

9369.



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

Case Reference : **LON/00BK/LDC/2013/0004**

Property : **112/114 Belgrave Road, London
SW1V 2BL**

Applicant : **Mr R Dring(landlord)**

Representative : **Rooks Rider LLP
Dauntons Soar, managing agents**

Respondent : **The leaseholders as per the
schedule attached to the
application**

Representative : **None**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Judge O'Sullivan
Mr W.R Shaw FRICS**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **25 November 2013**

DECISION

Decisions of the tribunal

The tribunal makes the determinations as set out under the various headings in this Decision

The background

1. By an application dated 26 February 2013 the Applicant sought a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) for dispensation from the relevant statutory consultation requirements which are contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003, in relation to proposed works to reduce the operating noise of a lift in response to a Noise Abatement Notice served on the management company by Westminster City Council.
2. The Applicant also sought a determination under section 27A of the 1985 Act in relation to the payability and reasonableness of the cost of the proposed works under section 27A(3), ie whether if costs were incurred they would be payable and reasonable. By an amended application form dated 13 June 2013 the tribunal was asked to determine the payability and reasonableness of the management and legal costs relating to the proposed works.
3. The applications were considered at a hearing on 20 June 2013. The tribunal issued its decision on 17 September 2013. It granted dispensation in relation to the works and found the proposed cost of the works reasonable although it found that a small element of the works were not recoverable pursuant to the leases. However in relation to the legal costs the tribunal was concerned that the leaseholders had not had the opportunity to comment formally on those costs in the context of these proceedings, an updated schedule having only been provided shortly before the hearing. The tribunal therefore made further directions in relation to these costs which have been issued to the parties by a letter dated 18 September 2013. These provided for the Applicant to serve a full breakdown of its costs on every leaseholder and for any leaseholder who wished to object to the costs to serve a statement in reply.
4. In accordance with the directions dated 18 September 2013 the Applicant filed a bundle. The application was considered by the tribunal by way of a paper determination on 20 November 2013.
5. The relevant legal provisions are set out in the Appendix to this decision.

6. The Respondents each hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

The Applicant's case

7. The tribunal made directions dated 18 September 2013 which provided for the Applicant to serve a breakdown of its costs and a brief statement setting out those costs. The Applicant purported to comply with this direction by its letter of 8 October 2013 which attached copies of the solicitor's invoices. What the tribunal had envisaged by these directions however was a statement identifying each and every invoice and providing a narrative of the work carried out. From the various copy invoices provided the tribunal has identified the costs before it as follows;

Rooks Rider LLP solicitors

Invoice dated 21 December 2013 £2462

(£1760 plus disbursements and Vat 18 December to 21 December 2012)

Invoice dated 21 January 2013 £1,713

(£1,375 plus disbursements and Vat 31 December 2012 to 17 January 2013))

Invoice dated 24 May 2013 £627

(£522.50 plus Vat 18 January to 23 May 2013)

Invoice dated 11 June 2013 £495

(£412.50 plus Vat 24 May to 11 June 2013)

Invoice dated 26 June 2013 £660

(£550 plus Vat 12 June 2013 to 25 June 2013)

Invoice dated 1 July 2013 £2,220

(£1850 plus Vat Counsel's fees)

Invoice dated 24/09/13 £819.60

(£674.50 plus disbursements and vat 1 July to 23 September 2013)

Total:	Legal costs	£5,294.50
	Disbursements	£2,271.50
	Vat	£1,430.60
Total		£8,996.60

Dauntons Soar – managing agents

£9960

(£7800 plus disbursements of £500 plus Vat)

Total costs **£18,956.60**

8. It is confirmed that the managing agents' time has been charged at £130 per hour plus Vat at the rate of junior staff rather than at the higher rate of £170 per hour plus Vat for senior staff as a gesture of goodwill.

The Respondents' position

9. Objections were received from the leaseholders of Flat 2 and 4.
10. Cannonshot Ltd (flat 4) objected by letter dated 15 October 2013. They submitted that the Rooks Rider LLP timesheets did not provide any narrative as to the work done. The comments are therefore made on a global basis as to the reasonableness of the costs as follows;
- i. As far as the Rooks Rider invoices numbers 2,3 & 4 are concerned, it is submitted that these relate to the receipt of the Noise Abatement Notice and the application to the tribunal, that these matters were straightforward and that the involvement of Rooks Rider should have been notional.

In response the Applicant says that the involvement of Rooks Rider was paramount given the noise abatement notice which had been served. Their involvement was submitted to have been reduced by the application to the tribunal being made by the managing agents.

