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HM Courts & Tribunals Service

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AZ/LSC/2012/0826
Premises:	9 Elm House, Rokeby Road; 310A Brockley Road; 17, 22 & 29 Greatfield Close 51A Tressilian Road; 8 Ivy Road; 16 & 12 Bede House;
Hearing date:	10 April 2013 from 10.00am
Inspection:	9 April 2013
Applicant(s):	Mr. N. Clark (9 Elm House) Ms. H. Bunduka (310a Brockley Road) Ms. E. Dyce (8 Ivy Road) Ms. S. Owen (22 Greatfield Close) Ms. Forde (12/16 Bede House) Mr. MacDonald (17 Greatfield Close) Ms. Berry (29 Greatfield Close) Mr. Fereday (51A Tressillian Road)
Representative:	
Respondent(s):	London Borough of Lewisham
Representative:	Mr. C. Heather – Counsel Mr. G. Cooper – Greenwoods Solicitors
Appearance for Applicants:	Mr. N. Clark in respect of his property.
Appearance for Respondent(s):	Mr. C. Heather – Counsel Mr. G. Cooper – Greenwoods Solicitors Mr. A. Kelly MCIOB, MRICS – Regenter B3
In attendance:	R. Alford – Counsel's Pupil A. Day – Trainee Solicitor S. Cook – London Borough of Lewisham

Leasehold Valuation Tribunal: Miss A. Hamilton-Farey LLB, FRICS, FCIArb
Mr. L. Jarero BSc FRICS
Ms. S. Wilby

Decisions:

1. It appears from Mr. Clark's letter to the Tribunal on 23 January 2013, that the applications in respect of 17 Greatfield Close and 20 Greatfield Close had been withdrawn and we make no determination in respect of those properties.

2. It is not clear whether the application in respect of 51a Tressillian Road has been withdrawn and accordingly we make a decision in that case.

3. We determine that the service charges in respect of the properties at 8 Ivy Road, 22 Greatfield Close, 310a Brockley Road, 12 and 16 Bede House and 51a Tressillian Road are all payable in full, and that the lessees are liable for these charges as claimed.

4. That the demand in respect of 9 Elm House, is payable in full.

5. We have no jurisdiction to determine the reasonableness of the works in relation to the balconies in Elm House because there is no charge to the lessees for this work.

6. Similarly, we have no jurisdiction to determine whether or not the signage to Oak House is of a suitable type, or the boundary walls to adjacent blocks require repair, as these properties are not the subject of this application. It is understood in any event, that Mr. Clark has raised the latter matter with the Respondent and presumably this work will be undertaken as part of a day to day repair and not part of the PFI Contract.

7. That the landlord shall not recover any of the costs of these proceedings from the leaseholders by way of service charges, although the landlord confirmed at the end of the hearing that no such costs would be passed on to lessees.

Background:

This is an application by several leaseholders in respect of the major works carried out by the Respondents under the Decent Homes Initiative from 2007. The contract has been the subject of previous LVT decisions, involving two members of this Tribunal, and we do not therefore consider it necessary to rehearse the contract itself, except where it is relevant for this decision.

The Issues:

9 Elm House:

8. Mr. Clark's objection to the major works charges was in relation to the following:
   - Roofing works, he felt that he had been overcharged and cited our decision in LON/00AG/LSC/2010/0129 as evidence of this.
   - Water tank replacement, again he relied on the above decision for this.
   - Electrical mains, whilst also relying on the previous decision it was his view that these works had been carried out to an unreasonable standard, that the riser cupboards in the common parts could have been utilised so that the metal trunking was not visible in the stairwells.
   - That the flooring to the stairwells and balcony areas had cracked as result of the works.
   - He objected to the charge for the replacement of the walkway balconies, on the basis that, having been told by the Respondent that the brickwork could not be repaired and required replacement, the adjacent block had had repairs carried out. He considered that the walkway works were unnecessary and in his view an 'eyesore'. He also made comment about the signage to his block and that of the adjacent block not being the same presumably showing, in his view, a lack of consistency on the part of the Respondents.
   - The works to his own balcony were to a poor standard. The damp proofing plastic had not been cut back to the brickwork, and the coping stones were not laid to a 'fall' and caused ponding on their surfaces.
   - That following on from the roofing works, his property suffered from damp, especially to the bedroom.
   - He considered that the S.20 process was flawed, in that the works which were undertaken were not notified to him on the actual notices, that these varied during the course of the works, and as a result, he did not consider himself to be liable for the costs as claimed.

