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LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AU/LSC/2012/0783

DECISIONS OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION MADE UNDER SECTIONS 19, 20C and 27A OF THE LANDLORD AND TENANT ACT 1985 FOLLOWING AN ORDER OF THE CLERKENWELL COUNTY COURT TRANSFERRING PROCEEDINGS TO THE TRIBUNAL FOR A DETERMINATION OF THE REASONABLENESS OF SERVICE CHARGES

Premises	19 Loreburn House, London N7 9SP
Applicants	The London Borough of Islington (landlords)
Representation	Ms R. Begum (solicitor)
Respondents	Mr I. Dogan and Mrs G. Dogan (leaseholders)
Representation	In person and assisted by Ms G. Dogan
Pre-trial review	Directions were given 22 November 2012
Hearing	The tribunal carried out an inspection of the premises on the morning of the 19 March 2013. This was followed by a hearing which took place on the 19th and the 20th March 2013.
The Tribunal	Professor J. Driscoll, solicitor (Lawyer chair), Mr C. Gowman MCIEH, MCMI BSc and Mrs S. Justice BSc
The Decisions Summarised	1. The service charges claimed (in the sum of £10,071.85) are recoverable in full from the leaseholders. 2. No order is made under section 20C of the Act limiting the applicants from recovering their reasonable professional costs as part of a future service charge. 3. The claim is returned to the Clerkenwell County Court for further action.
Decision date	15 April 2013

Introduction

1. Our determinations are summarised above. In the remainder of this decision we (a) explain the background to the dispute, (b) describe our inspection of the premises, (c) summarise the evidence and the submissions made by the parties, and (d) set out the reasons for our decisions and (e) deal with costs issues. The relevant legislative provisions that govern this application are summarised in the appendix to this decision.

Background to the dispute

2. The applicants ('Islington') are a local housing authority and this claim follows major works which were completed in 2010 to one of their estates in north London (which was managed for a period by an organisation called 'Islington Homes', an ALMO, that is an arms length management organisation). The respondents ('leaseholders') are the owners of flat numbered 19 in Loreburn House which is part of the Lorraine Estate in London N7. They are the joint leaseholders of this accommodation which is a two storey flat on the ground floor of Loreburn House. They purchased the flat under the 'right to buy' provisions in the Housing Act 1985. Some of the flats in Loreburn House are held on secure tenancies (also governed by the Housing Act 1985) and the remaining flats are held on long leases having been purchased under the right to buy.

3. In 2008, Islington decided to embark on a programme of major works as required by the 'Decent Homes' standards. Such works were carried out to several estates across the borough including the Lorraine Estate where the leaseholders have their home.

4. In the usual way, all leaseholders have to contribute to the landlord's costs of repairing and maintaining the block through service charges. However, in this case the leaseholders object to paying their contribution to the major works for various reasons, principally as they contend that their flat has not fully benefited from the works. They also challenge the validity of the consultations that took place before the works started.

5. As they refused to pay the charges, Islington embarked on county court proceedings to recover the sums claimed. These proceedings were instituted in the Clerkenwell County Court under the court reference 2QK20014. As the leaseholders filed a response indicating that they challenged the recovery of the charges, the court ordered the transfer of the claim to this tribunal. Although this order was made on 3 April 2012 the papers were not received by the tribunal until November 2012.

6. A pre-trial review was held on 22 November 2012 when directions were given. A hearing was arranged for the 19th and 20th March 2013. We carried out an inspection during the morning of the 19th March when the leaseholders and their daughter were present. Also present were

Ms Begum, Islington's solicitor, Mr Powell their special projects officer and Ms Monkman their architect. The results of our inspection are summarised in the following paragraphs.

Our inspection

7. We were able to inspect the exterior of Loreburn House, the interior and the rear of the leaseholder's flat and the common parts of this building. We also walked around the Lorraine estate and noted the community hall and facilities where, we were told, consultation meetings about the proposed major works had taken place.

