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MAN/00CG/LSC/2009/0103

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985, ss.20ZA and s27A

In the matter of

Various flats at Richmond Park, Sheffield S13 8HH

Great Places Housing Group — Applicant

and

Mr R. Beamer, Mr P. Phipps, Mr G and Mrs M Haddock, Mr E. Harvey, Mr M. Cotton, Mrs P. Rodgers

Respondents

Date of hearing: March 19, 2010

Attendances:
For the applicant: Ms Caroline Millington (Plumlife), Nick Abbott (Simon Fenton Partnership LLP), Helen Spence (Great Places), David Windle (Great Places)
For the respondents: Mr R. Beamer, Mr G and Mrs M Haddock, Mr E. Harvey

Tribunal: Prof. Caroline Hunter
Mr. Jeff Platt
Mrs Barbara Mangles

DECISION

Summary decision

1 The Tribunal finds that it is reasonable to dispense with the consultation requirement set out in Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987). The Tribunal also finds that the sums sought from the leaseholders for the proposed works are reasonably incurred.

Background

2. Richmond Park is an estate of houses and flats developed by Sheffield City Council in the late 1960s. The flats are formed within two storey blocks with four flats sharing a common entrance. Sheffield City Council was not the freeholder of the estate but held a 250 year lease from the freeholders Coppen Estates. The properties on the estate are of Reema concrete panel construction which, although not recognised for the purposes of what was the Housing Defects Act 1984 (now Housing Act 1985, Part 16), does suffer from some of the same issues of corrosion of the embedded steel reinforcement.

3. The lease held by the Council was transferred to Great Places Housing Group ('the applicant') in April 2007, following a ballot of tenants. The transfer was predicated on a major refurbishment of the properties. In particular a form of cladding was to be applied to the external faces of the properties, which provides a 30 year life assured warranty.

4. The respondents are all long leaseholders of one bedroom first floor flats on the estate. They all acquired their flats through the right to buy. Some of the refurbishment work on the estate has now been completed (including some works to the buildings in which respondents' flats are situated). The cladding work to their flats has not, however, been carried out.

The application

5. The initial application included a further five respondents. It subsequently transpired that the leases entered into by these applicants on exercising their right to buy did not enable the applicant to recover the proposed costs of the works. They now proceed against only six leaseholders.

6. The applicant makes two applications in relation to the cladding works:
(i) an application under s.20ZA of the Landlord and Tenant Act 1985 ('the Act') to dispense with some of the consultation requirements set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987; 'the regulations');
(ii) an application under s.27A(3) of the Act for a determination that the proposed service charges for the works are payable. This requires consideration of whether the service charges are legally recoverable under the terms of the lease, and whether they are reasonably incurred in accordance with s.19 of the Act.

7. We shall consider each of these applications in turn.

The consultation application

The law

8. Section 20 of the Act imposes requirements on landlords to consult with tenants in the case of specified qualifying works or qualifying long term agreements. If the requirements are not complied with the landlord is limited in the amount he can recover, unless the consultation requirements have been dispensed with by the Leasehold Valuation Tribunal (see s.20(1)(b)). The consultation requirements are set out in the regulations. These differentiate between different types of agreements and works. Qualifying long-term agreements are divided between those which require public notice and those which do not. Qualifying works are divided between those which are subject to a long term agreements and those which are not (see Schedules 1-4 of the regulations).

9. Section 20ZA(1) of the Act provides:
'Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.'

The issues before the Tribunal
10. There was little dispute before the Tribunal as to the relevant provisions of the regulations. The works are being carried out under a framework agreement which Great Places entered into in June 2006 after a tendering process which involved public notice as it fell within the EU public tendering requirements. This is a qualifying long term agreement subject to public notice. Accordingly entry into the framework agreement was subject to the consultation requirements set out in Schedule 2 of the regulations.

11. We do not know what consultation was carried out in relation to that framework agreement with Great Places' existing leaseholders. At that time, however, the applicants had not become the owners of the Richmond Estate. They could not have consulted with the leaseholders at the relevant time in compliance with the regulations. This is accordingly not a case in which a landlord has knowingly gone ahead with an agreement without undertaking the necessary statutory consultation. Rather it is one where the timing issues have made such consultation impossible. This has been a strong consideration in our decision that it is reasonable to dispense with notice.

13. We must, nonetheless, also consider the prejudice to the leaseholders if we dispense with notice. There have been some attempts at consultation since taking over the estate, both at "collective" estate events and in one to one meetings. Further the applicants are not asking us to dispense with the Schedule 3 consultation requirement which will go ahead following this decision. In our view the leaseholders are at this time being offered a very good "deal" in relation to the works (see further para. 22, below). If the works are postponed, as they might be should we not give dispensation (e.g. to fall outside the framework agreement which expires in 2011 and to allow full consultation then to go ahead), the deal on offer would certainly be more expensive and may not include the additional works now offered.

14. This is not to say that we do not think that the applicants could not, in the circumstances, have improved the situation. We understand it took some time even after they acquired their interest in the estate to establish the details of which properties had been purchased by leaseholders. Even taking this into account we feel they could have made this application much sooner. Although the applicant was attempting to get agreement from leaseholders to undertake the works, dispensation was always going to be required and in our opinion could have been sought early in 2008. Further there has been a lack of clarity about the exact charges which were going to be made for the works. There was no evidence before the Tribunal that the leaseholders received any written notification of the costs until the application to the Tribunal was made in August 2009. The earlier generic consultation events with all residents did not address the key issue for the leaseholders – that of cost. Further it would appear that even in one to one meetings the real details of what was being offered and at what cost was not made sufficiently clear (there is no evidence before us that written details were provided).