310A Brockley Road.

9. We inspected this property in the absence of the tenant. We had been provided with a statement of case very late in the day, but considered that an inspection might be useful. We saw the boxed in electrical installation, the new windows and patio door, the poor dressing to the flat roofed area over the porch and the poor external decorations. We also saw that the external railings to the rear balcony had not been made good and that the canopy area to the front of the building was in a very poor decorative order.

10. Ms. Bunduka's case was contained in a statement of case, submitted to the Tribunal on 4th April some 6 days before the hearing. She anticipated in that statement that Mr. Clark would act as her representative, but he confirmed to us at the hearing that he felt unable to do so. It was therefore not possible for us to test Ms. Bunduka's evidence or for the Respondent to make any real comments.

The Remaining Properties:

11. We inspected the remaining properties in the application on the morning of 9 April. We were unable to gain access to number 17 or 29 Greatfield Close, confirming in our view that they had withdrawn from the application. We gained access to No. 22 and their only observation was that they had replaced their own windows and did not see why they should pay towards other replacements, that external decorations were modest and that the replacement lateral mains electrical wiring was an eyesore. They had since suffered condensation problems to the bathroom.

12. We were unable to gain access to either of the Bede House properties, or 51A Tressillian Road, but did gain access to 8 Ivy Road, where we were shown the electrical wiring, the painted portico and the external decorations.

The Hearing:

S.20 Consultation:

a. As the consultation process under S.20 has been disputed by the applicants, it is, in our opinion, worth setting out the particular requirements in respect of this contract. A public notice was served in respect of this contract, prior to 31 October 2003, that is before the Service Charge (Consultation) (England) Regulations ("The Regulations"), came into effect. It is understood that the public notice was dated 16 March 2002 and was presumably served shortly thereafter.

b. It is the Respondent's case that, as the public notice was served before the Regulations came into effect that requirements under Schedule 3 of those Regulations applied. Mr. Clark was of the opinion that either Schedule 1 or Schedule 4 Part 1 applied to these works.

c. We find that Schedule 3 applies to this contract. It would clearly have come within the definition of a long term agreement, in that it was for a period of more than 12 months, and a tenant's liability exceeded the £100 threshold. The Respondents were required under the European Procurement Regulations to advertise the contract in the Official Journal of the European Union (OJEU), even though the Consultation Regulations had not yet come into effect. This is an instance where Schedule 3 became engaged as specifically anticipated for in Regulation 7(3)(b) as follows –

> *7(3) This paragraph applies where –*
> *(a) under an agreement entered into, by or on behalf of the landlord or a superior landlord, before the coming into force of these Regulations, qualifying works are carried out at any time on or after the date that falls two months after the date on this these Regulations come into force; or*
> *(b) under an agreement for a term of more than twelve months entered into, by or on behalf of the landlord or a superior landlord, qualifying works for which public notice has been given before the date on which these Regulations come into force are carried out at any time on or after the date.*

d. The requirements under Schedule 3 are –

> (1) The landlord shall give notice in writing of his intention to carry out qualifying works -
>
> (a) to each tenant; and
>
> (b) where a recognised tenants' association represents some or all of the tenants, to the association.
>
> (2) The notice shall –
>
> (a) Describe, in general terms the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
>
> (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
>
> (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;
>
> (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;

