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Case No MAN/00CZ/LSC/2010/0056

24 GLENSIDE ROAD, SLAITHWAITE, HUDDERSFIELD HD7 5LD.

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

APPLICANT: Mr and Mrs G M Fell

RESPONDENT: Kirklees Metropolitan Council

APPLICATION: 27th May 2010

DIRECTIONS: 12th July 2010

DETERMINATION: 27th September 2010

MEMBERS OF THE LEASEHOLD VALUATION TRIBUNAL:

Ms S O Greenan, barrister

Mr P Livesey, valuer

DECISION

The Tribunal determines pursuant to section 27A of the Landlord and Tenant Act 1985 that a service charge of £119.03 is payable by the Applicants.

The Application

1. By an application dated 27th May 2010 the Applicants sought a determination pursuant to section 27A of the Landlord and Tenant Act 1985 of their liability in respect of service charges for 24 Glenside Road, Slaithwaite, Huddersfield HD7 5LD (the Property). In their application they Applicants indicated that they were concerned in relation to charges levied for works

to the roof, the repointing of external steps, and the repainting of downpipes, external handrails, and a canopy.

Directions

2. Directions were given by a Tribunal Chair on 12th July 2010. The Chair directed that the matter would be determined without a hearing unless either party requested one within fourteen days of the date of the directions. No such request was made and the matter proceeded to determination without a hearing.

The lease

3. The Applicants are the owner of a leasehold interest in the property pursuant to a lease made on 3rd June 1991 between the Respondent and the Applicants' predecessor in title Mary Hardiman.

4. Paragraph 3 of the Fourth Schedule to the lease provides that the lessee covenants to "pay a Service Charge to the Council in accordance with the provisions of Part 2 of this Schedule." Part 2 of the Schedule provides in paragraph 30 that:

> "The expression "the Service Charge" means a fair and just proportion of the costs incurred by the Council in performing discharging or insuring against the obligations imposed by the covenants in the Fifth Schedule hereto and shall include:
>
> ....(b) The costs of periodical inspection repair and maintenance of the communal areas forming part of the Council's Larger Premises..."

5. The First Schedule to the lease defines "the Council's Larger Premises" as "all those premises situate and known as 18 to 24 (even numbers) Glenside Road.... ALL which premises are more particularly delineated on the Plan and thereon edged in blue (including all fixtures and fittings therein...).

6. The Fifth Schedule to the lease includes a covenant by the Council to "keep in repair (including decorative repair) the structure and exterior of the Council's Larger Premises and the Demised Premises (including drains

gutters and external pipes) and to make good any defect affecting that structure save to the extent that the liability therefore is hereby expressly; placed on the lessee" and "to keep in repair (including decorative repair) any other part of the Council's Larger Premises over or in respect of which the Lessee has rights specified in paragraph 1 of the Second Schedule..."

The inspection

7. The Tribunal inspected the Property on 27th September 2010. Present during the inspection were both Applicants. Also present were three representatives of the Respondent: the Applicants indicated that they wished only one of those representatives to attend the internal part of the inspection. Ms Katy Mennell, leasehold officer, particpated while the other two representatives (Mr Auty, Building Maintenance Surveyor and Mr Ainsty, Building Surveyor) remained outside. All three representatives of the Respondent attended the external part of the inspection.

8. The Property is one of a block of four flats. It is situated on the first floor, with access gained by an external staircase to the side. The majority of external pipework and guttering has been replaced with plastic pipework which does not require painting, but some case iron pipework which does need painting remains. It could be seen that the soffits to the property had not been replaced or painted and it appeared that they were made of asbestos. Those to the immediately adjacent (attached) first floor property had been replaced with plywood which had been painted. The other three flats are nos 18, 20, and 22. This block and its curtilage therefore form the "Larger Premises" within the meaning of the lease as set out above.

Facts and submissions

9. In their original application the Applicants had indicated that certain works charged for and included in the service charge for the year ending March 2010 had not been carried out. In a more detailed submission (undated but received by the Tribunal office sometime before 3rd August 2010) the Applicants indicated that in June 2008 he had received an estimate for works which the Respondent intended to carry out: the estimated cost was

£594.01. The final bill for the works was £653.41 which he had queried. No repointing work had been done to the hips and ridges of the roof. In November 2009 he had reported to the Respondent that the roof was leaking. No work had been done and they had approached the insurers of the fabric of the building Zurich Municipal, who had given Applicants the go ahead to have the works carried out by a contractor appointed by them. That permission had been given on 8th March 2010 and the work had been carried out by an independent contractor shortly thereafter, who had provided an invoice for £475 on 17th April 2010. The invoice stated that the work carried out had been to "Re-point hip tiles replace 2 tiles and repoint ridge tiles." Subsequently Zurich Municipal had provided the Applicants with a settlement cheque from which had been deducted a £100 excess.

10. Following receipt of the bill for £653.41 the Applicants had queried the work done. The local authority indicated in its statement of case that it had instructed its surveyor to visit the site on 29th March 2010 and that he had ascertained that only 10 metres of work on the hip tiles to the roof had been done and the invoice was reduced to reflect this. The surveyor also ascertained that scaffolding was not used on the Applicants' block and the invoice was reduced accordingly.

