10427

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/29UH/LSC/2014/0016 CHI/29UH/LSC/2014/0018
Property	:	1, 11, 14, 15 & 16 Cleveland House Woodford Road Maidstone, Kent ME16 9BU 8 Kenilworth House Woodford Road Maidstone, Kent ME16 9BY
Applicants	:	Mrs. C.T. Thomas Mr. I. Mustaqim Accommodate – UK Limited Mr. T. Bonett Mr. R. and Mrs. F. Russell Ms C. Highsted
Representative	:	Mr. D. Thomas
Respondent	:	Golding Homes Limited
Representative	:	Daniel Francis, Solicitors.
Type of Application	:	Liability to pay service charges Section 27A Landlord and Tenant Act 1985 Limitation of costs Section 20C
Tribunal Member(s)	:	Judge R. Norman Judge W.M.S. Tildesley OBE Mr. C.C. Harbridge FRICS
Date and venue of hearing	:	2nd July 2014 Medway Magistrates Court
Date of Decision	:	29th July 2014

DECISION

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Decision

1. The following service charges are payable:

(a) by each of the lessees at Cleveland House the sum of £11,697.18 in respect of the re-roofing of Cleveland House and the replacement of communal windows at Cleveland House.

(b) by the lessee at Kenilworth House the sum of £11,464.04 in respect of the re-roofing of Kenilworth House and the replacement of communal windows at Kenilworth House.

2. An order is made under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") that all or any of the costs incurred or to be incurred by Golding Homes Limited ("the Respondent") in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Mrs. C.T. Thomas, Mr. I. Mustaqim, Accommodate – UK Limited, Mr. T. Bonett, Mr. R. and Mrs. F. Russell and Ms C. Highsted (collectively referred to as "the lessees").

Background

3. The lessees seek a determination under Section 27A of the 1985 Act as to whether service charges are payable in respect of roofing and communal window replacement works at Cleveland House and Kenilworth House (collectively referred to as "the subject properties").

4. The lessees also seek an order for the limitation of the landlord's costs in the proceedings under Section 20C of the 1985 Act.

5. The freehold interest in the subject properties was held by Maidstone Borough Council but was transferred to Maidstone Housing Trust Limited and then to the Respondent. The lessees are the holders of long leases of their flats and under the terms of their leases are liable to pay service charges in respect of certain works carried out at the subject properties.

6. With the consent of all parties the applications in respect of the subject properties were, on 2nd July 2014 heard together.

Inspection

7. On 2nd July 2014, the Tribunal inspected the exterior of the subject properties and the communal staircases. Present were Mr. D. Thomas, Mrs. C. T. Thomas, Mr. T. Bonett, Mr. R. and Mrs. F. Russell, Ms C. Highsted and Mr. R. James. The Tribunal also inspected the exterior of Grange House. There was no appearance by anybody on behalf of the Respondent.

8. Cleveland House and Kenilworth House form part of an estate of six similar low-rise blocks of flats which were constructed for Maidstone Borough Council about 50 years ago.

9. Cleveland House and Kenilworth House are of identical design, each comprising of two, four storey blocks of eight self-contained flats conjoined by a four storey communal hallway/staircase and landing structure. There were, and are, no lifts to the buildings.

10. The properties were built to a concrete frame, having external elevations clad in facing brick, and with a concrete roof slab surfaced in asphalt which was dressed up to concrete parapets, capped with concrete coping stones. Surface roof water discharged through roof gullies to internal rainwater downpipes. The connecting staircase structure is of identical construction, save that one elevation was, we understood, formed by a glazed curtain wall, having a galvanised steel frame and single glazed windows.

11. Grange House which is referred-to in submissions reflects this design and construction, with the exception of the roof cladding which we were advised has been overlaid with bituminous roofing felt.

12. In 2012 the roof structures of Cleveland House and Kenilworth House described above were over-pitched by a proprietary roofing system comprising metal trusses clad with profiled metal tile panels, finished with a protective powder coating. Roof surface water now discharges through a system of traditional eaves gutters and externally via fixed rain water downpipes. Insulated panels have been fixed to the parapets to negate what would otherwise have constituted a 'cold-bridge' to the newly formed structure. The windows in the staircase structures were replaced with aluminium-core framed double glazed windows.