(e) specify –

(i) the address to which such observations may be sent;
(ii) that they must be delivered within the relevant period; and
(iii) the date on which the relevant period ends.

e. It is not disputed by the parties that notices were served. Mr. Clark confirmed to us that he did not make any observations, although he attended public meetings and considered that these were sufficient, with residents questioning the works and costs. In our view the Regulations require a tenant to make an observation in writing, and having not done so, Mr. Clark is unable to show that any prejudice applied to him in this respect. It was his view that the notices were defective in that they gave insufficient detail for him to make any real observations as allowed for in the Regulations, that they referred to 'Decent Homes Standard' which did not apply to leasehold property, and that the prejudice suffered was his inability to check whether or not the works were necessary, or whether the costs were reasonable.

f. In his statement of case he informed us that two S.20 notices had been served on him, one on 6 August 2007 and another on 7 December the same year. He did not know why two had been served, the former stated that observations must be delivered within 20 days of the date of the notice and the latter, no later than 9 January 2008. He therefore considered that he would not have time to respond to the second notice in any event. He also said that there were discrepancies between the first and second notices, the former relating to a contract for 20 years with an estimate of £16,853.00 and the latter 25 years with an estimate of £23,373.45. It is agreed that a further S.20 notice was sent 5 March 2010 concerning the balcony works.

g. Mr. Clark also said that despite the S.20 notices informing residents that if any additional works were found to be necessary the residents would be informed of any additional costs, this did not happen. He also complained that the OJEU notice was meaningless to leaseholders (1/52) when he said that the OJEU notice set out a 25 year contract for £43m, but it ended up being 20 years for £119m, and that this discrepancy had not been explained to leaseholders.

h. He considered that the individual front door replacements were not carried out as a result of the Decent Homes works, but another contract, that they have not improved the properties and have actually 'ruined' the block's appearance, by having different styles and colours, leading to a 'random and cluttered look'.

i. He did not consider that the window replacement costs were reasonable because beforehand his property had not suffered from condensation, but since the works, it had done. He also considered that, as the Respondent had installed additional ventilation into tenanted properties because they knew of the condensation problems, that leaseholders should also have been given the same ventilation to alleviate the condensation now occurring.

j. He said that the windows were not wanted (1/54), but that he was told he had no choice. He also told us and showed us flats in other blocks where windows had not been replaced.

k. With respect to scaffolding he considered this to be unnecessary and that work on the flat roof could have been carried out using a restraint harness. Even if scaffolding had been necessary, he had researched the cost with local suppliers and had found that towers were available for £119.60 per week and that as this was only necessary for a short period £84.42 would have been charged and not the £14,202.99. He said that number 8 Elm House had double glazed windows fitted privately without scaffolding. He also complained that the holes where scaffolding had been, had not been repaired satisfactorily or at all.

l. He made many complaints with respect to the balcony works. He submitted that they were not covered by the original contract and that replacement works were unnecessary. Finally in respect to the balconies he said that the Respondent knew in 2007 that balcony works would be required, but did not apply for planning permission until 2010. Had they applied earlier, they could have saved the additional scaffold costs of about £6,000. (1/56).

m. Mr. Clark finally made several submissions in respect of other blocks adjacent to his. In particular relating to the signage at Oak House, the boundary wall to the blocks adjacent to his had not been made good, communal lights were on constantly in most blocks including his. Deep cleaning to the common parts had been promised but not carried out, a satellite dish had been installed on his brickwork by the contractors, and he had been charged for this relocation, that generally no evidence was supplied by the Respondents to show that Fosroc coating was necessary, or the replacement of the water tanks or roof. He considered that the work throughout the Borough had not been undertaken to a reasonable standard.

