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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOMC/LSC/2013/0142**
Property	:	**Osprey Court, Sidmouth Street, Reading, Berkshire RG1 4QZ**
Applicants	:	**Mr B D Torr and 9 other leaseholders as set put on the application**
Representative	:	**Mr B D Torr** **Mr J S Morris FRICS, Chartered Building Surveyor**
Respondent	:	**Places for People**
Representative	:	**Mr A Rose, Ownership Services Manager** **Mr C Caldwell, Home Ownership Officer** **Mrs J Watkins, Contracts Delivery Manager**
Type of Application	:	**Sections 27A and 20C of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr D Barnden MRICS** **Mr M Z Bhatti MBE**
Date and venue of Hearing	:	**Reading Magistrates Court on 6th March 2014**
Date of Decision	:	**3rd April 2014**

DECISION

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DECISION

The Tribunal determines that the costs of the major works should be reduced by £727 per Applicant, plus VAT.

The Tribunal determines that the gardening costs should be reduced by a total of £500 inclusive of VAT for the two years ending March 2014.

The Respondents confirm that no claim for costs would be made and in those circumstances an order is made under Section 20C it being considered just and equitable by the Tribunal.

No other order for costs is made.

BACKGROUND

1. By an application signed on 25th November 2013 by ten leaseholders, Mr Torr as the lead Applicant brought an application to the Tribunal seeking a determination under Section 27A of the Landlord and Tenant Act 1985 (the Act) in respect of service charges for the property at Osprey Court, Sidmouth Street, Reading (the property). Osprey Court is a two/three storey purpose built block comprising eleven flats with eleven garages on the ground floor built in the late 1980s on a corner site partly overlooking the River Kennet close to Reading town centre. In the application for the years 2008/09 through to 2011/12 the complaint was that external decoration and repairs works should have been undertaken in 2008 at an estimated cost of £8,700 plus VAT but in fact were not undertaken until 2012 when the costs had increased it is said substantially and resulted in the reserve fund being fully used to meet the eventual cost. There is also an annual complaint made concerning the landscaping charges. In the year 2012/13 when the major works were carried out, it is alleged that certain items of work were not undertaken when they should have been, some items of work were undertaken when they were not necessary and that the cost of specific items, particularly preliminaries and the supervision fee, were excessive. In addition a claim is made for a refund of the £1,000 that the Applicant spent on employing Mr Morris to conduct a survey of the property.

2. Directions were issued on 9th December 2013 and have been complied with. In particular a Scott Schedule has been prepared, albeit in a somewhat limited format, which sets out the disputed issues. Those can be briefly summarised as follows:-

    - Woodwork repairs in the sum of £5,650
    - Exterior painting in the sum of £6,127
    - Tree surgery in the sum of £600
    - Landscaping in the sum of £500
    - Major works preliminaries £20,340
    - Major works supervision fees £7,200
    - Refund of the surveyor's report of £1,000

3. The bundles contained the Applicants' documents which included a statement of case and supporting papers, a sample lease, Mr Morris's report and a response to the Respondent's statement. The Respondent's document included a statement and no less than 14 appendices. These documents are of course common to both parties and nothing is to be served if we spend much time on recounting the information contained therein. We had the opportunity of reading the papers in advance of the Hearing and their contents have been borne in mind by us when making our decision.

4. It is worth, however, briefly recounting before we deal with the evidence at the hearing, the Applicants' issues. Firstly it is alleged that there had been historic neglect in that the quotation for external decoration and woodwork repairs in 2008 was £8,700 plus VAT. No such works were carried out but subsequently when the works were undertaken in 2012 the total cost including VAT and preliminaries rose to £63,157.80. This resulted in a total depletion of the reserve fund and left a deficit for the leaseholders to pay off around £1,000 each. In support of the argument put forward by the Applicants, estimates had been obtained from four contractors dealing with woodwork repairs (Steve Kingston), decorating to woodwork (Swift Décor), the removal of a tree (Arborfield Tree Care) and finally works to the garden (by Garden Works). The Applicants also disputed the cost of the major works, in particular the preliminaries and supervision fee, the scope of the major works, in particular the lack of works to windows, but works carried out to balconies were considered unnecessary. Finally, the Applicants challenged the quality of some of the major works relating to the cleaning of guttering and external walls, the replacement of the porch roofs and replacement of wooden timbers and cladding to the balconies.

5. The bundles before us contained a copy of a specimen lease which contained no terms which needed to be considered by us in the decision we had to make. It is noted, however, that the responsibility for the upkeep of the windows and doors on the outsides of the flats rests with the landlord.