8. Loreburn House is one of a number of five storey purpose built local authority blocks on the Loraine Estate. It was built in the late 1930's, the walls being mainly solid brick set under a pitched tile roof. As is typical of blocks of this nature access to the upper stories is by communal staircase or lift onto open walkways providing individual access to the flats. There was a mixture of windows, some being stained wood, white painted sash windows, while others were replacement uPVC.

9. A number of the flats had individual private balconies. Car parking spaces were available within the curtilage of the estate.

10. The tribunal undertook a general inspection of the block, we inspected the open walkway on the fourth floor, we were shown areas of repair to walkway steel grill fixings and we were also shown the interior and exterior of number 19.

11. The building was generally well maintained and in reasonable decorative order.

The hearing

12. In accordance with the directions given on 22 November 2012 Islington prepared a bundle of documents which included various witness statements, copies of the consultation documents, photographs relating to the works, various invoices and service charge notices, a 'Scott schedule', detailing the works, and other documents including a copy of the respondent's lease. The leaseholders prepared their statements of case. They did not, however, give their responses to the Scott schedule.

13. At the hearing Islington were represented by Ms Begum, one of their solicitors. She had Mr Powell and Ms Monkman with her as two of her witnesses. Also in attendance was Mr Anthony Carr, their major works consultation officer and Mr Stan Goulding, their estates services co-ordinator as two other witnesses. Also in attendance were Ms Karmel, head of legal services and Mr Scrivener who also works for Islington.

14. The leaseholders were not legally represented. Their daughter Ms G. Dogan attended the hearing and addressed the tribunal on her parents' behalf. She and Mr Dogan both told us

that they considered that the provisions in the lease are unfair as they require service charge payments in relation to works on parts of the building which they do not benefit from. Mr Dogan told us that he had a solicitor who advised him when he and his wife were purchasing the flat under the right to buy. However, he considers that the advice he was given was negligent. He was present with his daughter throughout the two day hearing. Mrs Dogan was present at the first day of the hearing but she was unable to attend the second day as she was indisposed.

Day I of the hearing

15. This started on 19 March 2013 after our inspection. Opening the case Ms Begum spoke to the statement of case she had prepared. In summary, she told us that Islington had carried out the correct statutory consultation requirements in full and had supplemented these requirements by additional forms of consultation, including letters, emails and leaflets.

16. She told us that under clauses 1(2), 5, Schedule 3, clauses 7(5), 10(1) and the Schedule 1 to the lease the landlord is responsible for the repair and maintenance of Loreburn House and it is entitled to recover its costs in doing so from those residents who own their flats under long leases. The recoverable costs can include maintenance and other work to the common facilities in the Estate. However, the issues in this case, she submitted, relate solely to major works carried out to Loreburn House. These costs include scaffolding (and other matters affecting access to the works), general roofing repairs, balcony waterproofing, window repairs (or replacement in certain cases), general repairs to concrete and brick work and painting and decorating. They also charge the costs of certain professional fees based on 11% of the total costs of this major works programme.

17. Ms Begum added that these works, which were carried out between 15 February 2010 and 31 March 2011, were required under both the Decent Homes programme and also under the landlord's obligations in the lease. In the county court claim, Islington sought the recovery of £11,261.01 which was based on an estimated invoice. The final account, however, is in the sum of £10,071.85 which Islington now seek to recover.

18. She suggested that the leaseholder's defence is based on their contention that they did not receive the section 20 consultation notice and that they are not liable under their lease for the full costs of the works. Evidence would be adduced to prove that the notice was sent to the leaseholders, that there was a very full consultation with the leaseholders and all of the residents. She told us that Islington considers that the leaseholders have been charged correctly under the terms of their lease.