n. His final complaint was that the management of the contract by Lewisham was not to a reasonable standard, that he had made several complaints and been told to refer matters to the Tribunal

that were not within its jurisdiction. He had contractors miss appointments, messages were not passed on and generally reports of maintenance issues were not responded to. He referred to some parcel tape marks in the hallway which he had showed us during our inspection. This had not been removed despite his complaint, however marks on the communal entrance door had been scrubbed to such an extent that the door had been scratched.

o. Mr. Clark drew our attention to our previous decision (LON/00AZ/LSC/2011/0126) where we determined that the cost of the roof replacement to Acacia House was not reasonable and the cost was not reasonably incurred and also that the cost for water tanks installations in other blocks had been found not to be reasonable. He cited these as examples of over-charging and said that he should also take the benefit of the reductions given in other blocks.

p. We are unable to take the approach cited by Mr. Clark. In the other cases, leaseholders presented us with evidence, from a surveyor in the case of the roof and the leaseholders in respect of the water tanks, supporting their cases that over-charging had taken place. It is for leaseholders to provide the evidence to support their cases before the Tribunal and they must, if they consider there are excessive costs, provide alternative quotations. Or, if it is alleged that repairs were not necessary, to provide professional evidence to support that allegation. The Tribunal cannot apply decisions made in other cases without evidence. We have not been given any in this instance by any of the leaseholders, and are therefore unable to apply any reductions to the costs charged for roof and water tanks.

Decision on S.20 Consultation:

q. The notice given to Mr. Clark in December 2007 described the works to be undertaken as *'Window renewal, front entrance door, asphalt, concrete slab etc, insulation works, electrical, mechanical works, structural, damp, drainage, asbestos, etc, brickwork repair/remove, elevation cleaning, walkways asphalt, scaffolding cost. Variations, increase scope of works and miscellaneous costs, and consultant fee'.* We consider this to be sufficient to include for example roofing works. We are of the opinion that The Regulations required the landlord to describe in general terms the works to be undertaken within the contract. We find that 'in general terms' does not require the Respondent to specify exactly what works are to be included and that some variation may be made to the scope of works, given that at the time of the notice, not all properties would have been fully inspected and the final schedule of works prepared.. We consider that the period for observations given to

tenants under the Regulations provides an opportunity for them to seek further information as to the works to be undertaken. Mr. Clark had already confirmed to us that he made no observations. Whilst, it is disappointing to note however, that the Respondent did not inform lessees of any variations in the works, so that they could be better prepared for what was likely to happen to their homes, we do not consider that this invalidates the notice.

r. We also consider that in one way the notices exceeded the statutory requirements. The Regulations require the landlord to state the total amount of expenditure estimated by the landlord in connection with the proposed works. We do not interpret this to mean that the landlord has to provide a schedule of each of the costs possibly to be incurred, but that a global cost would suffice. In this instance, the landlord gave the total contract sum of £74 million, and also a breakdown, which may have been helpful to the lessees, but on a strict interpretation, exceeded the requirements of Schedule 3, and has possibly led to more disputes concerning these works, than if only the global figure had been quoted. The Tribunal does not say that it was bad practice of the landlord to supply these costs, and considers that it is good practice to do so, but that it is not strictly in accordance with the Regulations, even though in our opinion being provided with a contract sum in the order of this one, is of little value to a leaseholder..

Preliminary Decision on the balcony works:-

s. We were informed by Mr. Heather on behalf of the Respondents that no charge had been made for the balcony works as the Mandatory Reduction of Service Charges Cap had already been exceeded on this property and that the Respondent could therefore not pass on the costs. He drew our attention to the S.20 notice issued in respect of these works (1/248) on 5 March 2010. The notice which is identical to the other S.20 notices and breaks down the costs to the leaseholder, clearly states on the bottom *'Please note, as your previous major works bill exceeded the £10,000 cap, there will be no additional charge for the balcony works'.*

t. Having heard that there would be no charge, we retired to consider whether or not we had jurisdiction to determine Mr. Clark's objections. We decided that we did not have jurisdiction on the basis that we are only able to determine whether a lessee is liable to contribute to works which are of a reasonable standard. As no contribution is sought, we are unable to make a determination on this matter.