INSPECTION

6. We inspected the subject premises at Osprey Court in the company of Mr Torr and his wife and also Mr Bateman who was a tenant. Mr Caldwell for the Respondents was also present. The development comprises two/three storey properties adjacent to the River Kennet on a corner site. It is in a somewhat tired state. We noted the works to the entrance porches which seemed of a reasonable standard and also the new cladding to the balconies. It was also obvious that the windows were in need of attention and that in a number of cases the beading was lifting and was warped. The gardens were basic and had recently undergone some trimming. To the rear in a courtyard now governed by substantial security gates. We noted the tarmac was cracked as a result of tree roots and that the metal railings had flaking paint.

7. We were able to make an internal inspection of flat 6, which was limited to an inspection of the balcony. We noted that the tops of the balcony were poorly finished and may well result in some water ingress if not attended to.

HEARING

8. Mr Torr told us that he had bought his flat (No 6) in January of 2009. At the time of purchase he was aware that there were planned works as evidenced by notice of intention issued under the Act dated 17th February 2008. This indicated an intention to repair and paint all external wood features; with the exception of communal entry doors and all window frames. This is the source of some misunderstanding we believe and we will return to this in the findings section of the decision. In any event, no works were undertaken at that time and on 27th May 2010 Mr Torr received a letter from the Respondents indicating that following the review, additional repairs to the balcony timber were found to be necessary and that the original cost of £8,700 plus VAT had now risen to £13,241 plus VAT. The letter went on to say that a fresh condition survey had been undertaken (not provided to us at the Hearing) which had recommended substantial works in particular the replacement of the timber windows with UPVC double glazing. This letter was stated to be a notice of intention for works to be carried out and gave until 30th June 2010 to respond but also indicated an informal meeting was scheduled for 15th June at 6.30. There is no suggestion that the Section 20 consultation process had not been followed correctly.

9. One matter we did raise with Mr Torr was the fact that although he took issue with the contractor used, none of the leaseholders had put forward their own contractor as a comparable. It appeared to be initially alleged that they had not been allowed to do so. However, that was inconsistent with the documentation that was provided in particular the letter of 27th May 2010 which refers to the leaseholders' rights to name a person from whom the Respondents should obtain an estimate. In any event, we were told that these works were carried out and by a letter dated 18th December 2012, the final account was confirmed at a figure of £63,157.80. This included VAT, a supervision fee at 12.8% of the total cost and final net costs of works of £46,631.

10. Mr Torr told us that he was in reality challenging only the preliminary costs on the basis that they were too high. This, however, was not to be taken as any derogation from the concerns that the Applicants had that the use of national contractors to provide estimates in this case meant the costs were higher than they would have been. They saw no reason why Reading-based contractors could not be used, which they believe would have resulted in substantial savings, particularly the preliminary costs and the supervision fee. In support of this, Mr Torr had provided some alternative costings. These were intended to show that works could have been undertaken more cheaply by local contractors. The first was from Swift Décor which was an estimate including the supply and erection of a tower scaffold but this made no provision for the repair or replacement of wooden parts and was a decorating only contract. There was a repair contract from Steven Kingston which related to the removal, cleaning and re-beading of 108 windows and some additional works but did not appear to include any specific provisional costs for the repairs and replacement of wood. The other quotations related to the removal of an alder tree and costs of gardening works to bring the property up to a reasonable standard of £500 with an annual charge

for weekly maintenance of a further £2,000. We noted these documents. Mr Torr told us that the Swift price for the tower could enable the use of same by the decorating and the carpenter which was not accepted by the Respondents.

11. At page R135 of the bundle was a breakdown of the costings showing the figure of £46,631 as the cost of works including preliminaries and additional works to the balcony. This final cost should be compared to the accepted tender from BSG. There is no need for us to go into the somewhat unusual tendering process. It was not at issue between the parties, although the original two tenders that were obtained were wildly apart and BSG lodged their tender after the tender period had expired. However, there costs were below the other two and were accepted by the Respondents. In the BSG tender they show a preliminary cost of £20,340 and a schedule of works costs of a total of £65,819.52. However, this sum is substantially reduced by the omission of window replacement work at £36,800. That in fact reduced the cost of works carried out to £29,019.52 but still left the preliminaries at £20,340 which with some omissions and additions resulted in the final bill of £46,631 for the works to which the supervision fee of £7,200 (including VAT) and VAT on the works of £9,326.30 was added.

