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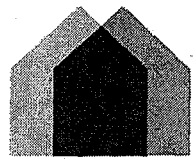

Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE ON APPLICATION UNDER SECTIONS 27A AND 20C OF THE LANDLORD AND TENANT ACT 1985, AS AMENDED

Ref: LON/00BG/LSC/2005/0351

Property:	34 Maitland House, Waterloo Gardens, London, E2 9HT
Applicants	Mr Mohammed Thompson Ms Nasima Begum
Respondent:	London Borough of Tower Hamlets
Application to Tribunal by:	
Hearing Date:	22 June 2006
Appearances:	Mr Mohammed Thompson For the Applicants Mr Roger Brayshaw, FCA, Consultant Mr Oluyemi Onabanjo, Legal Officer For the Respondent

Members of the Leasehold Valuation Tribunal Service:

Mrs J S L Goulden JP (Chairman)
Mr F W J James FRICS

JG

LON/00BG/LSC/2006/0351

PROPERTY: 34 MAITLAND HOUSE, WATERLOO GARDENS, LONDON, E2 9HT

Background

1. The Tribunal was dealing with applications dated 28 November 2005 in respect of the following:-

   (a) An application under Section 27A of the Landlord and Tenant Act 1985, as amended (hereinafter called "the Act"), 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;
   (e) the manner in which it is payable.

   (b) An application to limit the landlord's costs of proceedings under Section 20C of the Act.

2. The Applicants applied to buy their flat, 34 Maitland House, under the Right to Buy (RTB) legislation on 6 January 2000, and the Respondent had issued a Section 125 Notice under the Housing Act 1985 in response to that application on 24 July 2000. The Applicants said that there were errors in the Notice and requested the Respondent to amend the same. A further Section 125 Notice was issued by the Respondent to the Applicants on 29 November 2000, but the Respondent subsequently noted an error therein and withdrew the second Notice. A third Notice was issued on 3 April 2001 in which it was stated that the Applicants' estimated contribution to the major works (a list of which was attached to the Notice) was £34,246.67.

3. The lease to the Applicants was granted on 2 April 2002.

4. With regard to the major works, the Applicants in their statement of case, said, inter alia:-

   "An Estate Action scheme had been in progress on Wellington Estate since 1996. Maitland House was the last block to be worked on. Estimated costs for Maitland in 1994 were £3.175 million for works which allowed for the installation of lift shafts, sound insulation and durabella flooring to flats and the complete replacement of balconies. The works carried out were far more limited in scope to those originally planned although the overall costs remained the same."

5. The works commenced on 6 August 2001. The scheduled completion date was November 2002 but the date of practical completion was September 2003.

6. In August 2005, the Respondent demanded £29,312.81 from the Applicants as their proportion of the cost of major works.

HEARING

7. The hearing took place on 22 June 2006. The Applicants, Mr M Thompson and Ms N Begum, were represented by Mr M Thompson. The Respondent, London Borough of Tower Hamlets were represented by Mr R Brayshaw, Consultant, and Mr O Onabanjo, Legal Officer.

8. Neither side considered that an inspection of Maitland House, Waterloo Gardens, London, E2 9HT (hereinafter called "the property") would be of assistance to the Tribunal.

9. Although several adjournments were permitted by the Tribunal in order to ascertain whether the parties could settle the dispute or narrow the issues did not prove successful. It was however confirmed on behalf of the Respondent that it was not intended to place the cost of proceedings before the Tribunal on to the service charge account and, accordingly, no determination is required of the Tribunal under Section 20C of the Act.

10. In Directions dated 23 March 2006, the issues before the Tribunal were identified as:

    (a) whether the Respondent should have complied with the consultation process in Section 20 of the Landlord and Tenant Act 1985;

    (b) whether the Applicants' liability was limited by Section 20B;

    (c) whether the works were reasonable or to a reasonable standard.

11. The Tribunal decided that the issues relating to consultation under Section 20 and the Applicants' liability under Section 20B were to be determined by the Tribunal as a preliminary issue. The parties' evidence, and the Tribunal's determination, is therefore given under the appropriate head.