Hearing

13. The hearing was attended by Mrs. C. T. Thomas, Mr. T. Bonett, Mr. R. and Mrs. F. Russell, Mr. Draper the managing director of Accommodate – UK limited, Ms C. Highsted and Mr. R. James. Mr. D. Thomas attended to represent the lessees. Mrs. Eniolu of Daniel Francis Solicitors attended to represent the Respondent. She was accompanied by Mr. Hackman, Mr. Horey, Mrs. Parrott, Mr. Roberts and Mr. Flowers.

14. It was agreed by the parties that the leases of the subject properties are in common form.

15. The Respondent accepts that the consultation procedure under Section 20 of the 1985 Act applies to the works under consideration in this case.

16. During the course of the hearing it was confirmed that the lessees accept:
(a) That by 2011, and even by a date some years earlier, the roofs of the subject properties were in dire need of work being carried out to remedy the ingress of water.
(b) That the lessees are liable to contribute towards the cost of the re-roofing and the replacement of the communal windows at the subject properties.

(c) That the pitched roofs which have replaced the flat roofs are an improvement which has been beneficial to the lessees.

17. The following matters forming part of the 2013 service charges were in dispute at the hearing:
(a) Whether there had been compliance with the consultation requirements under Section 20 of the 1985 Act
(b) Whether the Respondent or Maidstone Housing Trust Limited had been negligent in purchasing the freehold of the subject properties without a full survey.
(c) Whether there had been historic neglect
(d) The decision to replace the flat roofs with pitched roofs rather than repair the existing flat roofs or replace them with new flat roofs and the lessees' contribution towards the cost of the works
(e) The replacement of the windows in the common parts and the lessees' contribution towards the cost of the works
(f) Whether an order under Section 20C of the 1985 Act should be made

18. The Tribunal heard evidence and submissions from Mr. Thomas, Mr. Draper, Mr. James a building surveyor for the Applicants, and from Mrs. Eniolu, Mr. Horey, Mr. Hackman and Mr. Flowers FRICS Dip.Proj.Man. for the Respondent.

19. In May 2011 Mr. James inspected the flat roof of Cleveland House which had an asphalt roof covering approximately 25 years old. Mr. James found the horizontal roof to be in reasonable condition which had several cracks and holes in the asphalt possibly caused by thermal movement in the flat roof. Mr. James, however, noted that the vertical upstands to the parapet walls were in very poor condition, having de-bonded and sagged over large areas with temporary flash bands stuck over some of the horizontal top joints with the parapet wall. Mr. James considered that the concrete coping stones to the top of the parapet wall in parts were not in good condition with mortar missing from the joints leaving gaps which allowed water ingress.

20. Mr. James was of the opinion that the failure of the asphalt roof was caused solely by lack of maintenance, and that the roof could have been repaired by a specialist asphalt contractor for a fraction of the cost of the new steel pitched roof. Mr. James pointed out that 50 years was the accepted life of an asphalt roof laid properly in accordance with the relevant BS codes of practice and properly inspected and maintained. Mr. James questioned the Respondent's claims that the life of a new steel roof would be in excess of 60 years, and be maintenance free during that period.

21. Mr. Flowers was instructed by the Respondent to provide an independent expert report on specific items of work carried out to Kenilworth House and Cleveland House. On 2nd June 2014 Mr. Flowers carried out an inspection of the two blocks of flats and of Grange House which was a block of similar construction with a replacement roof of felt covering.

22. In view of the timing of his instruction, Mr. Flowers was unable to inspect the original flat roofs for Kenilworth House and Cleveland House. Mr. Flowers

was, however, provided with photographs of the original flat roofs and concluded that the photographs confirmed the asphalt to be in poor condition and at the end of its life. On the strength of the photographs alone Mr. Flowers was unable to agree that the flat roof could not be repaired but he noted that the leaseholders did not dispute that the flat roof was in a poor state of repair, and needed replacement.

