to earlier in this statement. The Applicants main argument is that they do not think that any helix enforcing bars were inserted because work to this area was undertaken in about 30 minutes at 64 Hornbeams and there is no evidence that the bars were inserted. Mr Driscoll gave evidence that he had seen helix bars being inserted at other blocks but had no evidence that they had been inserted into this block. Mr Butcher argues that it is more likely than not that the helix bars were inserted. The Applicants argue that the re-pointing of the brick work is poor but the Respondent says it is to an acceptable standard.

(d) Stairwell Painting and Window Cleaning. The Applicants state that the stairwell to the upper flats has not been properly painted and the window cleaning after renewal of the windows was not undertaken properly. The Respondent points out that there has already been a deduction of £526.00 from the allowed figure of £663.00 in this respect.

(e) Facia Boards. The Applicants are satisfied with the standard of the finished job. Their main concern relates to the exposure and mishandling of the asbestos products as part of the preparation work. The Respondent argues that this is an issue between the contractors and their workforce and there was no risk to the Applicants in this respect.

(2) **Bad Management**

(a) Scaffolding. There was considerable argument by the Applicants that scaffolding the whole building was not the best way of dealing with the project and moveable towers should have been used. The Applicants do not consider it was value for money even after an allowance was given. The scaffolding was left up for an excessive length of time. The Respondent

considers that the scaffolding of the whole building was the most efficient and cost effective way of dealing with this issue.

(b) The Applicants argue that there may have been damage to the building which should have been pursued as an insurance claim. The Respondent says that there is no evidence in this respect.

(c) The Applicants say that the contract between the Respondent and their contractors was badly managed and there was a lack of supervision. The Respondents argue to the contrary providing evidence of regular meetings.

(d) Although discussed at the Hearing under ancillary matters the Tribunal consider that it is best at this stage to refer to the issue of the management of the project as between the Applicants and the Respondent. In this respect the Applicants provided considerable evidence of failures of the Respondent to communicate properly and deal with matters adequately. Mr Butcher argued that the Respondents did listen to the Applicants and were attentive to management. He says no management charge was made and therefore no reduction would in any event be appropriate.

(3) **Excessive Charges**

The Applicants argued in this section that some of the work was unnecessary such as replacing windows and items such as scaffolding were too expensive. The Respondent said they were satisfied that the work specified in the Section 20 Notice was necessary and nothing was too expensive because they had gone through the proper tendering procedures and work had been done by a contractor providing best value for money and the cheapest estimate.

(4) **Charges Unfairly Passed On**

The Applicants argue that there are extras charged for by the Respondent concerning extended preliminaries of £533.23 and an attendance of £157.86 which are being unfairly passed on to them. There was discussion about £656.16 charged for additional helix bars and in this respect the Respondent offered a concession as referred to earlier in this statement. The Respondent argues that the extended preliminaries and attendance should be charged to all blocks on the estate even though there was no evidence of these applying to this particular block.

(5) **Ancillary Issues**

The main ancillary issue was damage to the Applicants property caused by the contractors. Most of this has been resolved and allowances agreed. The only outstanding issue is damage to Mr and Mrs McLoughlin's patio caused by the erection of scaffolding. Mr and Mrs McLoughlin at the site inspection showed evidence of damage but the Respondent argues that this was not necessarily caused by the scaffolding.

(6) **Application Relating to Section 20(C)**

(a) The Applicants argue that the Respondent has behaved unreasonably and in particular they have failed to communicate properly with them and to manage the project efficiently.

(b) Mr Butcher for the Respondent argues that they are a public sector landlord have a duty to recover and it is reasonable that they should be allowed to do so.

6. The Decision

(a) The members of the Tribunal firstly considered Section 19 of the Landlord and Tenant Act 1985. They ask themselves whether the services were undertaken at a reasonable cost and to a reasonable standard. The members of the Tribunal then considered the provisions of Section 27(A) of the Landlord and Tenant Act 1985.

(b) On works not done or work not done to an acceptable standard the Tribunal decided so far as the roof and chimneys are concerned that no deduction should be made but there is remedial work that the Respondent should attend to as highlighted in the report of Mr Harman. On the front door issue again no deduction is made because the work undertaken was fair and value for money. Above the patio doors the Tribunal decided on the balance of probabilities that no helix bars had been inserted and the pointing was poor. In particular the Tribunal refers to page 96 of the bundle. The major work breakdown refers to the contractor cutting brick with a disc cutter and providing accro props to support the underside of the existing lintel. This would have been a noisy operation involving more disruption and a longer length of time than is shown by the evidence. With regard to the whole block

the Tribunal therefore deduct £627.90 for the lack of helix bars and £314.72 for the re-pointing of the brickwork. This comes to a deduction of £117.82 for each property. The balance of money claimed for work to the stairwell and window cleaning is small. The Applicants were not able to give the Tribunal access to the stairwell area. No award is made in that respect. The asbestos issue was considered and although it is evident that there may have been an element of exposure to individuals this is not an area in which the Tribunal has jurisdiction and therefore no deduction can be made.

(c) With regard to bad management the Tribunal considers that scaffolding the whole block was the most efficient and cost effective way of undertaking this work. Although the scaffolding was up for a long time the Tribunal does not consider that it has power to provide compensation on this issue. There was no evidence of items that could be claimed by insurance. Evidence shows that the management of the contract as between the Respondent and its contractor has inadequacies and management as between the Respondent and the Applicants was poor. The Tribunal with some reluctance has to accept the argument put forward by Mr Butcher that as there was no management charge made by the Respondent therefore no deduction can be made in this respect.

(d) Issues concerning excessive charges were considered by the Tribunal. It found that there was no work done that was unnecessary and the work was not too expensive. The Respondent had gone through a proper tendering procedure and used a reputable contractor that gave the cheapest estimate.

(e) The Tribunal then considered the allegation of charges unfairly passed on to the Applicants. They considered firstly the additional costs of the helix bars of £656.61. This sum must be totally deducted. The concessions offered at the Hearing are not appropriate. They also thought it was unfair for this block that the Applicants should pay for additional preliminaries and attendances that were not warranted and therefore deductions of £533.23 and £157.86 were made with regard to the whole block. These total deductions come to £168.30 for each property.

(f) With regard to the damage to the Applicants property the Tribunal noted the allowances that have already been made by the Respondent. They thought on balance that the indentations in the patio of Mr and Mrs McLoughlin had been caused by the scaffolding and the Respondent should compensate Mr and Mrs

McLoughlin in this respect. The Tribunal however does not consider that it has any power to make an award itself.

(g) Having considered all matters the Tribunal does make an order under Section 20(C) of the Landlord and Tenant Act 1985. It does consider that it would be unfair and inappropriate for the Respondent to try and claim costs for this case and add these to future service charges. The conduct of the Respondent was unreasonable in that they failed to communicate properly with the Applicants and failed in a duty to manage the project properly even though no management charge was made.

(h) In conclusion the owners of each property may deduct £286.12 from the outstanding amounts on the basis that the concessions offered at the Hearing by the Respondent are ignored and are now not relevant. The balances due by the Applicants to the Respondent are to be paid immediately in accordance with the terms of the Lease.

Duncan Robertson

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DUNCAN .T. ROBERTSON
(Chair)

(L1393/4)