CONSULTATION UNDER SECTION 20 OF THE ACT

12. The Applicants in their Statement of Case said, inter alia:-

> *"Leaseholders were sent section 20 notices on 29/6/01. Handouts describing the works were given to all residents and a drop-in evening was held on 18/7/01. The Project Manager wrote to all residents on 7/8/01 confirming what works would be carried out. There are significant differences between the works described in this letter and earlier handouts and with that contained in our lease ... No work to stairs was notified in the letter nor work internally relating to insulation or asbestos. The letter says we will be connected to new door entry systems rather than have a new system installed in our flat. Numerous items were included, (eg landscape) which were not included in the s125 estimates. The general impression obtained from talking to officers at the drop-in evening and their written descriptions was that the full scope and nature of the work was still to be determined as the contract progressed. Appendix C lists the nine items of work which*

appeared on the invoice (Aug 2005) but were not included in the letter of 7/8/01.

The letter of 7/8/01 advised residents that Botes Building Ltd (BBL) were appointed to carry out this building work. It commenced on site on 6/8/01 and was scheduled to complete in November 2002. We have never received notification as to when the contract was given practical completion. Defects have not been remedied.

The section 125 notice for 34 Maitland House contains itemised estimates for very broad areas of work the Council anticipated would be carried out in the initial period of the lease, totalling £34,246. No section 20 notice has ever been received by us for any works carried out in the five year period covered by this notice. No one wrote to us detailing how the work being done by BBL related to the work contained in the section 125 notice.

It does not seem fair to us that we should be charged for work which was done before we became leaseholders, ie work carried out between August 2001 and April 2002. If there is a requirement upon us to pay for this work, it would seem fair that there should also be a requirement upon the Council to have followed the section 20 consultation procedure.

The works carried out by BBL took place within the five year reference period defined by the section 125 notice. This notice, which is incorporated within the lease together with the estimates, defines the maximum scope of the recharge the Council is able to levy in the first five years of the lease, (in our case 24/1/01-24/1/06).

The reference period ordinarily coincides with the granting of the lease, but, because the Council made a series of errors in issuing this notice (and on each occasion failed to amend the reference period), this period predates our lease by more than a year. Thus, when we became leaseholders in April 2002, some of the estimates contained in the notice, we now understand, had become contract sums eight months earlier ...

In summary, we believe the Council should either have consulted us as leaseholders via the section 20 procedure or have limited their recharge to works carried out once we had become leaseholders in April 2002 and for which some proper notice had been served ..."

13. By way of reply, the Respondent in its statement, said, inter alia:-

"S20 consultation was carried out with all the existing leaseholders by a notice dated 29/06/01. This was more than 9 months before completion of the applicants' leasehold purchase. At the time, they were a periodic tenant, and not subject to S20 consultation. As acknowledged by the applicants, all residents were kept informed during June, July and August 2001.

Work commenced on 06/08/01, almost 8 months before the applicants became leaseholders entitled to S20 consultation.

Defects were identified and rectified under the contract in accordance with its terms ...

The applicants' case appears to ignore the following facts.

a. *On their insistence, the full estimated value of the works was applied as a reduction to the purchase price of their lease for 34 Maitland House. If they were not to pay for the works carried out before April 2002, this increased value would have had to be reflected in the valuation of the lease of 34 Maitland House. The costs should be reflected in either the purchase price, or the service charge for works. In this case, both parties agreed that it should be the latter.*

b. *Under S20 Landlord and Tenant Act 1985 (as amended by Schedule 2 of the Landlord and Tenant Act 1987 prior to 31 October 2003) work must not commence before the expiry of the notice period of S20 procedures, unless the works are 'urgently required.' (S20 (4) (e).*

In this case the interaction of Right to Buy and Landlord & Tenant Act legislation did not allow both to operate as intended in isolation. The Landlord therefore had to find a way of operating that it considered reasonable.

This section of the applicants' case refers also to the S125 Notice. There is no dispute about the relevance of this notice. As the respondent is not charging any more than the amount specified and described in general terms in the S125 Notice, the issue of statutory uplift for inflation does not apply.

As all major works can be subject to variation orders during the course of the contract, we do not believe that any minor perceived variations from the description of works given in the S125 Notice are significant.

