



Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL for the  
SOUTHERN RENT ASSESSMENT PANEL**

**LANDLORD AND TENANT ACT 1985, as amended, Sections 27A & 20C**

**Ref : CH1/29UE/LSC/2010/0046**

**Property:** The Queens, Ranelagh Road, Deal, Kent CT14  
7BD

**Applicant:** The Queens (Deal) Estate Company Limited

**Represented by:** Mr Baker of Fell Reynolds, managing agents

**Respondent:** The Lessees at the property

**Date of hearing:** 7 July 2010

**Tribunal:** Mrs S. O'Sullivan  
Mr J.N Cleverton FRICS  
Ms L. Farrierr

## **Background**

1. An application was received on 15 April 2010 under s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") seeking a determination of the reasonableness and/or liability to pay service charges.
2. The application concerns the property known as The Queens, Ranelagh Road, Deal, Kent CT14 7BD (the "Property"), a development of TBC. The Tribunal was provided with a copy of a standard lease and was informed that all other leases are held on similar terms.
3. Directions were made by the Tribunal on 23 April 2010 which provided for steps to be taken by the parties to prepare for the hearing. Further to those directions statements of case were exchanged and bundles lodged for the hearing of the application.

## **The Law**

4. Section 18 (1) of the 1985 Act provides that for the purposes of the relevant parts of the 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.
5. Section 19 (1) of the 1985 Act provides that 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 reasonably 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.

6. Section 19 (2) of the 1985 Act provides that where a service charge is payable before the relevant costs have been 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 otherwise.
7. Section 27A (1) of the 1985 Act provides that 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
8. Section 27A (3) of the 1985 Act provides that an application may be made to a leasehold valuation tribunal for a decision 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.

## **Inspection**

9. The Tribunal inspected the Property at 10am on 7 July 2010. It was a dry sunny day. Attending the inspection on behalf of the Applicants were Mr Baker and Mr Gary Mead of Fell Reynolds and Mr Hore, their expert. Mr Henderson, the lessee of Flat 15 attended. Other lessees were also present at the inspection.

10. The Property is a purpose built traditionally constructed block of 55 flats built in 1990 and extending up to six stories in height. The construction is based on a concrete raft and retaining walls at basement level with a steel framework and brick/block exterior cavity walls and pre-cast concrete walls over. The Property has mainly pitched and slated roofs and windows are timber double glazed.

11. The Tribunal inspected the car park areas only accessing them through the internal common parts. The Tribunal saw the access to the car park which was via a ramp on Ranelagh Road. The car park is situated in the basement of the Property and is on two levels. The Tribunal was shown the drainage system, the structural movement joists where cracks could be seen in the sealant and the storage rooms were also inspected. Water marks could be seen on the walls to the lower car park area. The car park was not well used at the time of inspection with cars on only a few of the bays.

12. The Tribunal also inspected the various pipework at high and low level and the ventilation grills. It also looked at an external courtyard area accessed from the lower car park area which contained a sump pump contained within a brick wall.

## **The Hearing**

13. The hearing of this matter took place on 7 July 2010 commencing at 11 am. At the hearing the Applicants were represented by Mr Baker of Fell

Reynolds with Mr Hore, the expert relied upon by the Applicants, appearing to give evidence.

14. Mr Henderson of Flat 15 had prepared a statement of case and made submissions at the hearing. He was not authorised to act on behalf of any of the other lessees. No other lessees had served any statements in accordance with the directions nor wished to make submissions at the hearing.

15. The Tribunal was referred to evidence over the course of the hearing and heard oral evidence from the parties. The Tribunal does not intend for the sake of brevity to repeat all that evidence in this decision, the majority of the evidence in any event being contained in bundles in the parties' possession. What follows therefore is a summary of the evidence heard and the Tribunal's decision in relation to each of the matters before it.

16. The issues before the Tribunal as set out in the application were whether proposed works were recoverable pursuant to the terms of the Respondents' leases and if so, whether the cost of the proposed works was reasonable. The works concerned works to a basement car park at the Property to protect it against future flooding. They concerned works to the movement and construction joints within the concrete basement walls and floors to prevent water ingress and the repair and improvement to the rainwater system including the replacement of the existing water storage bund.

