

Reasons

Introduction

2. This was an application made by A2 Dominion Homes Limited (the Applicant) for a determination whether estimated costs for proposed works to be carried out in respect of modernisation of 2 passenger lifts in Seaward Towers (the property) would be reasonable.
3. The following were agreed by the leaseholders (the Respondents):
 - a. the 2 passenger lifts to the property need to be replaced;
 - b. the long leases of flats in the property gives the right to the Applicant to recover the cost of such works from the leaseholders by way of service charge;
 - c. the Applicant has duly complied with Section 20 of the Landlord and Tenant Act 1985 consultation procedure;
 - d. the Applicant has completed a thorough competitive tendering process exceeding the requirements needed to comply with Section 20; the Applicant has obtained a competitive price representing excellent value for money in the sums set out in the decision.
4. While the Respondents accept that the proposed works need to be carried out and the above costs are reasonable, their issue is whether they should be required to pay their due proportion of the cost of the works by reason of the history of work being carried out, or not carried out, to the lifts since 1995.

Inspection

5. In the presence of representatives of the parties, the Tribunal inspected the 2 lifts in the property and their visible equipment and used one of the lifts, the other not being in operation. The property comprises 120 Flats laid out on 15 floors all of which are served by the 2 lifts. The property appears to be in reasonable condition for its nature and character but the lifts appeared to be in need of modernisation and one of them brought back into use with the other.

Hearing & Representations

6. A hearing was held the same day, those attending being those noted above and a very substantial number of the leaseholders themselves. So far as relevant to our consideration and decision we note the evidence and submissions below.
7. The Applicant's case.
 - a. The Applicant's case generally is that the property was transferred from Gosport Borough Council to Kelsey Housing Association in March 2004. With subsequent mergers, there were transfers to Dominion Housing Group in January 2006 and the final merger into the Applicant in October 2008.
 - b. Some work had been carried out to the lifts by the Gosport Borough Council in 1995 and in 2005 further works by Kelsey Housing Association to overhaul them by were undertaken limited to compliance with the Disabled Discrimination Act and aspects of general Health & Safety. This involved overhauling, cleaning and, replacing worn parts and adding additional controls. When the work was to be carried out in 2005, the intention had been to carry out more extensive work but the Gosport Borough Council had asked that the 1995 works be borne in mind, as result of which less extensive works had been carried out. That had extended the life of the lifts for 5 years so the work and its cost was not wasted. The decisions as to work carried out in 2005 was made on the information then available and without the benefit of hindsight. Nevertheless problems with the lifts had continued and a decision had been made in 2009 to carry out the works presently proposed.
 - c. The Applicant did not accept the Respondent's contention that the previous works had been wasted: they had partly been required by health and safety law and other statutory requirements; partly to improve reliability and extend the life of the lifts and the work done had

provided value for money. The Applicant noted that the Applicant itself was liable to pay about 40% of the costs in respect of those flats not let on long leases so itself had an interest in keeping past costs down so far as reasonable. They also calculated that the annualised capital costs incurred by reason of past work is about £112 per leaseholder per year and that the capital costs now to be incurred would be of a similar value.

8. The Respondents' case was generally as follows: –
- a. When major works to the property had previously been carried out they had expected the work to the lifts would be included; works carried out to the lifts in the past has not been value for money; they felt they had been seriously misled, they had issues about financial records and service charge accounts.
 - b. The leaseholders had done nothing wrong but the landlords had wasted £108,000 and this should be deducted from the present estimated costings.
 - c. On the disposal of the property by Gosport Borough Council, the leaseholders had had to participate but they had had no control.

Consideration

9. In coming to our decision we took into account the oral and written submissions that we had received and the documents and statements to which we had been referred by the parties.
10. We recognise the Respondents concern about past expenditure and whether it has been wasted or given value for money. While, with hindsight, more work might have been carried out in and since 1995 and there could be some element of wastage, we are satisfied that in carrying out the historical works, there has been no bad faith on the part of the Applicant or its predecessors in carrying out those works; there is no evidence that they carried out work contrary to specialist advice; the works carried out were required when they were carried out either for compliance purposes or to improve reliability and the lifespan of the lifts. We also took into account that because of the Applicants own liability for about 40% of the costs incurred in the past and in the future, it would have been all the more interested in not wasting money.
11. We accept the statement of Mr Martin dated 23 July 2010 and his evidence in that statement, confirmed at the hearing, that the past works were value for money and in accordance with recommendations and that none of the past work has been wasted: it was all appropriate and value for money but that the valid criticism is that they did not go far enough and paid perhaps too much attention to the works which had been carried out previously by the Gosport Borough Council. Notwithstanding that criticism, it does not lead us to the conclusion, in the absence of any expert evidence to the contrary, that there has been waste.
12. The Respondents accept that the work now proposed is needed and the cost is reasonable. If we had found that there had been waste in relation to past works, we are far from sure that that would have an impact on the basic question before us as to reasonableness of the proposed work and its cost. Rather, it appears to us that it might have affected reasonableness of the work done in the past although we think that is unlikely. That is not a matter before us. In any event, we found, as stated in our decision, that the present proposed works at the cost estimates are reasonable and are not affected in any way by the history of works to the lifts.
13. We made our decisions accordingly.

[Signed] M J Greenleaves

Chairman

A member of the Tribunal
appointed by the Lord Chancellor