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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BN/LSC/2015/0082**
Property	:	**65D, Longford Place, Longsight, Manchester M14 5GR**
Applicant	:	**Ms.M.Byrne**
Represented by	:	**Mr.J.Frazer**
Respondent	:	**St. Vincent's Park Management Limited**
Represented by	:	**Trowers & Hamlins**
Type of Application	:	**Landlord and Tenant Act 1985, section 27A** **Landlord and Tenant Act 1985, section 20C**
Tribunal Members	:	**Judge C.Wood** **Mr.J.Rostron**
Date of Decision	:	**14 April 2016**

DECISION

Order

1. The Tribunal orders as follows:

   1.1 that costs of £2300 plus VAT for professional services provided to the Respondent by Clancy Consulting in 2010 had been reasonably incurred by the Respondent and the Applicant was liable to pay her apportionment of such costs as service charge in accordance with the terms of the lease dated 22 March 1996 and made between Northern Counties Housing Association (1) St. Vincent's Park Management Company Limited (2) and the Applicant (3) ("the Lease");

   1.2 that the construction costs of £33,857.99 for re-building part of the perimeter wall of the Estate (as defined in the Lease) in 2013 had been reasonably incurred by the Respondent and the Applicant was liable to pay her apportionment of such costs as service charge in accordance with the terms of the Lease;

   1.3 that it was just and equitable in all the circumstances to grant the Applicant's section 20C application in respect of 10% of the costs incurred by the Respondent in connection with the proceedings before the Tribunal.

The Application

2. By an application dated 13 August 2015, ("the Application"), the Applicant sought determinations from the Tribunal under section 27A of the Landlord and Tenant Act 1985, ("the Act"), in respect of costs incurred by the Respondent in 2010 and 2013 and to be incurred in connection with the re-building of sections of the perimeter wall to the Estate as follows:

   2.1 2010: Clancy Consulting: £3714.50;

   2.2 2013: Mitie : £33858.80;

   2.3 rebuilding of wall between 61 and 63, Longford Place: date and costs to be confirmed.

3. The Applicant also made application for an order under section 20C of the Act.

4. Directions dated 21 August 2015 were issued pursuant to which the following documentation was received from the parties:

   4.1 Applicant's Statement of Case with supporting documents dated 20 November 2015;

   4.2 Respondent's Statement of Case with supporting documents received under cover of letter dated 15 January 2016.

5. A hearing was scheduled to take place on Friday 29 January 2016 at 11:30am following an inspection at 10am on the same date. Both parties attended, or were represented at, the inspection which included an inspection of the sections of the perimeter wall which have been re-built and the section between Nos. 61 and 63, Longford Place which may be the subject of future works.

6. Following the hearing, the parties were invited to make further submissions to the Tribunal regarding the plans attached to the Lease and the definition of the term "Estate" in the Lease. These submissions were received by the Tribunal on 23 March 2016.

The Law

7. Section 18 of the 1985 Act 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.

8. Section 19 provides that –

   (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.

9. Section 27A provides that:

   (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 date at or by which it is payable, and

      (d) the manner in which it is payable.

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

(3) .....

(4) No application under subsection (1)...may be made in respect of a matter which –

(a) has been agreed by the tenant.....

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

10. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

The Hearing

11. The hearing was attended by Mr.J.Frazer on behalf of the Applicant, and by Ms.L.Walsh of Trowers & Hamlins, representing the Respondent. Ms.R.Darling of The Guinness Partnership was also in attendance.

12. The parties confirmed, at the outset of the hearing, that there was no issue raised as to any procedural or other irregularity with the s20 consultation which had been carried out by the Respondent in respect of these works. Mr.Frazer did reiterate the Applicant's concern that no attention had been paid by the Respondent to the responses received from leaseholders as part of the s20 consultation.

13. With regard to the works referred to in the Application which were included within the s20 consultation but had not been carried out, the Respondent repeated the statements made at the inspection that there was no present intention to carry out these works not least due to financial constraints but also because there were more urgent repairs at the Estate which were of greater priority. It was stated that, if these works were to be undertaken at some point, then the advice of Trowers & Hamlins was that a further consultation would need to be carried out; it was also remarked that, as this was not a wall fronting a road, then it might be considered more appropriate to use an alternative to brick.

14. Clancy Consulting: costs of £3714.50: the parties made the following submissions:

14.1 the Applicant: since it was apparent to anyone in 2010 that the wall would need to be demolished, questions were raised as to the need for multiple visits to the site and to instruct a large consulting engineering firm – rather than a local contractor. The Applicant considered that 2 days' work (including supervision during construction) at £500 per day was a reasonable fee;

14.2 the Respondent: the work undertaken by Clancy Consulting was set out in the three reports dated 30 June 2009, and 15 December 2009 and included their recommendations following their site visits and the design for the new wall. They undertook no further work after 2010 ie they did not supervise construction in 2013;

14.3 the amount of their costs had been confirmed in an e-mail dated 7 March 2014 from Alison Quinn of the Respondent , (page 6 of Tab 1 of the Applicant's Bundle), to Mr.Frazer as £3714.50. The Respondent accepted that this amount was not supported in the 2010 service charge accounts, (Tab 6 of the Respondent's Bundle), nor by the only invoice relating to these costs produced by the Respondent which was for an amount of £725 plus VAT, (Tab 10 of the Respondent's Bundle);

14.4 the Respondent conceded that the correct amount of the Clancy Consulting costs was £2728.75 (including VAT) (rounded down to £2300 plus VAT). The Applicant accepted that costs at this level were reasonable.