19. Her first witness was Ms Monkman, Islington's Principal Architect, who as we have already noted was also present at the inspection. She spoke to her statement dated 11 January 2013 and she was also asked questions by the leaseholders and by the tribunal. Islington carried out works to Loreburn House and to the other five blocks on the Lorraine Estate under a project known as 'Contract 58'. She agreed that the leaseholders advised Islington that they did not wish to have any repairs carried out to the windows of their flat and Islington agreed to exclude this from the window works. In answer to our questions, she

confirmed that as the contractor did not do any works to the leaseholder's windows, no charges were incurred. However, in her view, the leaseholders are responsible to contribute to the charges for the other window works in Loreburn House. Ms Monkman also expanded and gave us details of the other works, as this had been outlined by Ms Begum in her opening statement. We were referred to a number of photographs showing the condition of the building before and after the works were completed. The quality of the works was monitored and approved by their clerk of works.

20. Ms Begum then called Mr Powell (who had also been present during our inspection). He spoke to his statement dated 9 January 2013. Mr Powell has worked for Islington for two years as a member of their Home Ownership Services. Although he was not involved with this works programme he has reviewed the documentation. He has several years' experience in the field of leasehold management as it affects social housing. As to the leaseholder's service charge contributions, he explained that Islington uses a methodology of dividing the total charges for a particular block by the number of properties in the block. Properties with two or three bedrooms, which he told us are the most common property type, attract this basic unit charge. However, adjustments are made for smaller and larger properties. For example, a one-bedroom flat's unit charge is reduced by 10% whilst a four bedroom flat, such as the leaseholder's flat, pays an additional 10% which amounts to 110% of the unit charge. In his professional experience this apportionment method is the most commonly used approach by social landlords. Mr Powell also answered questions posed by the tribunal and the leaseholders. On the completion of his evidence the hearing was adjourned until the following morning.

Day 2 of the hearing

21. The hearing resumed on 20 March 2013. Next to give evidence was Mr Carr who is a major works consultation officer for Islington. He was responsible for the consultation over the major works in this case (when he was working for Homes for Islington). He spoke to the statement he signed on 6 March 2013. As part of the consultation process preceding these major works, he sent a letter to the leaseholders on 22 December 2008 to advise them of the likely costs of the works. He sent a copy of the section 20 consultation notice with a breakdown of the estimated block costs and an invitation to a consultation meeting on 7 December 2009. The notice also stated that the 30 day consultation period expired on 24 December 2009. A copy of this notice was exhibited to his written statement.

22. Also exhibited to the statement was the relevant page of an internal recorded delivery record book which is signed by the officer of the Royal Mail when they collect mail which is to be posted by recorded delivery. Where delivery by recorded delivery is not possible and the item is returned by the Royal Mail, the practice is to re-send the notice by standard first class post. However, in this case the item was not returned. Mr Carr added that several responses to the section 20 notice were received from other residents living in Loreburn House (and residents living in the other blocks on the estate). In answer to a question from the leaseholders, Mr Carr confirmed that the Royal Mail does not send him copies of signatures when recorded items are successfully delivered.

23. Ms Begum then called Mr Goulding to give evidence. He spoke to the statement he signed on 8 March 2013. Mr Goulding has worked for Islington for 27 years and he was seconded to the property services department in July 2008 for two and a half years to deal with major projects. He told us that he was involved in ensuring that all residents were informed of the proposed works to their homes and were kept informed of the progress of the works. As part of this the contractors (a company called Kier) delivered news letters to all of the residents on the progress of the works (and Mr Goulding exhibited one such letter to his statement).

24. He explained the chronology of the consultations from 15 October 2008 to 7 December 2009 on paragraph nine of his statement. This started with a letter informing residents of the proposed major works and inviting them to a public meeting in the Lorraine Estate Community Hall. Later a steering group was set up with resident involvement. Minutes of these group meetings were sent to all the residents. A pre-consultation meeting was arranged for 30 November 2009 to which all residents were invited.