12. We then heard from Mr Morris who spoke to his report which was at page A103 of the bundle and was dated 14th May 2013. The report told us that Mr Morris had inspected the building on 7th February 2013 and noted under the heading *"Matters Arising from Surveyor's Inspection"* a number of issues. Many were uncontentious and had no impact on the issues we needed to consider. He did flag up the staining to brickwork and that the single glazed windows were found to be in a poor state of repair. He also thought that there were some issues with the balconies and that generally he thought the standard of external site maintenance was poor. He also noted the problems caused to the rear of the property as a result of root action and gave his conclusions at section 8. He was of the view that the manner in which the major works were conducted in 2011 was poor and he questioned some of the decisions made at that time. He also considered that the use of more local contractors may have led to "significant savings." At paragraph 8.04, however, he said as follows *"Although I believe that the landlord (through his agents) has not managed charge matters in the best possible manner I suspect that little success will be gained into taking the landlord to court for a claim in damages for the manner in which the building has been maintained over the years."* The report then went on to consider the transfer of management to the tenants and we should record at this point that in fact a right to manage company has been created and that the right to manage date of acquisition is, we are told, 1st May 2014.

13. In answering questions from Mr Rose and from the Tribunal he was of the view that the balcony drainage may be causing a problem and he was concerned also about the lack of drainage from the replacement canopies, although it appears that there had been no drainage prior to the changing of the roof. He agreed that the windows were in poor condition and needed to be treated as soon as possible and could give an additional ten years or so if that were done, thus avoiding the need for replacement in the immediate future. He was concerned, however, that if too much was spent on repair the difference between such repair and the complete replacement of the windows with the energy saving

elements could disappear. He was also of the view that the contractors put forward by the Applicants did not appear to be VAT registered and that the estimated figures did not appear to include the cost of cutting out and replacing wood. As to the balconies, whilst he had no particular argument with the replacement of the cladding, he thought that there were gaps and that the work had not been conducted as it might have been. He would have thought that they could be between £500 and £1,000 in total to seal off the balconies correctly. He also thought that the gardening was of a poor standard. His conclusion was that there still appeared to be leaking guttering, that the balconies were still suffering from issues and that the cleaning of brickwork had not been carried out as well as it might have been. He also thought that the scaffolding costs were high and would have expected to have seen a charge of somewhere between £7,000 to £8,000 plus VAT. As to the supervision costs, he accepted that it is usually based on a percentage of the contract price and though that 10% was the norm. He did, however, accept that the works were undertaken by the Respondents were reasonable but that the failure to attend to the windows was a poor decision.

14. In answering Mr Rose he told us that he had been a chartered building surveyor for some 40 years but was now semi-retired, having ceased full time employment four years ago. He still acted as an independent sole surveyor and had recently been overseeing a project at Phyllis Court in Henley. Mr Rose told us that he accepted the contents of Mr Morris's report.

15. After the luncheon adjournment Mr Rose for the Respondents put forward their case. The first matter he dealt with was the question of landscaping and pointed out that there had been no challenge to these costs for the three years prior to the appointment of ISS. ISS it appears had taken up the role of gardening under a contract dated 30th March 2011 which was included within the bundle. Mr Rose had confirmed that it had not gone smoothly. One year there had been a refund by ISS of £328.16 representing non-attendance and that warnings had been given. Mr Caldwell at this point interjected and said that he thought that ISS were improving and that the matter was hopefully being turned round. There was, however, no extra credit for the year 2012/13, notwithstanding that there had been issues during that time.

16. Turning to the major works, Mr Rose said that Mr Morris had looked at works that had not been done, in particular the guttering. The allowance made in the final costings for surface water drainage, which included the guttering, was only £276. All that was done he told us was the clearing and the replacement of some seals. Any leaks that were present in 2013 were, he said, unrelated to the works done in 2012. Insofar as the cleaning of the brickwork was concerned, he said that this was an improvement and indeed Mr Torr said that the stains had largely been removed.

17. In respect of the balconies, it was not wholly clear what works had actually been taken. By a document dated 3rd May 2012 at page R138 of the bundles, there is an additional element of £9,400 for the removal of all timber framework inside and out of the balconies and the renewing of the framework inner shelf and shiplap. The costs for this are included within the final account at page R135 but show an additional sum for balcony works of £5,094. Matters were further

confused because a review of the schedule of works accompanying the tender provided by BSG appeared to indicate that balcony items were excluded. However, it was confirmed to us and not in fact disputed by Mr Torr, that the additional sum of £9,400 related to extra work to the balconies found to be due when the contractors started.

