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HM COURTS & TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL (Southern Rent Assessment Panel)

In the matter of an Applications under Section 27A of
the Landlord & Tenant Act 1985 (Service and Maintenance Charges)

Case No. CHI/24UE/LSC/2012/0089

Property: 3 Leith Avenue, Fareham, Fareham PO16 8HS

Between:

MS ELIZABETH WALTERS

("the Applicant")

And

MAIDENBRIDGE PROPERTIES LIMITED

("the Respondent")

Members of the Tribunal: Miss T A Clark Lawyer/Chairman
MR P Turner-Powell FRICS Valuer/Member

Date of the Decision: 11th October 2012

Date of Inspection 20th September 2012

Hearing : 20th September 2012

Summary of Decision

The Tribunal determined that the Respondent landlords in this case fully complied with their obligations to consult, and indeed no issue was taken on this.

The Tribunal further concluded that the works undertaken were both necessary and reasonable and accordingly the Applicants are liable to pay a one third share, subject only to the issue of reasonableness of the Managing Agents charges for this year which appear to be excessive and which following receipt of this decision may be subject to appropriate review by the Respondents prior to certification at the end of the year.

1. The Application:-

This is an application commenced in the Tribunal. The Application relates to maintenance charges in respect of the property. Directions were given on the 4th July 2012.

The Tribunal has been provided with documents from both parties and neither party took any issue in relation to those documents provided.

The matter was listed for 20th September 2012.

The Applicant appeared in person at the Inspection and the Hearing. The Respondents appeared by Mr Thomas Bagley and Mrs Caroline Bagley .

2. The Law:

Section 27A of the Landlord and Tenant Act 1985 (hereinafter called "the Act") provides for applications to the Tribunal to be heard for a determination by that Tribunal as to whether a service charge is payable and if so -

- 1) the person by whom it is payable.
- 2) To whom it is payable.
- 3) The amount payable.
- 4) The date by which it is payable.
- 5) The manner in which it is payable.

In addition the Tribunal has the power to decide about the costs incurred for services, repairs, maintenance, improvements, insurance or management of any specified description and likewise as to -

- 1) Whom payable
- 2) By whom payable
- 3) Date payable
- 4) Manner in which payable.

Section 27A (5) of the Act states that the tenant is not taken to have agreed or admitted any matter by reason only of having made payment.

Section 18 of the Act defines service charges and "relevant costs" and section 19 provides as follows;

"Relevant costs shall be taken into account in determining the amount of service charge payable for a period -

- (a) Only to the extent that they are reasonably incurred, and
- (b) (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.

Section 20 of the Act applies to qualifying works and provides that the relevant contributions of the tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either;

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

The consultation requirements are set out in full.

3. The lease:

Clause 1 of the lease provides as follows;

“CONTRIBUTING AND PAYING yearly for all expenses set out in the fourth schedule hereto during the said term by way of additional rent an amount to be calculated in the manner set out in the Fifth Schedule hereto (and herein referred to as “the Maintenance Charge””

The Fourth Schedule provides that the

“Expenses and matters in respect of which the Lessee is to contribute

1. The expense of maintaining repairing making up cleansing decorating and renewing:-
 - (a) The structure of the building and in particular the foundations external and other walls roofs vents stacks and rainwater and other pipes and the outer part of the window frames
 - (b) -
 - (c) -
 - (d) Boundary walls and fences
 - (e) The general maintenance repair improvement of the Building and grounds
2. The cost of decorating and maintaining the exterior of the property
3. -
4. -
5. -
6. The fees of the Managing Agents and Accountants in respect of management of the above mentioned matters

The Fifth Schedule defines the maintenance expenditure as being;

- (d) “the total amount which shall be certified by the accountant of expenditure incurred during the accounting year in respect of the matters set out in the Fourth Schedule hereto”
- (e) “The Maintenance Charge” means the amount ... payable by the Lessee being one third of the total of the agreed maintenance expenditure ...”

4. Inspection:

An external inspection took place at the property prior to the Tribunal hearing. All parties were present.

The Tribunal noted that the property had a pitched roof at the front with three dormers which all appeared to be tiled with new concrete tiles. There was a front extended porch area which also had the appearance of having been retiled in matching tiles. The back portion of the property was a flat roof and this did not appear to have had works undertaken. The property appeared newly painted with new guttering. The windows were UVPC.

The fence to the right of the property had been renewed. There was a passageway with concrete steps next to the fence which appeared to provide public access via the steps at the far end and along the length of the new fence. The fence posts had been sunk into concrete. On the left of the building was an old piece of fencing to which additional boarding had been attached. This was immediately behind the Applicants front door. This and a small portion of low fencing to the left and in front of the Applicants front door detracted from the otherwise new appearance of fencing.

5. The hearing:

At the commencement of the hearing it became apparent that the Applicants did not have all the Respondents documents in bundle form. Arrangement were therefore made to provide them with a paginated bundle and they were given time to read through this. Following this adjournment the Applicants agreed that in fact they had seen most of the documents prior to the hearing.

The Tribunal heard firstly from the Applicant. She was accompanied by her partner and there was no objection taken by either the Respondents or the Tribunal to his input.

Applicants Evidence: Consultation

The Applicant did not take any issue with the consultation accepting that the Respondents had complied with their statutory obligations. She said she had asked for some quotations for work to be done but as she was not living at the property but in Germany it was difficult to follow these up. By the time she had returned to this country the works had already started.