u. We informed the parties of our decision during the hearing. Whilst we understand that this was a disappointment to Mr. Clark, it being one of his major complaints regarding the works undertaken, the

majority of his issues related to the aesthetics of the installation and the fact that balconies had not been replaced on a 'like for like' basis. We have noted in our comments on the inspection, the possible defects with the private balcony, and would recommend that this is attended to. However, we have no authority in this respect to make an order that the Respondent should do so. Mr. Clark is already aware of his options with respect to the Respondent's formal complaints procedure in this matter, having already exercised them.

Remaining Issues:
The Roof:

v. Mr. Clark sought to rely on the decision (0129) in respect of his roof. He appeared to say that because we had determined that the replacement of the roof to Acacia House to be unreasonable that we should apply the same reasoning in respect of his roof.

w. He said that since the roof had been replaced his flat had suffered from leaks and condensation and that this was an indication of poor workmanship. He confirmed that he had not reported these to the Respondent.

x. We are unable to apply a previous decision of the Tribunal to additional properties under the PFI Scheme without evidence. During the hearing for 0129, the lessees in Acacia House produced expert evidence to show that the roof had not been in a poor condition and that replacement was therefore unnecessary. In this instance, Mr. Clark has not provided any evidence to support his case that the renewal was unnecessary or excessively expensive. On balance, although we saw some minor damp staining to the bedroom and living room, we do not consider that this is sufficient evidence to disallow the charge for roofing. We would recommend however that the roof is properly inspected to ensure that there are no residual problems. We therefore allow this charge.

Water Tanks:

y. For the same reasons we are unable to disallow the costs for the water tank. Mr. Clark did not provide any evidence to demonstrate that these works were not required or were charged at an excessive cost. We therefore allow this charge.

Electrical Installation:

z. Again for the same reasons we are unable to disallow the charge for the new electrical mains. However, we would comment that, in

our view, the way in which the electrical mains were installed in this block, and into the individual properties which we were given access to, can only be described as 'appalling'. It does not seem to have occurred to the Respondent that the installation of large black, armoured cable in the hallways of flats, without any form of boxing in (Mr. Clark and Ms. Bunduka being exceptions) would be intrusive. The actual running of the pipes itself was not designed to be lost in other decoration, appearing to have been installed without any thought to the aesthetics of the installation, or the ability of the lessees to cover it up. From Ms. Bunduka's evidence it appears that she continually chased the Respondent until this work was completed to her satisfaction.

aa. With respect to the common parts risers, again no thought appears to have been given to the aesthetics. Although we did not take evidence from Mr. Clark during our inspection, his comment when showing us the very large metal casings running up the stairwells and landings, that 'you would not want that in your home' is correct. The Respondent has not taken any care, in our opinion, to minimise the effect of these works on the lessees, and it was not clear why existing riser cupboards had not been re-used.

bb. We consider that these works were not carried out to a reasonable standard, despite there being no evidence that they were not required. However, we reserve our comments as to the reduction in costs to the end of this decision.

Flooring to Walkways and Stairwells:

cc. As noted above under inspection, there were some cracks to walkways and stairwell flooring that could allow water to penetrate into the substructure in our opinion. As Mr. Clark has not been asked to pay for these works we cannot make an order that the works were unreasonably carried out, or incurred. However given our comments, it would be prudent for the Respondent to investigate further.

Miscellaneous Issues:

dd. Mr. Clark showed us during the inspection that the holes where scaffolding had been erected had not been made good, that the parcel tape attaching a notice to the common parts hallway had not been removed and that the lights appeared to be on 24 hours per day. This latter point appeared to be the same in all blocks we inspected on 9 April.

ee. The Tribunal has already made a determination that the costs of scaffolding were reasonable, and we have not heard anything in the

evidence in this matter to change our minds in this instance. Although Mr. Clark had obtained a quotation for a tower, it was our opinion that works could not have been carried out from a tower and that it was reasonable in the circumstances for the landlord to use full scaffolding.