If the Tribunal does not uphold these arguments, the respondent has the right to apply to the Court under S20 (9) Landlord and Tenant Act 1985 to seek a retrospective dispensation from all or any of the relevant requirements of S20 on the grounds that it acted reasonably ..."

14. By Section 20 of the Act, it states, inter alia:-

> **"(1) Where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified in subsection (3), the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirements have been either –**
>
> **(a) complied with, or**
> **(b) dispensed with by the court in accordance with subsection (9);**
>
> **and the amount payable shall be limited accordingly.**
>
> **(2) In subsection (1) "qualifying works", in relation to a service charge, means works (whether on a building or on any other premises) to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge."**

15. At the time of the issue of the Section 20 Notices to the Applicants, the works were not those **"to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge"** since, of course, at the relevant time, the Applicants had not yet purchased their property and therefore were not liable for the payment of a service charge. There was therefore no statutory duty on the Respondent to consult with the Applicants.

16. However, notwithstanding the Tribunal's determination, it is quite clear from the oral evidence given by Mr Thompson that he was fully aware of what works were to be carried out, not only by the contents of the Section 125 Notice, but also from correspondence with the Respondent and his attendance at residents' meetings. Mr Thompson complained that there was *"a lack of precision"* in the works carried out and it may be that he was not notified of the extent of all of the works, but it is noted that the amount claimed was less than that estimated in the Section 125 Notice and, in addition, Mr Brayshaw confirmed that a 40% deduction in the amount claimed of the Applicants had been offered, but had been rejected by Mr Thompson.

17. Whilst the Tribunal now has the power to dispense with consultation requirements under Section 20ZA, at the time that the Section 20 consultation took place in this case, the power to dispense lay with the county court only, and therefore the Tribunal has no power to dispense with any or all of the consultation requirements in the present case. However, the parties have requested the Tribunal to express its view on dispensation.

18. Therefore, if the Tribunal is incorrect in its determination as set out in paragraph 15 above and the Respondents should have consulted with the Applicants, the Tribunal considered whether, if it had the power to dispense, it would have so dispensed. The Tribunal determines that, in the particular

circumstances of this case, it would have dispensed with the need for the Respondent to carry out consultation requirements with the Applicants.

19. The parties were advised of the Tribunal's determination under this head at the hearing.

SECTION 20B OF THE ACT

20. In the Applicants' view:-

> *"Their failure to follow the section 20 procedure in 2001 or to formally notify us of how the works being done by BBL related to the estimates in the s125 notice, arguably made it even more critical for them to subsequently issue us with a section 20 b notice and deal promptly with any disputed charges which arose. In the event, as the following section describes, neither of these things happened: an invoice was presented to us four years after work commenced on site and, perhaps, 22 months after practical completion was awarded; even our complaint to the Council's Chief Executive went unheeded."*

21. In their Statement of Case, the Applicants said, inter alia:-

> *"Because of the works we had moved out of the flat since it was not possible for our family and in particular our new born, second son, to live there during the works. We returned in August 2002. We were disappointed by what we found and wrote to the project manager in October with a list of defects. We received no clear indications of when the contract would be completed or how defects would be remedied.*
>
> *In May and June M T Thompson spoke by telephone with the manager at Leasehold Services, Ms W Odusina, and subsequently wrote to her to describe our complaints and questioning the way the Council was reconciling its estimated and actual service charges for the year. Amongst other things these letters ask, "When will we receive an invoice for these works?*
>
> *We were unhappy with the partial response we got to our letters and so wrote in complaint to the Council's Chief Executive in December 2003. We received no substantive reply to this letter and so wrote again in March 2005. In August 2005 we received an invoice for £29,312.*
>
> *Other leaseholders were issued with section 20b notices on 5/8/03 ... the terms of our lease and the law as it now stands seem to define a strict timetable for obtaining information about actual amounts paid (summaries of relevant costs signed by a qualified accountant) which ought to be provided within 2 months of a request by law or supplied as certificates within 6 months of the end of the accounting period according to the lease, and; inspecting the supporting documents, which should be possible within six month of receiving the summary (by law) and within one month of receiving the certificate (lease). It*

appears to be a summary offence for anyone (without reasonable excuse) to fail in a duty imposed on them by the legal provisions.