11. The Respondent had provided a detailed estimate setting out eight items of work which it intended to carry out, a summary of the work required, and the cost for each item. However, it had not provided the Applicants with a detailed final bill broken down in the same way: it had simply submitted an invoice for £653.41 without any more detailed breakdown. This was described as a charge for "cyclical maintenance works completed July 2008 at Glen Side Road". When the Respondent provided its revised estimate of £310.29 plus 10%, it did not provide a breakdown. Although the Respondent took the opportunity to make submissions in writing to the Tribunal, surprisingly it did not provide a more detailed final invoice for the charges. The Tribunal has therefore had to work from the details and costings in the original estimate.

12. The first item on the estimate was the re-bedding or re-pointing of ten ridge tiles at a cost of £18.95 per ridge tile. The total cost of £185.90 was to be shared equally between the four flats contained in the block. The second item was the re-bedding or re-pointing of twenty hip tiles at a price per unit of £18.59. The total cost of £371.80 was to be shared between the four flats. The Tribunal was able to view the ridge and hip tiles to the block and it did not appear that any had recently been replaced, re-bedded or re-pointed save for those replaced by the contractor instructed by the Applicants in March 2010.

13. The third item was a scaffold for roof works. The Respondent had already indicated that this item was incorrectly charged and should be removed.

14. The fourth item was the repointing of fourteen external steps in total to the front, side and rear of the property at a cost per unit of £16.06 with the total cost of £224.84 shared equally between the four blocks. The estimate indicated that it was intended to repoint the side steps to nos 20 and 24 and three rear steps to no 18. During its inspection the Tribunal noted that no pointing appeared to have been carried out to the side steps to nos 20 and 24. The rear steps at no 18 were not visible.

15. The fifth item was the painting of the soffits to the roof. The estimate indicated that this was charged as two items at a cost of £206.74 per item, the total costs of £413.38 being shared equally between the four properties. The Tribunal noticed during its inspection that the soffits to the roof of no 24 were not painted at all and appeared to be made of asbestos. The wooden soffits to nos 18 and 20 were painted black to all three sides of that property.

16. The sixth item was the painting of 24 metres of cast iron down pipes at a total cost of £61.44 to be shared equally between the four properties. The Tribunal noted that although the down pipes serving no 24 were plastic, cast iron down pipes were visible to other parts of the block.

17. The seventh item was the painting of 26 metres of metal handrails at a total cost of £66.56 to be shared equally.

18. The eighth item was the painting/staining of two door canopies at a total cost of £93.20 to be shared equally.

The law

19. Section 18 of the Landlord and Tenant Act 1985 provides:

"(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a [dwelling] as part of or in addition to the rent–

(a) which is payable, directly or indirectly, for services, repairs, maintenance[, improvements] or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose–

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period."

Section 19 of the Act provides:

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

Section 27A of the Act provides:

"[(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to–

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable."

20. A leaseholder seeking to charge a service charge for works already carried out cannot recover charges which relate to works which have not in fact been carried out.

21. In so far as the service charges related to work carried out the hip and ridge tiles at the block, the Tribunal was not satisfied that any such work had been carried out other than that for which the Applicants' own contractor was responsible and the Tribunal found that there had been no works to the roof which could be included within the service charge.

22. In relation to the provision of scaffolding, the Respondent had already conceded that item had wrongly been charged for.

23. In relation to the re-pointing of the external steps, none had been carried out to the side of nos 20 and 24. The Tribunal was prepared to accept that repointing to the three rear steps of no 18 had been carried out. The proper

charge for that at a cost per unit of £16.06 was a total of £48.18. Divided equally between the four dwellings this gave a cost per dwelling of £12.04.

24. The Tribunal accepted that there had been repainting of the soffits to the part of the block containing nos 18 and 20. The Tribunal could not understand, and the Respondent did not explain, why this was charged as two items at a cost of £206.74 per item. There appear to be two alternatives:

    a. The total cost for painting the soffits to one side of the block was being charged at £413.48; or

    b. The Respondent had erroneously assumed that the soffits to both halves of the block had been painted and had charged erroneously for both.

25. In the view of the Tribunal the latter explanation was the more likely as the relatively small amount of painting involved would have been unlikely to result in a charge of over £400. The Tribunal therefore found that the correct charge for this item was £206.74 which results in a charge per dwelling of £51.69.

26. In relation to the costs of painting the cast iron downpipes, painting the metal handrails, and painting/staining the canopies over the doors of the ground floor properties the Tribunal found that the works had been carried out and the charge was reasonable.

27. The Tribunal therefore determined that the total charges in relation to the works properly recoverable through the service charge were £119.03 per dwelling.

28. The Tribunal noted that the Applicants may not have understood fully that the service charges for the Property include charges for works to the communal areas and the exterior of the other dwellings in the block.

29. The Tribunal was made aware during its inspection that there is a dispute between the Applicants and the Respondent in relation to works carried out

by the Applicants within the dwelling. That dispute is irrelevant to the issues which the Tribunal had to decide and the exchange which took place between the Applicant Mr Fell and the representative of the Respondent has been entirely disregarded by the Tribunal in reaching its decision.

S O Greenan
Chairman of the Leasehold Valuation Tribunal

18 October 2010