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LEASEHOLD VALUATION TRIBUNAL
FOR THE LONDON RENT ASSESSMENT PANEL

LON/00AC/LSC/2007/0364

Landlord &Tenant Act 1985 (as amended) s.27A

Property: **61 Galsworthy Road London NW2 2SG**

Applicant: **London Borough of Camden**
Represented by Mr K. Schooling, Housing Officer

Respondent: **Mr L. Mourou and Mrs S. Mourou**
In person

Also present: Mr M. Dillon, Shillam & Smith Architects

Hearing: 16th January 2008

Members of the Tribunal:
Mr L. W. G. Robson LLB(Hons) MCIArb. (Chairman)
Mr C. Kane FRICS
Mrs R. Turner JP

Preliminary Matters

1. This case relates to an application made under section 27A of the Landlord & Tenant Act 1985 (as amended). The Respondents hold the property under a lease ("the Lease") dated 17th July 1989 for a term of 125 years. The Applicant seeks determination of the reasonableness and the amount of service charges relating to a major works contract ("the Contract") comprising landscaping and safety improvements. The Contract was completed on 21st October 2002 and the final account was issued on 1st March 2006. The total estate cost of the Contract amounted to £284,780.31 and the Respondents' contribution was stated to be £2,274.80.

2. The case was transferred from the Willesden County Court by an order of District Judge Dabezies dated 3rd September 2007 under Claim No 7QZ72448. Pre-Trial Directions were given by a Tribunal on 24th October 2007.

Inspection

3. The Tribunal inspected the subject property externally, and the immediate area around it on the morning of the hearing accompanied by Mr Schooling and Mr Dillon on behalf of the Applicant, and Mr Mourou. The property was part of a large estate of predominantly two storey terraced houses built around small squares in about 1925. The property was built of brick with a tiled roof. Immediately adjacent to the property was an alleyway leading from the street to the square at the rear. The iron gate on the alleyway appeared to be a relatively recent addition, and Mr Mourou demonstrated that when opened it hit the exterior wall of No 61, making a considerable noise as there was no

buffering of any kind. The gate was unlocked. At the rear of the property we noted that an external light had been fixed to the rear wall of the property above the alleyway. Our attention was directed to the power cable for this light which apparently ran down the exterior wall of the property to an underground supply in the garden. The alleyway opened out on to paths at the rear, one running the length of the block, and another running across the open space to the other side of the square. Some older style lamp standards stood along the path, which had apparently been repaired or renewed quite recently. Highly specified iron railings about four feet high had been erected relatively recently around the area in the middle of the square beyond the path. Within that area some planting and landscaping had been done on what were previously allotments, apparently as part of the Contract. Our attention was also directed to a path at the other end of the square which had been improved as part of the Contract and another horseshoe shaped area through the gate at one end of this path where the grass had been redone and the parking area organised. The cost formed a significant part of the Contract.

Evidence and submissions

4. Written submissions were made on behalf of both parties, and these were substantially referred to at the hearing. The hearing was held on 16th January 2008 at which oral submissions were also made on behalf of the parties. Mr Michael Dillon gave evidence on behalf of the Applicant. The submissions are summarised as follows:

5. On behalf of the Applicant, Mr Schooling stated that the Applicant had consulted widely on the proposed work It had been carried out in response to a Metropolitan Police report dated 22nd March 2000 highlighting a history of social problems, muggings, burglaries and drug dealing aggravated by certain physical characteristics of the area, which made it more susceptible to crime. He submitted that the necessary procedures had been correctly carried out. A Section 20 notice had been served on 6th February 2002 relating to this particular contract containing a statement showing an estimated contribution by the Respondents of £2,274.80, equating to 1.67% of the total rateable value of the estate, in accordance with the lease of the subject property dated 17th July 1989. A formal demand for payment of this sum had been made on 20th March 2003. Practical completion took place on 21st October 2002, with the Defects Period terminating on 20th October 2003. The final account was issued on 1st March 2006 and the cost had significantly exceeded the tender sum, but the Applicant was not seeking recovery of the additional costs. No significant complaints had been received about the standard of the work at the time. The Respondents in their statement of case had failed to identify any disputed items of work, the reasons for the dispute, or what the Respondents considered to be appropriate costs. The matters raised by the Respondents were, in his view, applicable to another contract for external works, and not relevant to the works disputed in this case.

6. On behalf of the Respondents, Mr Mourou submitted that they should not be expected to pay for poor or uncompleted work charged in what he described as a cavalier and imaginative fashion. The demands sent by the Applicant were not clear. The work was of no benefit to them and actually ruined the quality

of life for their son with special needs, with a knock-on effect on the rest of the family. They were being asked to pay for work that was not done, or in the case of the particular gate beside the property, actually affected the whole family's quality of life. He attached a number of photographs to his statement of case.

7. The parties made other more detailed oral submissions and these are summarised below in the Tribunal's consideration of the issues.

Consideration

8. For ease of reference, the Contract had been described in the Section 20 notice dated 6th February 2002 thus; fencing of estate, installing new gates, general landscaping of surrounding areas around estate, installing of entryphones to some blocks.