18. Mr Rose was asked why if the contract price had reduced the supervision cost was not also reduced and the same with the scaffolding. He was invited to provide any alternative figure for the preliminary costs but declined to make any assessment. He could not tell us whether the scaffolding charges were based on a fixed price or a weekly charge but thought that the extra work to the balconies may have had some impact but was not able to indicate what impact the omission of window installation may have had on the scaffolding cost.

19. Questions were also raised as to the considerable difference in the tender prices that had been received prior to BSG being accepted. His view was that they had considered all factors and indeed in accepting BSG had gone with the lowest quote. As to the use of local contractors, we were told that they would need to meet health and safety requirements and be registered with CHASE, although nobody could actually indicate what this stood for. In addition they would need to be construction line registered and have proper insurance and full liability cover. Their accounts would need to show that the company was solvent and certainly a contractor not registered for VAT might well cause them concerns. He told us they had used BSG on a number of schemes and were satisfied with them.

20. As to the supervision costs, originally this had been 8% for the surveyors P H Warr PLC and 5% for the Respondents. It was thought, however, that limiting the overall figure to 12.8% wholly going to P H Warr with no mark up for the Respondents was a fair settlement.

21. As to the historic neglect argument, he said that there were no causal links between costs unreasonably incurred as a result of the lack of maintenance over the years and that insofar as the tree works were concerned, the damage caused has only now become apparent and presumably had therefore been latent for a while and he asked what the Respondents were expected to do.

22. We were also told that the leaseholders had swayed the Respondents in their views with regard to works to the windows. We were told that a meeting had taken place in January 2013 but only two leaseholders had attended and they had not been able to agree with each other. A stock condition survey was intended to be undertaken in 2013 but with the right to manage position now arising would not take place. Mr Caldwell told us that after the initial consultation meeting in 2011 the residents declined the installation of new windows. The Respondents concluded that they did not wish to do this without residents' consent and accordingly that item was dropped from the final tender. He told us that they had wanted to marry the obligations and views of the freeholders with the residents' wishes, hence the lack of window works.

23. In final submissions Mr Torr told us that the overall balcony costs were higher than he thought they should be and that the major works could have been less if

local contractors had been used. He thought also there was necessity for replacing the windows as many now had secondary double glazing and that renovation of the existing rather than replacement was required. Mr Torr accepted that scaffolding was required rather than towers but still thought the costs were too high.

THE LAW

24. The law applicable to this case is set out on the appendix attached,

FINDINGS

25. We listened carefully to all that was said and noted all that said in the documentation before us. The argument that there is some form of historic neglect which resulted in losses being suffered by the Applicants, does not seem to be borne out by the documentation before us. We accept that originally the works intended to be undertaken, as set out in the initial notice, did not include communal entry doors and window frames. This appears to have been misunderstood by Mr Torr and others. We have referred briefly above to the initial notice but the exact wording to be found at paragraph 2 is as follows:- *"The works to be carried out under the agreement are as follows:* ***to repair and paint (as required) all external wood features; with the exception of communal entry doors and all window frames."*** We read that to indicate repair and paint of external features excluding doors and windows. This would, we think, have left soffits and balcony frontages, possibly rainwater goods, and wooden frames supporting the porches. The letter of 27th May 2010 clearly relates to limited amount of work and also refers to the possibility of the replacement of windows with double glazing, which did not take place.

26. Mr Morris accepted that the works that were undertaken by the Respondents were reasonable and were required. It may be, that on reflection, the Respondents could have undertaken more works including reparation works to the windows, but this would undoubtedly resulted in additional charge to the leaseholders. Mr Torr was helpful enough to confirm that at page R135 the issues that he wished to challenge were centred around the preliminary costs which included £4,000 for supervision, £2,300 for welfare storage etc and £740 for waste disposal. The other substantially larger item related to scaffolding at a price of £13,300. We propose, therefore, to review these preliminary costs in the light of the evidence that we received and the fact that the original contract when providing for these preliminary costs included a replacement of the windows in the estate at a cost of over £38,000.