## **The Lease**

17. The Tribunal was referred to a sample lease at pages 9 to 31 of the bundle (the "Lease"). The Tribunal had been asked to determine whether the proposed works fell within the costs and expenses to be included in the service charge as set out in the Eleventh Schedule to the Lease. Mr Henderson confirmed that the liability for the proposed works pursuant to the Lease was not challenged.

18. The Tribunal considered the provisions of the Lease. The "Building" is defined in the Lease to include "vehicular access and ramp" and "the car parking area and the car parking spaces on level 1 of the Building". The Eleventh Schedule defines the costs and expenses to be included in the expenditure as including *"the costs incurred by the Lessor in maintaining repairing and where necessary in renewing, replacing or rebuilding the Building both interior and exterior excluding the Demised Premises and all parts of the Building"*.

19. The Tribunal therefore concluded that the proposed works would in principle be recoverable pursuant to the service charge provisions in the Lease.

#### **Consultation under section 20**

20. The Tribunal was referred to copies of the notices served under section 20 of the 1985 Act. The notice of intention was at pages 54 to 55 of the bundle and was dated 4 February 2009. The responses received to the notice of intention were at pages 119 to 132 of the bundle, only 7 responses had been received, 6 of which objected to the works. The objections were made on the basis of the costs, the improbability of flooding, whether insurance would cover the problem and whether a better pump would solve the problem. After the service of the notice of intention a meeting was held on 19 February 2010 to discuss the proposed works which was attended by Mr Hore who gave a tour and explained the rationale behind the works. The Applicants then decided to vary the works to a two stage process (carrying out works to the construction joints and storm water drainage system first and the carrying out the water proofing of the walls and floors at a later date if necessary. They wrote to the lessees by letter dated 15 April 2009 setting out the planned variations. By varying the works as proposed the cost would be spread over a two year period.

21. A second notice was subsequently served under section 20, a notice of estimate on 5 July 2010. It was noted that the time period set out in the notice had yet to expire. The Tribunal noted that the notice did not contain

an estimate of each individual's contribution and this should be contained if practicable.

22. The Tribunal did note the numerous meetings which had been held to discuss the works and the efforts made by the Applicants to keep the lessees informed.

### **The Proposed works**

23. The Tribunal heard the background to the works from Mr Baker and this was set out at page 79 of the Applicant's bundle. The first serious flood at the Property occurred in 1992 and then again in 1994 when the lower car park was flooded to a depth of approximately 18 inches. Works were carried out by NHBC under warranty in 1995 who "injected" beneath the basement slab, carried out works to the construction joints, constructed a block work bund around the drain at the lower level and installed a one way valve. Minor flooding continued and in 2001 further works were instigated which included a catch pit in the lower area, construction of brick walls in front of ventilation grills and the provision of drain plugs.
24. No serious problems then occurred until 2006 when flooding to a depth of 4 inches occurred and again in 2007 when flooding to a depth of 2 inches (or as much as up to 5 or 6 inches) occurred.
25. Following the flooding in 2007 Fell Reynolds instructed a consultant to advise in relation to the problem. A report was prepared by Angel Thompson on 27 February 2008 (at pages 32 to 34 of the Applicant's bundle) and a subsequent report prepared by Christopher Hore. Mr Hore was retained as a local engineer with knowledge of the local environment and to confirm the findings of Mr Thompson. Both reports confirmed the problem and Mr Hore was then instructed to undertake further investigative works and he reported in respect of these further issues by further reports dated 14 August 2008 and 23 September 2008. By a letter dated 15 January 2009 Mr Hore provided approximate costings for both

the damp proofing of the basement and dealing with the water ingress due to heavy rainfall.