We made a number of attempts in the second half of 2003 to exercise these rights of access to information ... The first summary (unsigned by a qualified accountant) received by us was on 9/8/05 and inspection of documents was not facilitated until March 2006.

The Council have failed to provide us with any formal notification of the works which would have enabled us to take our case earlier to the LVT. The s125 notice is a declaration of intent rather than a formal notice describing work to be undertaken and the price of the work, and it certainly does not describe the reasons for the work ...

We had no accurate description of what work was being or had been carried out. It was essential to get an invoice and access to the final account documents.

We were aware of the possibility that the Council could be charging us up to £34,000 for these works but on the other hand their final invoice could turn out to be far more reasonable. Until we had their invoice or were given the right to inspect the accounts, we couldn't be sure how reasonable the works were. We certainly placed a very low value on the works which were actually carried out and on the balance of probabilities, we expected to be disappointed when the invoice arrived. No defects had been remedied. But the College of Law said we were unable to act until we had something concrete to dispute; a section 20 or 20b notice would have given us something concrete to take to the Tribunal. Nothing like a 20b notice was received by us prior to August 2005 when we were invoiced."

22. By way of reply, the Respondent in its statement said, inter alia:-

"Leaseholders who had been consulted under S20 received a S20B notice on 05/08/03. Practical completion of the works was certified as at 30/09/2003.

As the applicants had not been subject to S20 consultation (for the reasons set out above) their name was not included in the mailing of S20B notices.

S20B (2) states, "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 the 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."

The works commenced on 06/08/01. The applicants were informed in writing of the works in their S125 Notice attached to the RTB offer notice of 03/04/01, and subsequently in a letter of 06/06/03. This letter fulfilled all the requirements of a 'S20B notice.'

On the applicants' own admission stated in paragraph 3.4 of their Statement of Case, "We were aware of the possibility that the Council could be charging us up to £34,000 for these works ..."

23. A Section 20B Notice does not have to be a formal document. The Act merely provides that the tenant be "notified in writing".

24. The Applicants were so notified in writing particularly by letters from the Respondent to the Applicants of 7 August 2001 and 6 June 2003 (copies of which were provided to the Tribunal).

25. In addition, the Section 125 made it clear that major works were anticipated at an estimated cost to the Applicants of £34,246.67. In the event the amount demanded of the Applicants was in the reduced sum of £29,312.81.

26. The Tribunal determines that the Applicants had been notified in writing that the costs had been incurred and that the Applicants would subsequently be required under the terms of their lease to contribute to them by way of service charges under Section 20B of the Act.

27. The parties were advised of the Tribunal's determination under this head at the hearing until the morning of the hearing.

REASONABLENESS OF COST OF WORKS

28. Having made the above determinations, the Tribunal then considered the Section 27A application and was referred to the analysis of the final cost recharge statement by Mr Thompson who said that he was challenging each item in the statement. During questioning by the Tribunal as to the contents of this statement, it became apparent that neither Mr Brayshaw nor Mr Onabanjo were in a position to deal fully with this aspect. It was explained by Mr Brayshaw that he had expected a Miss Rudd, as the major works manager, to appear before the Tribunal to answer as to details of the matters charged to the service charge account but she had not appeared due, it is understood, to a dental appointment. Mr Brayshaw said that he had been unaware that Miss Rudd was not able to attend the hearing until the morning of the hearing.

29. Whilst Miss Rudd's absence is regretted, particularly since it was not drawn to the Tribunal's attention until the afternoon of the hearing, it was obvious that the Section 27A matters could not be dealt with at the hearing on 22 June.

30. It was further explained that another application (reference number: LON/00BG/LSC/2006/0145) relating to different tenants at 1-65 Maitland House with essentially the same Section 27A issues in relation to major works was listed for mediation on 11 July 2006. Accordingly, the Tribunal at the 22 June hearing decided that this matter before the Tribunal stand adjourned part heard in respect of the Section 27A issues. If the mediation was successful, then the case relating to 34 Maitland House, would be listed for the first available date after 11 July 2006 before the same members of this Tribunal. If however the mediation was unsuccessful, then the two cases

would be linked and would be listed before a fresh Tribunal for all matters to be considered.

CHAIRMAN .....

DATE ..... 7 July 2006

JG