25. This concluded the evidence given on behalf of Islington.

26. During Day 1 of the hearing we raised certain queries over the nature of the consultation process. In broad terms Islington had entered into a long-term qualifying agreement which allows for individual contracts such as the major works contract in this case to be entered into. We found some confusion as to the details of the long-term qualifying agreement Islington relied on. However, Ms Begum submitted that we should not explore this point. It is not one that the leaseholders had raised in either their defence to the county court proceedings nor in their statements made in these tribunal proceedings. She referred us to the decision of the Upper Tribunal in *Birmingham City Council v Keddie and HIll* [2012] UKUT 323 (LC) when the Upper Tribunal stated that a leasehold valuation tribunal should not raise or deal with issues that have not been raised by the parties. Although as an expert tribunal the leasehold valuation tribunal can raise points during the course of hearing an issue that has not been raised by the parties but, even then, the issues must fall within the scope of the application, and must not arise outside of it.

27. As the leaseholders confirmed that they are not challenging the consultation (save for their claim that they did not receive the section 20 notice) and bearing in mind that the case has been presented and defended since the inception of the service charge claim on a different basis we conclude that following the advice given by the Upper Tribunal in the Birmingham decision it is unnecessary for this tribunal to pursue this line of enquiry. We therefore turned to the leaseholder's case.

28. This was presented by Mr Dogan (with the assistance of his daughter). He told us that he would not be calling any witnesses to give evidence on his behalf. He had not taken legal advice on the service charges claim.

29. He is adamant that he did not receive the section 20 notice and neither he nor his wife recall signing for any letter delivered by recorded delivery from Islington. Mr Dogan told us that

he was aware of the decision to carry out the major works and that he attended one of the consultation meetings, though he cannot recall which one.

30. His major complaints about the service charge claim relate to the costs and the scope of the works to Loreburn House. He makes several points in support of this position. First he submits that his flat has not directly benefited from the works. He insisted that Islington did not undertake any works to the windows of his flat. We pointed out to him that he is required to pay service charges for works carried out to the building by Islington under the terms of his lease. However, he told us that the lease is unfair in that it requires him to contribute to the costs of work from which his flat does not directly benefit. Mr Dogan also told us he received negligent legal advice when he and his wife exercised the right to buy. He tried to seek damages from his former solicitor but he found that she was no longer practising.

31. Mr Dogan also told us that he considers the costs of the works to be far too high and that they could have been done more cheaply. He bases this conclusion on his experience in property development (working with a company on a project with a major housing association in London). Although he is currently unable to work because of ill health he has in the past worked on housing and other property developments and he was able to apply this experience to the major works in this case. In his opinion he should not be required to pay more than £2,000 towards the costs.

32. Despite the evidence he told us that he and his wife had not received a section 20 notice. He did not accept the evidence of Mr Carr about the postal arrangements used by Islington.

33. After he completed his evidence there were brief closing statements by each party.

Reasons for our decision

34. We summarised our determinations at the start of this decision. In short we determine that the costs demanded of the leaseholders by Islington were reasonably incurred and are recoverable in full. In this section of the decision we give our reasons for this conclusion.

35. Having considered all of the evidence and the very full documentation supplied by Islington we have little hesitation in reaching the conclusion that the major works were properly carried out and that the leaseholders have been properly billed for their contribution to the costs of the works.

36. We deal first with the leaseholder's concerns over the lease. In our experience leases granted under the statutory right to buy are in a common form and very similar, in our experience to the terms of flat leases granted by private landlords. It is essential that the landlord assumes responsibility for the general maintenance of the building containing the flats and to carry out repairs when necessary.

37. In the case of much social housing blocks of flats may contain flats rented out under secure tenancies (in the case of local housing authorities) and in some cases, such as this one, some flats that are held leasehold when the statutory right has been exercised. For the rented accommodation the landlord is responsible for the repair and maintenance of the rented flats as well as for the structure and the exterior of the building and any common parts. This is provided for in the Landlord and Tenant Act 1985 (sections 11 - 14) and landlords may not contract out of these statutory provisions which are implied into tenancy agreements (without a court order). The costs of these repairs is not (and may not be) charged to the tenants but the rent may reflect such costs.