23. Mr. Flowers had not been supplied with evidence of a routine repairs regime between the transfer of the blocks to Maidstone Housing Trust Limited and then to the Respondent, although he said in oral testimony that the photographs indicated that some repairs had been carried out to the flat roofs. Mr. Flowers also observed there were already signs of deterioration of the flat roof coverings on Grange House which had been replaced in 2009. Mr. Flowers said the maintenance of the flat roof would normally include removal of debris, application of solar reflective coatings and localised repairs. Mr. Flowers, however, added that the defects in asphalt covering as revealed in the photographs would not appear to be the result of a failure to carry out routine maintenance. Finally Mr. Flowers stated that an asphalt roof should have a life expectancy of at least 30 years,

24. Mr. Flowers had not been able to analyse the figures used in the option appraisal carried out by the Respondent for choosing between a flat roof replacement and a pitched roof conversion. Notwithstanding this, Mr. Flowers agreed with the principles underpinning the appraisal, namely the pitched roof conversion should last in excess of 60 years, and the flat roof system would require recovering after 20 years. Mr. Flowers also stated that the pitched roof should be virtually maintenance free for a period approaching 60 years, and that its design should improve the insulation of the blocks of flats.

25. On the question of replacing the communal windows using aluminium curtain walling instead of uPVC Mr. Flowers expressed the opinion that the width of the opening would be best suited to aluminium which was more rigid and stronger than uPVC equivalent over this span, and more robust in the communal situation.

26. Mr. Flowers said the use by the Respondent, or its predecessor Maidstone Housing Trust Limited, of a stock condition survey was an acceptable method of establishing the overall condition of the stock and enabling future financial planning. Mr. Flowers also added that he did not understand the leaseholders' claim that a detailed structural survey would have revealed the specific defects to the blocks because they would have remained liable for their share of the costs irrespective of any adjustments achieved on price when the stock was transferred to the Respondent or its predecessor Maidstone Housing Trust Limited.

27. Mr. Hackman, the Respondent's Asset Manager Surveyor, stated that it was not uncommon for asphalt surface flat roofs to require replacement at 20 to 25 years, and that a flat roof with asphalt coverings which lasted 27 years in the case of the subject properties would not be regarded as having failed prematurely. Mr. Hackman pointed out that historically the roofs at both Cleveland and Kenilworth Houses had developed several problems and

various repair works had been carried out by the Respondent. Mr. Hackman identified that the problems with the roof were not restricted to the asphalt covering but extended to the failure of the pointing on the parapet concrete stones and the asbestos flues.

28. Mr. Hackman was of the view that the flat to pitch roof conversion was the best practice option for the kind of flat roofs on the subject properties. Mr. Hackman stated that although the initial outlay on a pitch roof conversion was higher than a flat roof replacement, the ongoing savings associated with the conversion outweighed the start up costs. In this respect Mr. Hackman produced an options appraisal which showed that after 20 years the costs of the pitched roof conversation were considerably less than those for a flat roof replacement. Mr. Hackman acknowledged that he used the industry standard costs for the appraisal rather than the actual costs for the specific works.

29. Mr. Hackman pointed out that the Notice of Intention to Undertake Qualifying works dated 14th June 2011 clearly stated nominated contractors would have meet certain requirements in relation to finances, insurance and health and safety.

30. Mr. Horey, the Respondent's Leasehold Advisor, stated that section 20 Notices of Intention were sent to all leaseholders on 14th June 2011. The Notices set out the reasons for the proposed works and also notified the leaseholders of their right to make observations and nominate a contractor by no later than the 15th July 2011.

31. Mr. Horey said that it came to the Respondent's attention that Mrs. C. Thomas and Mr. Draper had not received their section 20 Notices because they were delivered direct to the flats. On 21st July 2011 the Respondent sent out section 20 Notices to Mrs. Thomas and Mr. Draper at their correspondence addresses inviting comments and nominations by 21st August 2011.