26. Mr Hore's reports were contained in the Applicant's bundle and he gave evidence to the Tribunal in relation to the proposed works. Mr Hore confirmed that he was a chartered civil engineer. The Tribunal was referred to the scope of works at page 61 onwards of the Applicant's bundle. This has now been superseded by a further version which was not before the Tribunal but Mr Hore confirmed that the scope of the works remained identical to those set out in the specification before the Tribunal. The proposed works were summarised as consisting of injecting a resin sealant to all cracks and joints and improving the drainage by installing additional flood valves and an extra sump pump. He explained that the original intention had been to also provide a waterproof coating but this had been removed from the works proposed at the first stage and would be carried out as a second stage only if necessary.
27. Mr Hore was asked by the Tribunal why he considered the works were necessary. He confirmed that the structure of the building itself was not at risk in the short to medium term. That may well change in the future so the position would be monitored. The Tribunal heard that it was Mr Hore's view that the works were necessary to maintain the building in what he described as a "*usable condition*", and he clarified that by this he meant to maintain the use of the car park and basement storage areas at all times.
28. The lowest price contracted for the proposed works was set out in the notice of estimates at a total of £113, 187.00, a contribution equating approximately to more than £2,000 from each lessee (exact contributions will differ according to the size of the flat).
29. In addition to Mr Hore's evidence as to the necessity for the works, Mr Baker also submitted that the works were necessary to safeguard the value of the Property. The Tribunal heard that his view was that there may be a disincentive to purchase a flat in a property where flooding occurs. He submitted that if this problem was not addressed then the flats may well suffer from a diminution in value.



30. Mr Henderson made submissions challenging the necessity for the works. He is a Fellow of the Royal Institute of Chartered Surveyors and gave details of his extensive professional experience. He had obtained a report from Maslen Brennan Henshaw Surveyors in relation to the works. This was contained in his bundle. The main conclusion of the report was that *"the condition of the concrete fabric of the building is not sufficiently damaged as to require a complete surface treatment for damp prevention"*.
31. Mr Henderson had prepared a statement which was included in his bundle. His position was straightforward. He considered that the proposed works to the basement were *"an unnecessary expense"* and that they were *"irrelevant to the wellbeing of the building or even of any parked cars"*. He also pointed to the irregularity of the flooding, the last flood had occurred 3 years ago, the last substantial flood had occurred in the 1990s, flooding, he said, was certainly not a regular occurrence. In any event the lessees had regard to any flood warnings and could take action to move their cars from the car park area if a flood was thought to be possible.
32. Mr Henderson also asked the Tribunal to consider the proportionality of the cost of the proposed works in relation to the benefit to the lessees. The lessees were happy to suffer occasional flooding in the basement rather than pay for expensive works which may not in any event solve the problem. The Tribunal heard that the lessees for the most part were an ageing community who would rather spent their money on different things.
33. The Tribunal also heard of alleged irregularities within the Applicant company and submissions that the lessees should be allowed to vote on whether the works should go ahead. This is a matter of company law and does not concern the Tribunal. The Tribunal therefore makes no findings in relation to any such matters of company law.

## **The Tribunal's decision**

34. The Tribunal considered the evidence it had heard carefully. It noted Mr Hore's evidence that the fabric of the Property was not at risk but that the works were aimed at maintaining usage of the car park in times of flooding. The Tribunal noted that only the lower half of the car park would be likely to be affected by any flooding in any event and that it had seen on inspection that the car park was not well used.
35. The Tribunal concluded that the cost of the works was not reasonable when proportionality was taken into account. The episodes of flooding were sporadic, they did not threaten the integrity of the building and resulted in only minor inconvenience to those lessees using the car park. In contrast the proposed cost of the works was high, in excess of £2,000 per lessee and taking a step back and looking at the situation in the round in the Tribunal's view these costs could not be justified.
36. The Tribunal was not persuaded by the Applicant's arguments in relation to a possibility of diminution in value to the flats having been presented with no real evidence in this regard.
37. The Tribunal appreciates that there is a need for continuing review and the position may well change. If the flooding becomes a more regular occurrence works may be required in the future.
38. The Tribunal would mention that in its view the Applicant company has acted in good faith in relation to the works. It had made every effort to consult with the lessees at every stage of the planning process as evidenced by the minutes of the many meetings it has held with the lessees and had made an application to the Tribunal for a determination rather than proceeding to carry out the works.

**Application for costs**

No application was made by either party to the proceedings in relation to costs.

Chairman: Sonya O'Sullivan

Dated: 4 August 2010