The Applicant stated that she believed the works were unnecessary and therefore the quotations obtained were too high and excessive. The Applicant referred to information obtained on the internet about cost of works but accepted that much of the information was out of date or not directly relevant to this work.

The Roof

The Applicant stated that the roof had not been leaking, Her view therefore was that that no immediate work needed to be done and that there were simply a few loose tiles. in her view the roof did not need completely replacing and that tiles could have been re-fixed or a few tiles replaced.

The Applicant told the Tribunal that her understanding was that works had been done to the roof 25 years ago before the property was converted from a shop. She had purchased her property in 1990. She wondered if there was a guarantee for this work.

The Applicant was unaware as to whether or not any insulation had been put in to the roof or the precise nature of the works. She said that she lived abroad for some of the time and much of the work was done in her absence. She had her partner explained that when they had attempted to go into the loft to look at the work that debris had rained down on them. The Tribunal asked how the Applicants gained access into the roof space and they said that their flat was on the first floor. The Tribunal asked how many of the dormers, if any, were directly above their flat. The Applicant explained that their flat occupied the entirety of the first floor, being the area that was re-roofed.

The Applicants said that in her view it was unnecessary to have repaired or replace the overhanging porch. She believed that work had been undertaken to the porch within the last 10 years.

The fence

The Applicant said that the boundary line of the property according to the land registry was to the right of the apparent right of way and so no fencing at all was necessary other than to block off this right of way so that the appearance of the boundary line changed and abutted the property next door, which was a pub that appeared to be undergoing renovation at the time of our inspection.

Other works

The Applicant said that her front door did not need painting as she painted it regularly.

The Applicant explained that this was a very large bill for her to pay, that the work had not been necessary and that in the current economic climate this was especially hard.

Respondents Evidence:

Consultation

The Tribunal heard from Mrs Bagley, a director of the Respondent Company. Mr Bagley followed giving his evidence which confirmed and expanded upon the evidence of Mrs Bagley. The Respondents confirmed their statement.

The Respondents confirmed that they had originally instructed its surveyor, Mr Barron, to report to them on the condition of the report. A general condition assessment report was prepared. This report described the roof as being in "poor condition and I believe them to beyond economical patch repair." A Schedule of External Repair Work was prepared by Mr Barron.

The Respondents then decided to comply with the requirements to consult in accordance with the Landlord and Tenant Act 1985.

The steps that were taken are clearly set out in the statement and were not disputed.

The Respondents also explained that when complaint about the proposed work was made by the Applicant Mr Barron arranged for another independent surveyor to carry out an inspection of the property and a Mr Eyley was so instructed. He too advised on the poor state

of the roof, upheld the findings of Mr Barron and that works to the roof were necessary in accordance with the Schedule.

The roof

The Tribunal was told that the roof was the original roof and had never been replaced according to the surveyor. It dated back to the 1950's.

The porch had had work undertaken about 35 years ago. No guarantees were available for this as the property had been bought at auction.

On commencing the works and the scaffolding going up additional problems came to light which had not been apparent at the time of survey. This included that conditions of the battens were poor, no insulation or felt in the roof space/roof void, there being a break down of the pins and/or nibs of the tiles necessitating replacement of many more tiles than had been envisaged. On the overhanging porch the batons holding the porch in place had come away from the wall, making the whole structure precarious.

The Tribunal requested further information relating to what was found, in particular whether or not there were any records. The tribunal therefore adjourned and the Respondents were able to produce copies of the site notes with photographs. A further adjournment was granted for the Applicants to consider this.

These documents were explained in detail and showed very clearly the condition of the roof when inspected closely. Photographs showed in particular the broken battens and lack of any roof felt. There was also a photograph showing that the bolts holding the front porch in place had come away from the wall at certain points. Tiles were shown in a very poor state.

The Applicants declined to comment in this document save to repeat that the roof had not been leaking.

Fence

The Respondents had already produced photographs of the old fence which appeared to be in a very poor state of repair. They noted the apparent discrepancy in the boundary line and said they would need to take advice but had placed fence along the identical line of the old.

Other

The Respondents stated that all the doors had been repainted and that this as done after all the work was completed.

Decision:

The Tribunal concluded that there had been compliance of the requirements to consult on the part of the Respondent. The Tribunal further concluded that the Respondents had acted properly throughout the consultation period.

The Tribunal concluded that in accordance with their statutory obligations the Respondents had elected a contractor and when that contractor could not confirm the ability to proceed

they had approached the next most expensive contractor and invited them to match the lowest price. This was done.

The Tribunal were satisfied from the documents produced both prior to the hearing, and in particular the works diary which included photographs of works undertaken that the work undertaken was necessary and reasonable.

The Tribunal was satisfied that the replacement of the fence was necessary and reasonable. The Respondents had replaced like for like. The issue of the boundary was not something the Tribunal could determine and there may be legal issues related to the boundary line upon which the Respondents would need to seek advice if they wish to block a right of access which has existed for members of the public for some time.

The Tribunal was satisfied that the redecoration of the door belonging to the tenants was de minimis in this contract, but would have probably been required following extensive external works.

The Tribunal concluded that the Respondents had acted throughout in accordance with their statutory obligations.

The Tribunal did ask whether or not a guarantee was available in relation to the work undertaken. We understand that this is being put in place.

In addition the Tribunal asked if the respondents could undertake to clear the roof space of debris and were told that this would be undertaken. The Applicants will of course have to co-operate with this by allowing access or it cannot be done.

T A CLARK Chairman
11th October 2012