15. Mitie: costs of £33857.99: the parties made the following submissions:

15.1 the Respondent referred the Tribunal to the 2 Mitie invoices, each for £16,082.54, at Tab 10 of their Bundle. The Applicant confirmed that, if the Tribunal were to determine that the re-building of the wall in brick was reasonable, then there was no issue as to the costs of doing so;

15.2 the Applicant asserted that the whole job could have been done for less than £4000 by using concrete posts and panels along the frontage to Clarence Road and by using concrete posts and either wooden or concrete panels along the boundary to the neighbouring properties. At the inspection, Mr. Frazer had shown the Tribunal fences on nearby properties which were either concrete or wood panels which he said had lasted for more than 20 years with no or minimal maintenance. He challenged the Respondent's assertion that a brick wall would last for 60 years with no maintenance. At the inspection, he had also pointed out to the Tribunal points along the new perimeter brick wall (which bordered a number of freehold properties within the Estate) built by the Respondent c20 years ago where (principally) tree roots had caused the wall to rotate and crack. He said that it was necessary to put the decision to re-build in brick in the context of the development: these were 1-bedroomed flats in a deprived area where, because of costs like these and a significant increase in the annual amount being collected within the service charge for the reserve fund, the service charge was double that being charged for equivalent flats within the area. He claimed that the increases in the service charge – which had doubled over the last 5 years and was currently c£140 per month – was blighting the development and affecting the leaseholders' ability to sell their properties. It was accepted that the concrete alternative would not have been as attractive but that it would have been as effective, particularly in respect of the problems of vandalism and other anti-social behaviour, and further would have protected the Applicant from this charge;

15.3 the Respondent clarified that, whilst reference had been made to "party walls", there was no legal obligation on any neighbouring property to contribute to the cost of the wall. It was further clarified that the Respondent had no obligation to repair or maintain the wall bordering the freehold properties. The Respondent confirmed that they had replaced "like with like". It was accepted that the old wall had to be demolished. The Respondent was under an obligation under the Lease to repair the wall but had a discretion how best to do so: reference was made to the decision in 620 Hi-Lift Elevator Services and Anor. v Temple (1995)70 P.&C.R.620 in support of this claim. They had received very few responses to the s20 consultation. Those leaseholders who live nearest to the new wall are very happy with it. Before the wall was re-built, temporary security fencing was erected which was stolen; there were also examples of where wooden fence panels had been removed. In the long-term, the brick wall was the most cost-effective alternative as it will require little, or no, maintenance - where fences/panels will need re-painting and replacing – and, aesthetically, it is much better than the cheaper alternatives. The Management Company's obligation to repair the wall is set out in Clause 1 of the Fourth Schedule to the Lease. Further, the Applicant has failed to discharge the burden of proof upon her to show that the costs incurred are not reasonable: in particular, there are no independent quotations for the alternative works.

Tribunal's Reasons

16. Clancy Consulting: in the course of the hearing, the issue regarding these costs was resolved when it became apparent that they had been over-stated by the Respondent. On it being accepted that the costs were, in fact, the lesser amount of £3200 (rounded down to the nearest hundred) plus VAT, the Applicant accepted that these were reasonable. The Tribunal considered that, having regard to the pre-existing relationship between Clancy Consulting and the Respondent, it was reasonable to use their services rather than a local contractor with whom there would not be the same relationship.

17. Mitie costs: the Tribunal was not unsympathetic to the Applicant's statements as to the financial impact of the Respondent's decision to re-build the wall using materials (ie bricks) that involved the highest initial cost. However, the Tribunal also accepted that the Respondent's obligation to repair did not oblige them to do so using the cheapest available materials or that the decision to use a higher cost alternative would inevitably lead to a conclusion that the costs had not been reasonably incurred. The Tribunal accepted the Respondent's evidence that they had given consideration to the alternatives and also accepted their reasons for selecting bricks eg replacing "like with like"; limited adverse responses from the leaseholders in the s20 consultation; future maintenance costs; and aesthetics (although they considered that there was some exaggeration of the superior efficacy of a brick wall in preventing/discouraging vandalism and other anti-social behaviour over the alternatives). On balance, the Tribunal was satisfied that, whilst another management company in the same position as the Respondent may have chosen another course, having

regard to all of the evidence, they had acted reasonably in choosing to re-build the wall in brick. The Tribunal noted the Applicant's concession that, if this was the Tribunal's determination, then there was no challenge to the amount of the costs paid to Mitie.

18. s20C application: during the course of the hearing, it had become apparent that the Clancy Consulting costs had been mis-stated (and possibly incorrectly charged to leaseholders). For this reason, the Tribunal considered that it was just and equitable in the circumstances to grant the Applicant's s20C application to the extent of 10% of the Respondent's costs.

19. The Tribunal was unable to make any determination in respect of the other works which had been included within the s20 consultation as no works had actually been planned, completed and/or any costs incurred. The Tribunal noted the Respondent's assurances that, if it was decided to do such works in the future, a new s20 consultation would be entered into. Further, the Tribunal noted that the reasons which supported the re-building of the wall in brick in 2013 may not apply equally to the re-building of this other boundary wall.