38. In contrast, leaseholders must contribute to the landlord's costs under the service charge provisions in their leases. In cases such as this where works are carried out under the Decent Homes policies, the service charges may be unusually high by comparison to most service charges. Whilst we understand the leaseholders baulking at such a high bill for works that do not appear to directly benefit their homes, they are being asked for these contributions under the terms of their leases. Besides we were told (and saw documentary evidence) that Islington has offered an instalment payment plan to its leaseholders for the payment of these charges.

39. We accept the legal submissions put forward by Ms Begum that under the relevant clauses Islington are entitled to recover costs of the works. The leaseholders did not have an answer to this fundamental point except to argue that the lease is unfair.

40. The next issue on recovery is whether Islington have complied with their statutory consultation obligations. These are contained in the Landlord and Tenant Act 1985, Section 20 and the regulations made under that section (that is the Service Charge (Consultation Requirements) (England) Regulations 2003). On this matter we are satisfied that Islington complied with these requirements. It is also apparent to us that in several respects they exceeded the statutory requirements. All leaseholders were given advance notice of the intended works prior to the formal statutory consultation process. The setting up of a steering group, the news letters and the meetings also supplemented the statutory procedures. We do not see how any resident could justifiably complain that were unaware of the decision to carry out major works to the blocks in the estate. It seems to us that the leaseholders accept that in broad terms they were made aware of the proposed works and that they were kept informed on the progress of these works.

41. Perhaps their major challenge to the consultation is their contention that they did not receive their copy of the section 20 notice. Having heard the evidence from Mr Carr we conclude that on the balance of probabilities the notice was sent and delivered by recorded delivery. We can see no reason for doubting Mr Carr's statement which explains the procedures used by Islington. He told us that he had no notice from the Royal Mail that they were unable to deliver by recorded delivery. This is why he assumed, correctly in our view, that the notice was properly delivered. And as Ms Begum points out this form of service is provided for in the lease.

42. To summarise, we conclude that the works were carried out by Islington in accordance with their obligations under the lease and that the leaseholders are required under the lease to contribute to the costs by paying service charge. We also conclude that Islington complied in full with their statutory consultation requirements under section 20 of the Act and by the regulations made under that provision.

43. There remains the issue of the actual costs of the works. The leaseholders called no professional or indeed any evidence in support of their contention that the costs were far too high. Ms Monkman explained the background to the works, how they were supervised and how the quality of the works was monitored. This evidence was supported by Mr Powell, who has reviewed the works programme. This leads to the conclusion that the leaseholders have failed to show that the costs were too high. As we have already noted the contractors were told not to carry out any works to the leaseholder's flat windows. We were told that this the projected costs were not included in the final bill.

44. To summarise we determine that the charges made of the leaseholders (the sum of £10,071.85) are recoverable in full. This matter is now to be transferred back to the Clerkenwell County Court under the court reference 2QK20014 for further consideration. We close by expressing the opinion that, in the interests of avoiding further costs, the leaseholders make arrangements to pay the outstanding service charges as soon as possible.

Costs

45. We explained to the leaseholders the scope of section 20C and its impact on the recovery by the landlord of its professional costs as part of a future service charge . After hearing very brief submissions by the parties we conclude that no such order should be made in this case. As Islington have been trying to recover the service charges for a considerable period they had no alternative but to launch proceedings and to use their legal and other professionals in support of their claim.

46. In reaching this conclusion we are not expressing any view of the extent to which Islington are entitled to include such professional costs in service charges under the leases. Nor can we make any determination of any such costs claim.

James Driscoll (Lawyer Chair)

15 April 2013

Appendix of the relevant legislation

Landlord and Tenant Act 1985

Section 18

(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

(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 provisions 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the Tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be

taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).