

11979



**PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference LON/OOAE/LSC/2016/0422

Property Mountaire Court, Highfield Avenue, London NW9 OQA

Applicant Mountaire Court Management Company Limited (Management Company)

Representative Hurford Salvi Carr Property Management Limited (managing agents)

Respondents Various leaseholders of the flats in the subject premises

Type of application An application for a determination of two questions. It is made under section 27A of the Landlord and Tenant Act 1985 (the 'Act')

Tribunal members James Driscoll (Judge) and Luis Jarero (Professional Member)

Venue The tribunal considered the application on the basis of the papers filed.

Date of decision 7 February, 2017

DECISION

DECISION

1. The application for a determination of service charges under the Act is dismissed as the questions posed on behalf of the applicant are not matters on which the Tribunal can make a determination under the Act.

THE APPLICATION

1. This application is made on behalf of Mountaire Court Management Company Limited who are the holders of the head lease of the subject premises which contains 30 flats in five adjoining blocks of flats (all held, we understand on long leases). It was made by Hurford Salvi Carr Property Management Limited who act as the managing agents. The owner of the freehold of the development is St Leonards Properties Limited. The Respondents to the application are the 30 leaseholders of the flats. We noted from the details supplied that of this number, 14 are held by one company which is Daejan Properties Limited.
2. Directions were given by the tribunal and the parties were notified that the application would be dealt with by a consideration of the papers filed and without an oral hearing unless either party notified the tribunal that it wanted an oral hearing.
3. As no such request was received the tribunal dealt with the application on 11 January 2017. A bundle of documents was assembled and lodged with the tribunal by the managing agents. The bundle included notes of resident's meetings, the documents relating to the service charge consultation and tender results. Also included were various comments from some of the leaseholders. We noted that the consultation procedures have been going on since 2014.

REASONS FOR THE DECISION

4. The application is made under section 27A of the Landlord and Tenant Act 1985. It relates to proposed major works for which the leaseholders will be charged as service charges for the costs involved. The application refers to the year ending 31 March 2017 as the accounting period in question. On page 7 the managing agents state that the works are urgent as the building is in poor condition and that a dangerous structure notice has been served by the local authority. (However, as we noted in the previous paragraph, these consultations have been going on since 2014).

5. Page 10 of the application states that the 'Residents Management Company' (which we took to mean Mountaire Court Management Limited) has been advised that the works should be done in one operation with the result the lessees would have to put the company in funds now to cover the costs of the contract. However, some of the leaseholders want the works to be spread over several years to allow for the financial burden to be spread. The applicant is opposed to this as it would increase the costs.
6. We also considered a letter sent by the managing agents to the tribunal dated 12 December, 2016. In that letter the agents stated that the costs to be recovered is the total sum of £570,000 with the same sum due in 2018. On the assumption that each leaseholder pays the same proportion of the costs, each leaseholder will be required to pay the sum of £19,000 this year and the same sum in 2018. The documents suggest that only one leaseholder (an individual) has paid this so far. We assume that the managing agents will not commission the works until they have received monies in advance to cover the contractual costs.
7. On page 10 of the application the Tribunal is asked to determine two questions: first, does the Tribunal agree that the works should be done as one project? Second, should the costs of replacing doors, window frames and glass be charged to individual leaseholders (under paragraph 5(1) of the lease)?
8. A copy of one of the one of the leases was included with the application along with a copy of documents relating to the grant of a new lease. We have assumed that this is a specimen lease and that all thirty of the leases are in a common form.
9. It is apparent from reading the lease that the leaseholders are required to pay through service charges for relevant costs for each of the five blocks of flats and not just the building containing their flat. Clause 1 of the specimen lease refers to the 'buildings' as consisting of flats numbered 1 to 30 Mountain Court. In clause 2, which sets out the leaseholder's covenants, the landlord's covenants on such matters as insurance and repairs also refers to the 'buildings'. In other words, leaseholders in one of the blocks can be required to pay towards the costs or works to a different block even though they do not directly benefit from those works. Or if costs are to be carried out to all of the blocks in phases this will result in leaseholders in some of the blocks paying for works to other blocks in advance of works being carried out to their block or blocks.
10. On the issue of how to charge certain items concerning works to internal doors and windows, this, it seems to us, is essentially a matter of the correct interpretation of the lease. We note that there is provision in the lease for the leaseholder concerned to carry out such works.

11. Having reviewed the application and the documents supplied, and having considered section 27A of the Act we have concluded that we do not have jurisdiction to answer the two questions posed by those advising the management company. In our view they are both hypothetical questions. It is for those managing the premises to decide first on the works should be phased or not and on issues relating to recovery of costs for internal works to some of the flats. These are decisions to be taken after consulting with the leaseholders concerned.
12. Under section 27A we have the jurisdiction to make determinations as to the reasonableness of the charges and we must take into account the statutory consultation requirements in section 20 of the Act and in the regulations made under that provision as well as the provisions in the lease or leases.
13. Whether to carry out major works as one project, or to spread the work over several years is a management decision to be taken in this case by the management company, not one for a determination by this Tribunal. Moreover, whether the costs of some of the works to be carried out can be charged to individual leaseholders is also a matter of the correct interpretation of the lease and also whether it is appropriate for the managing agents to commission the works and then charge the relevant leaseholder or leaseholders for the costs incurred.
14. The tribunal only has jurisdiction under section 27A of the Act, where the parties are in dispute over the recovery of the landlord's costs through service charge demands.
15. Under section 27(3) either party can seek a determination as to whether proposed demands for service charges to be payable in advance is possible, but that is not what has been applied for here.
16. If such an application were to be made it should be accompanied by a clear statement from an expert that the works can only be carried out as one project. The tribunal would also expect a statement from the applicant explaining the consultations that have taken place, why such extensive works are required and how it has taken in consideration the ability of all of the leaseholders to pay all of the costs in advance.
17. The question of proposed works to the interior of individual flats is also one for which an application could be made under section 27(3) of the Act. Such an application would need to be accompanied by a statement explaining why works, that on the face of it, might be a matter for the leaseholder concerned are to be carried out by the managing company and why it is considered that the costs of such works can properly be charged to the leaseholder.
18. Whilst we do not underestimate the scale and the complexities of the proposed works programme in this case but we must respectfully reject the application which it seems to us to be an invitation for the Tribunal to express an opinion on two matters rather than making determinations under the Act of the reasonableness of the charges. It is

for the managing agents to decide on how to proceed and if the leaseholders disagree the manager can consider an application under section 27A if it wants to have the matter settled prior to commissioning the works.

19. Under rule of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 a person seeking permission to appeal must make a written application to the Tribunal for permission to appeal. Such an application under paragraph (1) must be sent or delivered to the Tribunal so that it is received within 28 days after the date that the Tribunal sends to the person making the application written reasons for the decision.

James Driscoll and Luis Jarero,

7 February 2017