32. Mr. Horey stated that on 19th September 2011 a second consultation letter by way of a statement of estimates was sent to all leaseholders. In addition to the formal consultation process the Respondent held an informal meeting in July 2010 to explain to residents details of the proposed works at Cleveland House and Kenilworth House.

Reasons

33. The Tribunal considered all the documentary evidence produced by and on behalf of the parties, the independent expert evidence of Mr. Flowers and all the evidence given and submissions made at the hearing. The Tribunal also considered the explanation of the VAT situation which was provided after the hearing. Findings of fact were made on a balance of probabilities.

34. The leases provide for the landlord to maintain, decorate, renew, improve and modernise, as the landlord may from time to time consider necessary, the structure and exterior of the subject properties and the lessees

are liable to make a contribution to the cost of such works. The terms of those provisions in the leases are wide.

35. However, the 1985 Act provides that service charges are payable only to the extent that they are reasonably incurred and only if the works are of a reasonable standard.

36. Also, Section 20 of the 1985 Act provides a procedure for consultation with the lessees in respect of major works.

Compliance with the consultation procedure.

37. The Applicants did not challenge the accuracy of Mr. Horey's testimony in respect of the steps taken by the Respondent to consult with the lessees about the proposed works

38. The Applicants pointed out that two of the lessees did not receive the first notice of intention to carry out the works, sent on 14th June 2011. This was because, although the Respondent was aware of the lessees' addresses for correspondence and that they did not reside in the flats, the notices were sent to the flats.

39. The Applicants, however, agreed that those lessees became aware of the intention to carry out the works and that when it was discovered that they may not have received the notices, new notices were served on them by the Respondent at their correspondence addresses giving the required period of time for making observations on the proposed works and nominating contractors.

40. The Applicants argued that the notices had to be served on all the lessees at the same time in order to be valid but no authority for that argument was produced.

41. The Applicants also stated in the documents produced that the work to the windows had not been included in the notice of intention but that was incorrect. The notice did include the work to the windows.

42. Evidence was given that contractors had been nominated by the lessees but that when the contractors were informed that they would have to satisfy certain conditions in order to be placed on the Respondent's list of approved contractors no estimates were received from them. The Applicants submitted that it was impossible for the contractors to comply with the conditions within the 30 day consultation period. We were satisfied that, particularly with a contract of this size, it was reasonable for the Respondent to require conditions to be met which concerned such matters as the financial standing of the contractor, insurance, and references. Meeting those conditions would not have to be completed within the 30 day consultation period.

43. For these reasons the Tribunal was satisfied that the notice of intention complied with the requirements of Section 20 of the 1985 Act and that there had been compliance with the remainder of the consultation procedure.

44. Before dealing with the other matters in dispute, the Tribunal makes the following findings of fact on the replacement of the roofs and communal windows:

