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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/29UG/LSC/2016/0097

Property : 44&45 West Street Gravesend DA11 0BN

Applicant : The Maltings RTM Co Limited

Representative : Taylor and Emmet LLP

Respondent : The Lessees

Representative :

Type of Application : Liability to pay service charges

Tribunal Member(s) : Mr D Banfield FRICS

Date of Directions : 9 May 2017

DECISION

The Tribunal determines that the chosen option of complete replacement of the car park structure satisfies the requirements of Section 19 and that the costs so incurred may be taken as relevant costs payable by the lessees in the proportions determined by their respective leases.

Background

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) as to whether proposed works to rebuild the underground car park at a cost in the region of £250,000 are the responsibility of the landlord and are a reasonable Service Charge expense under the terms of the lease.
2. From the Preliminary Statement of Case appended to the application the property is described as residential blocks and comprises the following;
 1. Hazards House; 8 residential units known as Flats 1-5 Hazards House and numbers 43, 44 and 45 West Street.
 2. The Maltings and Oasts comprising 65 residential units known as number 1-12, 14-64, 92 and 93 West Street.
 3. The New Flats comprising 27 residential units known as 65-91 The Maltings.
3. The office complex comprising 9 units is not included in the application.
4. A report from The Concrete Consultancy gives details of the defective underground car park and makes recommendations for its repair or replacement. The Applicant considers that the most economic option is to demolish and rebuild.
5. Before incurring costs the Applicant seeks a determination from the Tribunal that the terms of the lease permit recovery of those costs by way of the service charge.
6. Directions were made on 1 November 2017 setting out a timetable for the exchange of documents leading to a determination and indicating that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. A form was provided for tenants to indicate to the Tribunal whether they supported or objected to the application and if an oral hearing was required.
7. The dates referred to in the Directions were subsequently amended by Further Directions dated 22 November 2016.
8. Nine tenants returned a form none of whom objected to the proposals and one of whom asked for a hearing. In the absence of any objections to the proposals to hold an oral hearing would be disproportionate to the issues involved and the matter is therefore determined on the bundle received from the Applicant.

Evidence

9. In their statement of case the Applicant confirms that they are an RTM company and perform the management function in accordance with sections 96 and 97 of the Commonhold and Leasehold Reform Act 2002.

10. They refer to a specimen lease which requires each lessee to pay a service charge for their block and also contribute to the overall costs of the estate.
11. A copy of the survey dated February 2016 from The Concrete Consultancy 2000 Ltd is produced which details the investigations undertaken, provides a number of photographs of the development and the defects referred to and at section 7.0 provides alternative options described as Short Term, Medium Term and Long Term.
12. The short term option comprises;
 1. Installation of propping.
 2. Removal of loose concrete
 3. Review of deterioration at 6 month intervals.
13. The medium term option comprises;
 1. Installation of propping.
 2. Replacement of brickwork and drainage to upper deck and replacement with lightweight system and functional drainage.
 3. Repairing steel supports and adding additional as required.
 4. Clean and repair all concrete surfaces.
14. The long term option comprises;
 1. Remove defective car park deck and steel frame retaining existing ground bearing slab.
 2. Replacement with suitable modern light weight steel frame structure and decking system.
15. The Applicant says that to repair the car park would cost in the region of £250,000 to £300,000 and that to demolish and rebuild to match the existing design would cost £250,000. Based on these options the Applicant wishes to demolish and rebuild.
16. The Applicant confirms that it intends to undertake consultation in accordance with section 20 of the Landlord and Tenant Act 1985.

The Lease

17. The following extracts from the lease are relevant to the issues to be determined. Reference to page numbers refers to the page number of the lease;
 1. Page 2; *“the Development” shall mean all the buildings now or within the Perpetuity Period erected on the area of land comprised in Title No K608279 which is intended to comprise the Office Complex Hazards House The Maltings and Oasts the New Flats and the Car Parking Areas and all other Communal Areas.*
 2. Page 4; *“the Overall Charge” shall mean the Service Charge that relates to the whole of the Development and which is detailed in Part 1 of the Third Schedule.*

3. Page 15; *Clause 4 (3) (b) Contribute and pay on demand the proportionate part set out in paragraph 6 of the First Schedule of firstly the Overall Charge and secondly the Charge as set out in the notice mentioned in paragraph 10 of the Third Schedule.....*
4. Page 19; *Clause 8 The Management Company HEREBY COVENANTS with the Lessee to perform and observe the obligations and each of them set out in the Third Schedule.....*
5. Page 24&25; *The Third Schedule. The Management Company when willPart 1, The Overall Charge; 1. Maintain repair redecorate and renew all roadways footpaths parking areas and refuse store landscaped areas traffic barriers and all other equipment used for the Traffic Management Scheme.*

The Law

18. Landlord and Tenant Act 1985

Section 18 Meaning of “service charge” and “relevant costs”.

(1) In the following provisions of this 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.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—

(a) “costs” includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 Limitation of service charges: reasonableness.

(1) 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 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.

(2) Where a service charge is payable before the relevant costs are 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 subsequent charges or otherwise.

Section 27A Liability to pay service charges: jurisdiction

(1) 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination 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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Discussion and Determination

19. The Tribunal is satisfied that the Applicant is to carry out the functions of the Management Company which includes the obligation to maintain and repair the parking areas.
20. The Tribunal is further satisfied that cost of such works may be placed on the service charge and that the lessees must bear their due proportion.
21. The Tribunal also accepts the evidence provided by the report and recommendations from the Concrete Consultancy, that extensive repairs are required and that one of the three options is to demolish and replace the structure.
22. The Tribunal dismisses option 1 as only providing a temporary repair which would not satisfy the Applicant's obligation to Maintain.
23. Of the remaining options an opinion of the respective cost of repair against replacement has been given but the Tribunal has not seen any evidence as to how that opinion has been formed and therefore can place no weight upon it.
24. Subject to the test of Reasonableness referred to in Section 19 of the 1985 Act it is for the Applicant to determine the means by which it satisfies its repairing obligations.
- 25. Based on the evidence provided the Tribunal determines that the chosen option of complete replacement of the car park structure as referred to in Paragraph 14 above satisfies the requirements of Section 19 and that the costs so incurred may be taken as relevant costs payable by the lessees in the proportions determined by their respective leases.**
26. Nothing in this decision relieves the Applicants from carrying out the consultations required by S.20 of the 1985 Act.

D Banfield FRICS
9 May 2017

1. 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. 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.

2. 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.
3. 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