12379

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LSC/2017/0266**
Property	:	**58, Flaxman Road, London, SE5 9DH**
Applicant	:	**58 Flaxman Road RTM Company Limited**
Respondents	:	**Livia Whyte (Flat 1)** **Kristin and Rob Bayliss (Flat 2)** **Nadine Frohlich (Flat 3)** **David Cohen (Flat 4)**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 - determination of the reasonableness and payability of service charges and section 20ZA Landlord and Tenant Act 1985 – determination whether to dispense with the statutory consultation requirements**
Tribunal Members	:	**Mrs H Bowers BSc (Econ) MSc MRICS**
Date and venue of Hearing	:	**31 August 2017** **10, Alfred Place, London, WC1E 7LR**
Date of Decision	:	**31 August 2017**

DECISION

For the reasons given below, the Tribunal finds as follows:

- The proposed costs to be incurred for Options 2 and 3 are reasonable.
- The Tribunal grants the application for dispensation from further statutory consultation in respect of the subject works. For clarity the works are the repair work or the removal work to the external decorative features.

REASONS

Introduction:

1.) The Applicant has made two applications, both dated 10 July 2017, under the Landlord and Tenant Act 1985 (the Act). The first application is under section 27A for a determination of the reasonableness of service charges and the second application is under section 20ZA for a determination to dispense with the consultation requirements in connection with these service charges.

Background:

2.) There are Directions dated 17 July 2017 that identified the issues and set out the timetable as to how the parties should prepare for the case. The Directions listed the matter for a paper determination for the week commencing 28 August 2017, unless any party made a request for a hearing. There was no request for a hearing and therefore the Tribunal considered this case on the papers submitted to it on 31 August 2017.

3.) The Applicant is a RTM Company and is represented in these applications by Haus Block Management. The Respondents are the leaseholders of the the four flats that comprise 58, Flaxman Road, London, SE5 9DH (the Building).

The Law:

4.) A summary of the relevant legal provisions is set out in the Appendix to this decision.

The Lease:

5.) A copy of a lease for the first floor flat was provided to the Tribunal but was not included in the bundle. The lease is dated 23 February 2001 and the original parties to the lease were Nextlease Limited as Lessor and Roopinder Gillmore and Julia Gillmore as the Lessee. The lease is for a term of 999 years from 1 June 2000. It is assumed that all the leases of all four flats within the Building are in substantially the same form for all matters that were relevant to the Tribunal.

6.) The lease provides a definition of the Building and the flat. At clause 3(C) the Lessee covenants, amongst other matters, to pay a 25.96% of the '*reasonable expenses and outgoings incurred by the Lessor in the necessary repair maintenance renewal and insurance of the Building and the other heads of expenditure as the same set out in the Schedule excluding the expenses incurred in connection with the interior common parts of the Building (PROVIDED ALWAYS that in respect of the interior common parts of the Building the liability shall be 34.42% of the Lessor's reasonable expenses and outgoings in connection with the obligations as set out in Clauses 5(2)(a) and 5(3)(a-d) .....*' Clause 5 sets out the Lessor's obligations and the Schedule lists the items that come within the service charge regime.

Inspection:

7.) Given the nature of the issues in dispute, the Tribunal did not carry out an inspection of the Building. However, the Tribunal understands from the papers that the Building was built in 1868 and is stated to be of historical significance. Previously it was a public house that was converted into four flats in 2002.

Representations/Discussion/Determination:

8.) It was explained in the applications that the service charges were not disputed and they were made on a protective basis. Major works had commenced and on the erection of the scaffold it was discovered that there were some additional works. These works related to the external decorative features of the Building. The major works have been suspended until a determination by the Tribunal. It is proposed that there are three potential options and seeking a decision from the Tribunal as to whether it is reasonable to demand the extras sums in relation to those options. The options being and the total sums are:

Option 1 – Restoration Work - £122,181.45 (additional £46,707.00)
Option 2 – Repair Work - £66,952.44 (additional £14,150.00)
Option 3 – Removal Work - £61,292.04 (additional £10,700.00)

A schedule attached to the section 20ZA indicated that the varied sum for the original contract was £30,000.

9.) In relation to the first stage of the major works a Notice of Intention was sent to the leaseholders on 6 November 2015, with the Statement of Estimates on 15 April 2016.

10.) There is no statement of case submitted by the Applicant. However, there are different positions taken by two sets of leaseholders. Kirstin Bayliss (Flat 2) and Nadine Frohlich (Flat 3) made joint representations and Livia Whyte (Flat 1) and David Cohen (Flat 4) also made a joint statement. A brief summary of both those statements are included below.