(i) Although Mr. James suggested that the original roofs could have been repaired by a specialist asphalt contractor, we are satisfied that the weight of evidence indicated that the flat roofs had come to the end of their useful lives. We accept Mr. Hackman's description of the faults identified with the existing roofs at paragraph 10 of his witness statement dated 3rd June 2014 and that there had been a persistent problem with water ingress from around 2005.
(ii) There was a significant dispute between the parties about the extent of the maintenance carried out by the Respondent on the roofs, and whether its approach was reactive. We find that the Respondent had carried out repairs to the roof but there was no evidence of a systematic approach to maintaining the flat roofs.
(iii) Mr. James stated that the Respondent's failure to maintain the roofs on a regular basis was the principal cause of the failure of the roofs. Mr. James also said that the expected life of an asphalt roof was 50 years if installed and maintained properly. On balance we preferred the evidence of Mr. Hackman who stated that a flat roof with asphalt coverings which lasted 27 years would not be regarded as having failed prematurely.
(iv) Our reasons for preferring Mr. Hackman's evidence were that the projection of a 50 year life cycle for asphalt roof coverings was an expectation based on ideal circumstances. The fact that the original flat roofs on Cleveland and Kenilworth Houses had been replaced within a space of around 20 years with the flat roofs complained of, and of the problems of the new flat roof of Grange House, albeit of felt covering, suggested there were other factors at play which resulted in a life of less than 30 years for flat roofs on the properties. We placed weight on Mr. Flower's evidence which ruled out the failure to carry out routine maintenance as a cause of the identified defects with these flat roofs. Also the 27 year life of these flat roofs fell within the bounds of probability of Mr. Flower's estimate for the life expectancy of an asphalt roof of at least 30 years or possibly more.
(v) We are persuaded by the evidence of Mr. Hackman and Mr. Flowers of the cost benefits of replacing the flat roofs with the pitch roof conversions. Although we consider Mr. Hackman's appraisal of the costs of the two options optimistic in favour of the pitched roof conversion, we are satisfied that in the long term the pitched roof is the best option, in respect of costs savings and added benefits, particularly the insulating qualities of the new arrangements.
(vi) We find that the communal windows which were replaced were the original windows when the properties were constructed around 1966, and that they were in poor condition with signs of failure of the galvanising in the Crittall windows and rusting around the joints.
(vii) We prefer the Respondent's evidence of the aluminium windows being more appropriate than uPVC ones for the width of the opening and the location of the communal windows on the walkways in the blocks.

Negligence of the Respondent or Maidstone Housing Trust Limited when purchasing the subject properties from Maidstone Borough Council.

45. The Applicants submitted that when the subject properties and a substantial number of other properties were purchased, Maidstone Housing Trust Limited should have had a full survey of the properties rather than the stock condition survey. Had that been done, the extent and cost of repairs would have been discovered and a discount could have been obtained which could then have been used to carry out the repairs.

46. We found that the type of survey carried out by the Respondent or its predecessor Maidstone Housing Trust Limited when the properties were transferred to it was normal and reasonable in such a transaction and we would not expect a full survey of each property. However, the evidence was that the stock condition survey dated February 2002 did show that the majority of the stock was in need of repair and that just over 50 per cent did not meet the Decent Homes standards. There was no evidence, however, that persuaded us that this was relevant to the matters before the Tribunal. Irrespective of the price paid or the result of any survey, the obligation of the landlord to repair the structure and common parts of the subject properties passed from Maidstone Borough Council to Maidstone Housing Trust Limited and then to the Respondent and did not affect the obligation on the part of the lessees to pay for such repairs.

Historic neglect

47. If the landlord fails to comply with the repairing covenant in the lease then the tenant can sue for damages for breach of covenant. Such an action would normally be taken in the County Court but the Tribunal has a limited discretion in exceptional circumstances to set off a sum, which would have been the damages awarded by the County Court, against service charges.

48. In this case the Applicants were required to satisfy us that the roofs were brought to a premature end by the Respondent's failure to comply with its repairing obligation, and that they suffered a loss as a result of the Respondent's breach.

49. Although we found there was no evidence of systematic maintenance of the roofs by the Respondent, we were not convinced that the absence of such maintenance resulted in the roofs being replaced early. We agreed with Mr. Hackman's assessment that a roof with asphalt coverings which lasted 27 years would not be regarded as having failed prematurely. We were satisfied that the flat roofs had come to the end of their useful lives and needed renewing and therefore set off does not arise.

The decision to replace the flat roofs with pitched roofs rather than repair the existing flat roofs or replace them with new flat roofs and the lessees' contribution towards the cost of the works

50. The Applicants refer to a letter dated 19th February 2010, from Maidstone Housing Trust Limited headed "Consultation on Sinking Funds for Major Repair Works". That letter referred to substantial repairs being required from time to time and stated that at some point there would be a need to replace windows or roofs and to repaint communal or external areas. Two alternative sinking fund proposals were outlined to make provision for repairs at some time in the future. There were illustrations in which the roof replacement was expected in eight years time. The Applicants were surprised therefore when about sixteen months later the first notice of intention under the consultation procedure was served. Perhaps, ideally, a sinking fund should have been proposed earlier and a roof replacement should not have been chosen for the illustrations but the illustrations were just that and the letter of 19th February 2010 did not create any contract for the works to the roofs being in 2018 or any promise that there would be no renewal of the roofs before 2018. Additionally, there is no dispute that by 2011 the roofs were in dire need of attention.