27. It seems to us that if such an item of work is extracted from the contract, the preliminary costs should, as a corollary, be reduced. We propose to deal with the matter on the following basis and in the absence of any alternative from the Respondents, notwithstanding the invitation extended to them to put forward suggested figures. Insofar as the scaffolding is concerned, we accept that these works could not have been undertaken using a scaffolding tower as was originally suggested by Mr Torr. The setup of the estate, in particular the rear access, would not lend this to using a tower particularly where works were

required to the soffits which were at some considerable height above the ground. We are satisfied, therefore, that the practical way of dealing with these works was to have erected scaffolding. However, we cannot see that scaffolding costs of £13,300, which remained unchanged following the windows replacement, is reasonable. Mr Morris thought the cost should be somewhere between £7,000 and £8,000 plus VAT. We accept that scaffolding is needed for the soffits and for the balconies but we have no doubt that removing window replacement from the works would have reduced the time for which scaffolding was required and in our view a reasonable reduction is therefore 20%. The reduction in the contract price as set out on tender is in excess of 50%. Accordingly a 20% reduction for scaffolding seems to us to be wholly reasonable. This, therefore, reduces the scaffolding costs to £10,640.

28. We turn then to the other preliminaries. The waste disposal costs are allowed at £740 but this presumably included removing all the window frames. Insofar as welfare and storage is concerned, again we consider these would have been reduced and the supervision fee with the extraction of the works necessary for the windows should also be reviewed. We believe the correct way of doing this is to consider the percentage value that the preliminaries had to the original contract price. The original total contract price, including preliminaries, was £65,819. This, on our calculation, means that the preliminaries, excluding scaffolding, were 10.696% of the original contract price. We have, therefore, taken this percentage and applied it to the reduced contract price now standing at £26,290 following the removal of costs of the windows and ignoring the preliminaries. That gives a figure of £2,812. Accordingly we amend the final contract price for the major works and substitute the following figures as necessary.

- The cost of works is agreed at £26,291.
- The scaffolding we allow at £10,640
- and the remainder of the preliminary works including supervision, storage etc, is £2,812.
- This gives a total cost of £39,743 instead of the figure of £46,631 claimed. These figures exclude VAT which will need to be recalculated.
- The professional fees of £7,200 inclusive of VAT were based on the reduced contract price of £46,631. It seems appropriate therefore to apply the 12.8% charge to the reduced figure of £39,743, which gives a sum of £5087, which with VAT makes a total supervision cost of £6105. The percentage claimed was not in reality under challenge from the Applicants, although Mr Morris did think 10% was sufficient. We find that a total percentage charge of 12.8 is not unreasonable, particularly given the reduced value of the works
- This leads to a total reduction of £7993 on the actual costs of the works including the preliminaries, which divisible by the eleven properties gives a reduction of £727 per leaseholder in respect of the major works, plus VAT.

29. Insofar as the landscaping works are concerned, we have read the correspondence and in particular the statement made on behalf of the Respondent. This statement, which is under cover of a letter dated 24th January 2014, honestly reflects the problems that the Respondent has had with ISS. In the service charge year 2011/12 a credit of £328 was obtained. In the service

charge year 2012/13 the service was still deemed to be poor but no financial penalty was imposed and it records that in the current year there has again been poor performance. Accordingly there are three years where this company has failed to perform. In those circumstances we think it is reasonable to make an allowance to the Applicants in respect of the shortfall in performance by the contractors. The Applicants sought a figure of £500 as set out on the garden works estimate of 7th September 2013 at page A37 of the bundle which was to remove scrub vegetation and tidy the front and rear gardens. Accordingly we reduce the landscaping charges for the periods ending March 2013 and 2014 by a total £500, inclusive of any VAT. The gardens have recently been the subject of some fairly substantial hacking but still showed a somewhat unkempt condition. In any event, it was accepted by the Respondents that the garden contractors had not performed and this seems to us to be a reasonable compromise.

30. The Respondents confirmed that they would not be seeking to recover the costs of these proceedings as a service charge. The Applicants do seek an application under Section 20C of the Act and given the Respondents' confirmation that they would not be seeking costs and our findings in respect of the major works, we consider it just and equitable to make an order under Section 20C that the costs of these proceedings would not be recoverable as a service charge.

31. No other claim for costs was made except for the refund of £1,000 to the Applicants for Mr Morris's fee. As we explained to Mr Torr, ours is a non-cost jurisdiction in the main and that if he wished to seek to recover costs he would need to show that the Respondents had acted in a manner which was unreasonable. We cannot see that they have done. They have responded to the enquiries and conducted themselves appropriately during the course of the proceedings and Mr Morris accepted, if it be relevant, that the works they have carried out were reasonable if perhaps in part misplaced. In those circumstances we cannot say that the Respondents have acted in a manner which would result in a cost order being visited upon them and unfortunately, therefore, the Applicants will have to bear the cost of Mr Morris both in his report and any other fees that may have been incurred.

Judge: *Andrew Dutton*

A A Dutton

Date: 3rd April 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(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

(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 provisions 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

(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.