11.) Ms Bayliss and Ms Frohlich explained that they were Directors of the RTM company and supported the application with a preference for Option 2. They considered that this option struck a balance between retaining the building's character, mitigating unnecessary cost and maintaining structural integrity for the future. It is stated that Option 3, the removal of all decorative stonework features is conflict with the obligations in the lease to 'renew' and that it would be a loss of an aesthetic feature which attracted these leaseholders to the purchase of the flats and has been recognized by the planning department at the London Borough of Lambeth. The loss of the features could impact on the capital values of the flats within the Building. It is also considered that Option 1 would be excessive as it goes beyond what is reasonable and necessary. The square footage of these two flats is 52.91% and it is suggested that they would bear a higher proportion of the cost. There has been some costs savings in sourcing of materials and the difference between Options 2 and 3 is now only £5,660.40. Ms Bayliss and Ms Frohlich provide a chronology which includes that in July 2016 the Building was automatically added to the London Borough of Camden's local Heritage Assets listings and the description form that list is provided. The initial works commenced in March 2017 and by 26 April 24 decorative corbels had been removed by the contractors leaving 10 in fair condition and 8 partially remaining. Works ceased on the following day and options were considered. The recommendation from Haus, the managing agent was to proceed with Option 3 as this was '*the most cost effective and minimizes the delay and inherent cost, but the decorative features to the parapet wall and*

around the second floor windows will be lost'. Since the initial presentation of the options the costs for Option 2 have reduced due to ready made corbels having been sourced rather than needing to re-mould to match the few remaining ones. It is stressed that the work is suspended but the scaffolding remains in place with weekly costs of £300.

12.) Ms Whyte and Mr Cohen state that due to the lack of funds Option 3 is chosen. The initial difference between Options 2 and 3 was £11,000. They had been informed by the Directors of the RTM Company that they did not need the permission of the leaseholders to make decisions, did not have to have meetings or share minutes and that the Directors were the eventual decision makers. Both of these leaseholders have borrowed to pay for the first stage of the major works. A history was provided as to the previous management of the building and the formation of the RTM company. The financial circumstances in relation to Flats 1 and 4 was explained. Although Option 2 has revised figures this will amount to £1,500 per Flat which is unaffordable and there are concerns that unforeseeable circumstances may increase costs. Concerns are raised about the delays and the impact on costs to all parties. In stating a preference to Option 3 it is suggested that it may be possible to re-add decorative finishes in the future. There are frustrations about how this issue has been managed with time delays adding to the cost and that other work could have been undertaken in the interim time, the seeking of legal advice and the applications to the Tribunal. A timeline was provided and refers to some of the above and shows that initially Option 3 was selected.

Conclusions:

13.) The jurisdiction of this Tribunal is limited. It can consider the reasonableness of the costs incurred or to be incurred or that the works are to a reasonable standard. At paragraph 1 in the Directions, it is stated that whilst the Tribunal will consider the issue of reasonableness and the need for dispensation, it is for the parties to agree which option to pursue. This Tribunal will go a step further to state that once the issue of reasonableness is decided and whilst it would be ideal for the parties to agree a way forward, it is ultimately the RTM company, with the management responsibility for the Building, who has to make the decision as to how to proceed.

14.) It appears to be common ground between the two groups of leaseholders that Option 1 is too expensive and is not to be pursued. This leaves Options 2 and 3. There is no specific evidence before the Tribunal to show that the costs proposed are unreasonable, this is therefore an issue as to whether the works proposed are reasonable. It is noted that the advice from the managing agent is to pursue Option 3, but this is caveated as to the consequences to the decorative features of the Building. The two options strive to do subtly different things. Option 3 is for the works to be carried out at a minimum cost. This in itself is not an unreasonable objective and as such the costs to be incurred in respect of this option would appear to be reasonable. Option 2 involves the expenditure of more money, but helps to retain the decorative features. No evidence was provided that the retention of the decorative features would help maintain capital values, but there does seem a logic to that submission. Again this is a worthy motive and not unreasonable given that it should help to protect the capital values of the flats within the Building. The cost differential between the

two options, whilst burdensome for two of the leaseholders, is not particularly large given that the decorative features should be maintained. As such if Option 2 is pursued then the costs to be incurred in respect of this option would also be reasonable.

15.) In relation to the application for dispensation, section 20ZA(1) of the Act provides:

"*Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*"

16.) The Tribunal has taken account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14.

17.) Neither party makes any meaningful representations in respect of this second application. However, it is noted that there have already been time delays and this has added to the overall costs. The Tribunal accepts that any further delays to undertake a full consultation process would not be helpful and will add even further to the costs. Given that there have been no substantive objections to this application for dispensation, the Tribunal grants the application for dispensation from statutory consultation in respect of the subject works, considering it reasonable to do so. For clarity the works are the repair work or the removal work to the external decorative features.

18.) This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonable cost of the work once that work has been undertaken and once the standard of any works is ascertained.

Chairman: *Helen C Bowers* **Date:** *31 August 2017*

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office, which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will

then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix

LANDLORD AND TENANT ACT 1985

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 of 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 it 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 fro 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 it 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 subject of determination by a court, or
(d) has been 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.