51. We did not see the roofs of the subject properties before the flat roofs were replaced with pitched roofs but we did see photographs indicating that there were faults in the original construction and that there had been repairs which could be described only as being of a temporary nature. However, there was agreement that the roofs of the subject properties were in a very poor state. Although there was some suggestion that the roofs could have been repaired we were not persuaded by the evidence that that was a practical proposition. There was conflicting evidence as to the expected life of a flat roof but on the basis of the evidence and our own knowledge of flat roofs we consider that thirty years life could be expected. In this case the roofs had lasted for twenty six or twenty seven years so were not far short of their expected life.

52. We noted that the flat roof of Grange House had been recovered with a supplementary layer of bituminous felt. Whether that was a reasonable way of dealing with that roof is not within the scope of this application but we note that Mr. Flowers had identified problems with that flat roof despite the fact that it had been recovered in 2009.

53. The flat roofs could have been replaced with new flat asphalt roofs and that would have resulted in lower service charges in 2013 but we found that the pitched roofs were a benefit to the lessees in providing better resistance to water ingress, better insulation, better drainage from the roof, reduced maintenance, a better appearance, and costs savings over a period of time. Some leases do not allow the landlord to make improvements but that is not the case here. The leases in this case give the Respondent the right to make improvements and for the lessees to contribute towards the cost.

54. As to the subject properties, we were satisfied that the decision to replace the flat roofs with pitched roofs was reasonable and that the costs were

reasonably incurred. The lowest tender was accepted and there was no evidence that the cost was anything other than reasonable.

55. We were not satisfied that there was evidence of the works falling below a reasonable standard.

56. The Respondent had treated the provision of services in connection with the major works as a taxable supply, in which case the Applicants as final consumers were liable to pay VAT on that supply of services.

Replacement of the windows in the common parts and the lessees' contribution towards the cost of the works

57. It is agreed that the windows in the common parts were single glazed in Crittall type steel frames protected by steel balustrades on the landings. It was suggested that the windows could have been repaired. We did not see the windows and frames before they were replaced and had little evidence of their condition. At the inspection we saw where the balustrades had been removed and the double glazed windows with aluminium frames which had been fitted. It was submitted that the windows could have been replaced more economically using uPVC and that the balustrades could have been left in place to provide protection. However, the evidence from Mr. Flowers, the independent expert surveyor, with which we agreed, was that uPVC would not be appropriate for use in this location where there are full storey height frames spanning the full width of the landing between the two blocks. It was suggested that with metal strengthening uPVC could have been used and/or that columns on the landings near the windows could have been used to provide intermediate fixings. However, we found that even when uPVC frames are strengthened, they flex in changing temperature conditions and when exposed to wind. The balustrades would have helped to some extent to save anybody coming into contact with the glass but would not have dealt with the problem of flexing. We were not persuaded that the use of the columns near the windows as intermediate fixing points was practical. The aluminium alternative, although more expensive, we found was the appropriate alternative. There was no evidence that it was unreasonably priced and we found that the cost was reasonably incurred. It was sensible to carry out these works by making use of the scaffolding which was in place rather than have the additional expense of scaffolding to deal with the communal windows at a later date.

58. We were told that individual flat occupiers had experienced problems with the work to their windows but that work was not charged to the service charges and so is not within our jurisdiction. The complaint as to the work to the communal windows was that some of the floor tiles on the landings had been scratched by the window installers and that some of the damaged tiles had been replaced with tiles of a different colour. By the time of our inspection we were told that the tiles of a different colour had been removed and replaced with tiles of a similar colour.

59. We were not satisfied that there was evidence of the works falling below a reasonable standard.

60. The Respondent had treated the provision of services in connection with the major works as a taxable supply, in which case the Applicants as final consumers were liable to pay VAT on that supply of services.