9. Section 19 of the Landlord & Tenant Act 1985 defines reasonableness of service charge costs as follows:

(1) "Relevant costs shall be taken into account in determining the amount of a service charge 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."

10. The Tribunal considered the submissions and the evidence before it. Firstly we considered if the Section 20 notice procedures had been correctly followed. The documentation had some minor ambiguities about the description of the work, but nothing of significance. The Applicant had obtained three estimates and had chosen the contractor submitting the cheapest estimate. The Respondent had only written one letter expressing dissatisfaction with work, and that appeared to relate to work under another contract. The Respondents had never challenged the actual cost. Mr Mourou had agreed at the hearing that he was not challenging the Section 20 notice. The Tribunal decided that the Section 20 notice was valid.

11. The Tribunal then went on to consider whether the costs were reasonably incurred. Mr Schooling referred to the Metropolitan Police report dated 22nd March 2000. The work was intended to improve community safety, prevent crime, and reduce the fear of crime in the local area. He submitted that the definition of service charge in clause 1 of the Lease gave the landlord power to carry out improvements. The Tribunal was surprised that the Metropolitan Police had not been invited to re-inspect or comment since the works had been completed.

12. Mr Mourou submitted that the work was of no benefit to the Respondents. He did not consider that crime had been reduced in the area, although the Tribunal noted that he had not provided any evidence to support his view. He stated that keys to the gate had been handed out by the caretaker to tenants in the road

who used the alley as a shortcut through the estate within weeks of the gate's installation. The unlocked gate made things worse as it banged against the wall disturbing his son several times per night. The Tribunal noted the evidence of Mr Dillon that the problem with the gate was not a defect in construction, but one of management. The intention had been that the gate would remain locked shut with the only keyholder being Camden Council to impede movement through the alleyway by criminals escaping from the estate.

13. The Tribunal noted that neither party had made submissions on the detail of the costs. After considering the estimates and final account, the Tribunal concluded that some elements of the costs were quite high, but not unreasonable.

14. One matter concerned the Tribunal. The Lease is very tightly drawn and makes very specific provision in paragraph 13 of the Fifth Schedule for the landlord to charge a 10% management fee on all expenditure incurred under the service charge. In answer to a question from the Tribunal, Mr Schooling stated that he considered the fee to be reasonable. For normal management the Tribunal considered that a charge of 10% would be reasonable. However on this contract the supervising architects had charged 15.40 %. The addition of the 10% management charge allowed by the Lease brought these costs up to more than 25% of the cost. This did not appear to represent value for money to the leaseholder. However the Tribunal considered that it was constrained by the Lease. The Lease was unambiguous on the charging point, and the Tribunal reluctantly concluded that it had no power in the circumstances of this case to go behind the terms of the Lease. The Tribunal also noted that the Applicant's costs had actually exceeded the estimate originally given in the Section 20 Notice by a considerable amount, but the Applicant had not sought to serve another notice, which it could have done, to recover those extra costs.

15. Taking all these matters into account, the Tribunal decided that there were good reasons for the Applicant to do the work and that the costs were reasonably incurred.

16. The Tribunal then considered whether the work had been done to a reasonable standard. Mr Mourou's complaints about the Contract were apparently limited in scope. He stated in evidence that a rubber buffer had been installed in response to a complaint he had made soon after installation of the gate. This buffer had been inadequate and had broken off very soon afterwards. It had not been replaced. Mr Schooling submitted that the buffer had not been part of the original specification, but nevertheless he had sympathy for the Respondents' situation. He would ask the Applicant to investigate on becoming aware of Mr Mourou's concerns, with a view to installing a more durable buffer. The Tribunal also had great sympathy for the Respondents and the disturbance caused to them by the gate, but agreed with Mr Schooling that the problem was not due to a fault in the design, but in the use of the gate. The Tribunal noted in passing that the problem could be easily solved by changing the lock so that no one could gain access.

17. Mr Mourou also referred specifically to the exterior light. He considered that the power cable had been run through his property without permission, and damage had been caused. Mr Schooling considered that the light had been installed under a different contract for external repairs and redecorations which had overlapped with this Contract. The Tribunal decided that in view of the summary in the section 20 notice and the specifications, Mr Schooling's submission was correct, although it considered that it would have been difficult for the Respondents as lay people to differentiate between contracts. However the Respondents were not barred from raising this issue in relation to the other contract. The Tribunal decided that the work done for the Contract had been done to a reasonable standard.

Decision

18. The Tribunal decided that the Applicant was entitled to charge the full amount it claimed, i.e. the sum of £2,274.80.

19. The Tribunal noted that the Pre-Trial Directions in this case also made provision for an application for reimbursement of fees. No submissions were made to us on this point and as the case was transferred from the County Court no fees were payable, so that matter does not need to be decided. For clarity the Tribunal notes that it has no power to deal with costs incurred in the County Court.

Signed: ..... Laurence Robson
Chairman

Dated: ..... 18th February 2008