Decision on Costs:

ff. We have some difficulty with the costs of this matter. Originally Mr. Clark was informed in the S.20 Notice of December 2007 that the estimated proportion of the £72 million for his property would be £23,312.54. This was then revised to an actual account of £18,586.31 and then finally 'capped' in accordance with the Mandatory Reduction of Service Charges Regulations, with a consequence that his liability is reduced to £10,000.

gg. It is difficult for this Tribunal to determine that the actual individual account could be reduced by over £8,000, so that it would reduce below the capping figure, and give a reduction to Mr. Clark.

hh. His evidence that works were not reasonably required; was not substantiated by any evidence, nor that they were incurred at an unreasonable cost. For this reason we find that the costs were reasonable per se.

ii. We do find that the electrical installation was not carried out to a reasonable standard, and reduce the sum claimed by 25%, which in our opinion, reflects the very poor installation. However given that we have received no evidence that the work was not required, and the total cost for electrical work did not relate solely to the new lateral mains, the effect of our decision does not reduce Mr. Clark's charges below the capped level. For this reason we are unable to make any reduction in the charges to Mr. Clark.

Ms. Bunduka:

jj. Ms. Bunduka's case followed Mr. Clark's in some respects. Her claim that the S.20 process was flawed is addressed by this decision. In respect of the electrical works, these had been boxed in and her installation appeared to have been one of the better ones we saw. However the making good externally had not been carried out to a reasonable standard.

kk. With respect to the roofing works over her porch area, this appears to have been carried out without due diligence and was messy in appearance.

ll. The windows of which she complained appeared to us to be of a reasonable standard, and there were no real signs of condensation at the time of our visit.

mm. She also complained that the patio doors had not been properly fitted and that they were difficult to operate. It appears from the evidence before us that this may now have been rectified and during our inspection the patio doors appeared to work perfectly well.

nn. In a similar way to Mr. Clark, Ms. Bundunka has not provided any evidence to show that she is not liable for the costs as claimed. Having considered the actual figures presented by the Respondent (1/142) these appeared to be reasonable and without evidence to the contrary from the lessee, we find that they are payable.

Generally:

oo. Mr. Clark complained that the on-costs of this contract were excessive. The Tribunal has already considered these costs and on appeal the upper Tribunal has made its decision generally in favour of the Respondent. The Respondent has amended each of the demands to reflect the decision of the Upper Tribunal and this Tribunal is therefore bound by that decision.

pp. Mr. Clark also complained that there had been a lack of management by the Respondent in this matter, through the various parties responsible for the contract, we have seen his evidence concerning lack of responses to his queries, and in our view these have been systematic in this contract. However, many of the complaints made by Mr. Clark are of an aesthetic nature, do not relate to his block or charge in particular and are therefore beyond the remit of this Tribunal. We would however comment that, if Mr. Clark's contribution had not been capped, we might have considered reducing the management costs, given that the electrical works in particular were to a poor standard, and were so intrusive.

qq. We were concerned to see at page 1/91 that as part of the official complaint process Mr. Clark was referred to the Tribunal for resolution of his complaint regarding the private balconies (para 17). At that stage the Respondent knew there was no charge to Mr. Clark and should have been aware that the Tribunal had no jurisdiction to consider the matter, it is therefore unclear why such a recommendation was made.

S.20C:

rr. Mr. Clark had made an application under S.20C to prevent the landlord from recovering its costs of proceedings from the lessees. Mr. Heather confirmed to us at the end of the hearing that no such costs could be passed on. We are satisfied that this is the case, but in any event make the order under S.20C.

Chairman: Miss A Hamilton-Farey Date: 15 May 2013