Section 20C of the 1985 Act

61. There is before us an application for an order under Section 20C of the 1985 Act. We were not referred to any provision in the leases under which the Respondent was able to recover the costs of these applications through the service charge. Therefore it should not be necessary to make an order under Section 20C but we do so for the avoidance of doubt.

62. Mrs. Eniolu referred to the provision in the lease dealing with costs in relation to Sections 146 and 147 of the Law of Property Act 1925 and submitted that that provision enabled the Respondent to claim the costs of these applications as an administration charge. The question of whether the Respondent can pursue its legal costs as an administration charge was not before the Tribunal, and in this respect a separate application would have to be made. An order under section 20C does not prevent the Respondent from recovering its legal costs as an administration charge. The Tribunal at this stage forms no view on the correctness of Mrs. Eniolu's submissions.

Appeals

63. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

64. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

65. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

66. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge R. Norman (Chairman)

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

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Property	:	1, 11, 14, 15 & 16 Cleveland House Woodford Road Maidstone, Kent ME16 9BU 8 Kenilworth House Woodford Road Maidstone, Kent ME16 9BY
Applicants	:	Mrs. C.T. Thomas Mr. I. Mustaqim Accommodate – UK Limited Mr. T. Bonett Mr. R. and Mrs. F. Russell Ms C. Highsted
Representative	:	Mr. D. Thomas
Respondent	:	Golding Homes Limited
Representative	:	Daniel Francis, Solicitors.
Type of Application	:	Application for permission to appeal
Tribunal Member(s)	:	Judge R. Norman Judge W.M.S. Tildesley OBE Mr. C.C. Harbridge FRICS
Date of Decision	:	16th September 2014

DECISION

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DECISION OF THE TRIBUNAL

1. The Tribunal has considered the Applicants' request for permission to appeal dated 26th August 2014 and determines that:

a. It will not review its decision, and
b. Permission is refused

2. In accordance with Section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicants may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

REASONS FOR THE DECISION

3. The reason for the decision is that the Tribunal has considered and taken into account all of the points now raised by the Applicants, when reaching its original decision.

4. The original Tribunal's decision was based on the evidence before it and the Applicants have raised no legal arguments in support of the application for permission to appeal.

5. The Upper Tribunal (Lands Chamber) has indicated that a person who wishes to apply for permission to appeal must specify whether their reasons for making the application fall within one or more of the following categories:

(a) The decision shows that the First-tier Tribunal wrongly interpreted or wrongly applied the relevant law;

(b) The decision shows that the First-tier Tribunal wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice;

(c) The First-tier Tribunal took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect; and/or

(d) The point or points at issue is or are of potentially wide implication.

6. The Applicants have not specified where the Tribunal erred in law in its decision. The application for permission essentially repeats the Applicants' arguments at the hearing which the Tribunal has rejected.

7. For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the Tribunal records below its comments on the grounds of appeal, adopting the paragraph numbering of the original application for permission:

Paragraphs 5-42: rehearsal of the evidence given at the Tribunal, which do not amount to grounds for appeal.

Paragraph 44(ii): it would appear that the Applicants are in agreement with the Tribunal's finding.

Paragraphs 44(iii)(iv): the Applicants are repeating arguments which the Tribunal has rejected. The Tribunal has clearly stated the evidential basis for its findings.

Paragraph 44(v): it would appear that the Applicants are in agreement with the Tribunal's finding.

Paragraph 46: does not address the Tribunal's point on relevance,

Paragraph 49: repeat of the Applicants' arguments under paragraphs 44(iii) and (iv).

Paragraphs 50-52: no substantive disagreement with the Tribunal's findings

Conclusions: repetition of the Applicants' submissions at the hearing which the Tribunal has rejected for the reasons given in the decision.

8. The Applicants have requested that the Tribunal take into consideration the financial status of the lessees with regard to payment of the service charge. The Tribunal does not have jurisdiction to consider the ability of the lessees to pay service charges or, in the absence of any legal requirement to do so, to impose a payment plan.

Judge R. Norman (Chairman)