Decision

15. Notwithstanding our concerns that an application could have been made at an earlier date, and that details of costs could have been provided sooner to the leaseholders, we nonetheless conclude that it would be reasonable to dispense with notice. In the circumstances of the timing of entry into the framework agreement and of the particular offer being made to the leaseholders we consider that they have not been substantially prejudiced by the failure to comply with the Schedule 2 requirements.

The payability of the service charge

The law

16. Section 19(1)(a) of the Act provides that costs can be taken into account in determining a service charge "only to the extent that they are reasonably incurred." Prior to determining whether they are reasonably incurred, i.e. whether the works are necessary and the proposed costs for them are reasonable, we must also consider whether there is a legal liability to pay under the leases entered into by the leaseholders.

17. The leases are in common form. Part III of the Schedule to the lease provides that the landlord may recover services charges under the lease for: 'Keeping in repair and improving the structure and exterior of the demised premises and the Building (including drains gutters and external pipes) and the making good of any defect affecting the structure'.
Because the lease includes improvements in addition to repairs we did not have to consider whether the proposed cladding works amounted to a repair or an improvement. Whichever they amount to, in our view the applicants are entitled under the lease to recover for the costs of the proposed works.

The issues

18. Even though the applicant's may be entitled to recover the costs under the terms of the lease, this does not settle the question as to whether the works are reasonably necessary or the amount being charged is reasonable. At the

hearing the applicants made it clear that in their view some form of works would be needed within the next five years. The engineer's report before us states that "the effects of carbonation will progress over time if the PRC external wall structure is left exposed to air and moisture. In order to halt the further carbonation into the concrete it is necessary to provide some form of protection to the external walls." The leaseholders who appeared before the Tribunal did not object in principle to the works being carried out (although naturally they were concerned about the costs of them). We noted, however, the written objections of Mrs Rodgers who states clearly that she does not want any further works carried out.

19. Turning to the costs, the total which the leaseholders are being asked to pay is £5154.41 plus VAT. The payment of VAT for the works was only added to the costs which had been given to the leaseholders in February 2010. This appears to be because the applicants thought initially that there would be no VAT payable, because of a VAT shelter provided through the council on the main contract. It now appears that this does not apply (although this has not been finally confirmed). We therefore consider the costs on the basis that VAT is payable.

20. The basis of the costs of the works is set out in the report from Simon Fenton Partnership LLP. They have been arrived at from the tendered contractual rates and comprise £4236 for the external cladding (this includes scaffolding and the replacement of the balustrade), £89 external decoration plus an overhead and profit for the contractor at 9% and 2% respectively. The Tribunal were able to see the external works which had already been carried out to the tenanted flats, and in our view the sums being proposed are in any event reasonable for the very specialist work which the cladding requires.

21. We also had before us valuation evidence that the value of the unimproved flats was £55000, and that in their improved condition they would be worth £65000. The lack of any sales on the estate makes it hard for any valuation evidence to be put forward with great confidence. We were, however, of the view that given the 30 year warranty and the extensive works offered in addition to the cladding, there would be a considerable increase in value that would exceed the costs being charged to the leaseholders.

22. Even were this not the case we have also taken into account the offer made by the applicants in relation to other works. The applicants have already carried out considerable works to the blocks involved, including new roofs, rainwater goods, works to common parts (including doors and intercom systems) for which they undoubtedly could have charged the leaseholders. They are not proposing to make any charge for these works. In addition they are also offering new windows and balcony doors for the leaseholders should they so wish at no charge. (It may be noted that some of the leaseholders have fitted new windows in relatively recent years and may not wish to take up this offer, but that the windows will in any event have to be removed and refitted with special sills as part of the work so that the new sills properly overhang the thicker walls.)

23. In addition we have taken into account in deciding whether the costs are reasonable that the applicants are offering a variety of very favourable payment terms, including interest free loans and an equity share scheme, in order to for the leaseholders to fund the works.

Decision

24. As we have stated in para. 17 the costs of these works are clearly recoverable under the leases entered into by the applicants. Given that during the ownership of the council very little was spent on the flats beyond day to day upkeep and service charges were accordingly low, we can understand that it may come as quite a shock to now find a liability for large amounts of repair and improvement works to the fabric of the buildings. Nonetheless a clear liability exists under the leases.

24. We are also of the view, taking into account all the factors that we have set out above, that the works are reasonably required and that the proposed sum for the works (which the applicants have undertaken are a fixed price), is a reasonable one. We are of the view indeed that the offer being made by the applicants is a very generous one given the potential charge they could have made for the works which have already been carried out or which they are additionally offering to carry out.

Caroline Hunter
March 23, 2010

To: Presidential Team

Re: **Richmond Park, Sheffield, S13 8HH**

Herewith, Caroline Hunters Reasoned Decision for content / approval

The hearing was only last Friday!

Phil
23/03/10

OK. Caroline

24/03

(Interesting approach to decisions!!)