- ii. As far as invoices 4, 5 & 6 are concerned it is argued that very little involvement was needed at this stage as all professional

advice would have been received. It is also questioned whether Counsel was required (invoice 6) given that the case turned on expert evidence rather than legal argument.

In response no comment is made save for a general note that it was necessary for Rooks Rider to have some input on the documentation before the tribunal.

- iii. In relation to invoice 7 this covered the post tribunal hearing period and it is submitted can only relate to a comment on the tribunal decision of 17 September 2013.

The comments at (ii) apply.

- iv. In relation to the Dauntons Soar timesheets a reasonable amount of charge is accepted but it is argued that it should not have been carried out by a senior member of staff, by way of example a 2 hour period spent issuing letters to the leaseholders. It is also noted that a 15% professional fee on the cost of the works in the section 20 notice has been reassigned as a 10% as "lift consultation fees". It is also noted that the LVT fee appears to have been recorded twice.

In response Dauntons Soar say the charge out rate has been charged at the lower rate of a junior as per the management agreement. It is said that given the complexities of this matter it was not practical for two members to have been involved and thus a senior member of staff undertook the vast majority of matters.

The professional fees have not yet been finalised but will be after the tribunal's determination and an amended notice of estimates served.

As far as the application fee is concerned it is confirmed that there were two separate application fees payable for both the section 20Za and section 27A application.

- v. In summary it is submitted that the proposed costs of £15,633.25 plus Vat and disbursements is unreasonable.
11. Mr Porter (Flat 2) objected by an email dated 17 October 2013. He submitted that since the abatement notice was served almost a year ago there has been ample time in which to consult and that there had been very little resistance on the part of the leaseholders. He further argued that the application to the tribunal had been unnecessary and the costs were not properly incurred. He also pointed out that one year after the

service of the abatement notice and £12,000 having been incurred in legal costs the matter is no closer to solution.

In response the Applicant says that this has been a long and complicated process and that the matter is proceedings to fruition once the issue of costs has been determined.

The tribunal's decision

12. The tribunal determines that the amount payable in respect of costs is as follows;

Rooks Rider LLP

£2,500 plus Vat

Disbursements £2,271.50 plus Vat

Dauntons Soar

£5,000 plus Vat

Disbursements of £500 plus Vat

Reasons for the tribunal's decision

13. The tribunal was not impressed by the quality of the information with which it had been provided in relation to the costs.
14. As referred to above the tribunal was not provided with any detailed narrative of the work carried out although it has a print out which identifies dates upon which emails/letters were sent and the time spent. However it is difficult to identify what work was being carried out from the supporting narrative which in the main simply identifies letters and emails being received and sent and/or attendances with clients. The majority of the work appears to have been carried out by Nicola Stewart. Another fee earner appears to be involved at times. The levels of qualification for the relevant fee earners have not been provided nor has the charge out rate although it appears that the charge out rate of Ms Stewart is around £300 an hour. Doing the best it can therefore the tribunal has necessarily had to take a broadbrush approach in determining the reasonableness of the costs.

15. The tribunal was provided with a copy of the management agreement between the landlord and Dauntons Soar dated 1 January 2013. It was not provided with the management agreement for the period prior to 1 January 2013 although some of the costs claimed date from this period. The tribunal is therefore unable to establish which costs may fall within the general management charge for the period prior to 1 January 2013 and which should be the subject of an additional charge. As far as the managing agent's costs were concerned the tribunal considered the provisions of the management agreement dated 1 January 2013.
16. Clause 2.1.3 provides that attending at courts and tribunals is an additional service which is the subject of an additional charge. Clause 2.1.1 provides that preparing specifications, obtaining tenders and administering works costing more than the agreed expenditure limit is also an additional service.
17. However the tribunal noted that at clause 1.2.5 the standard terms of service includes "*except in case of emergency to notify the client of all reasonably necessary works of repair and maintenance estimated to cost more than the Agreed Expenditure Limit of which the Agent is aware*".
18. The tribunal is of the view that some of the works carried out by Dauntons Soar, in particular in relation to the liaison with their client, are in relation to the initial service of the Abatement Notice in December 2012 would fall within this provision and should not have been the subject of an additional charge.
19. Although the tribunal granted dispensation under section 20ZA so far as it was necessary the tribunal notes that the Applicant could well have carried out full consultation in the time period available to it. It could be argued that the application for dispensation to the tribunal was therefore unnecessary.
20. In addition the time spent on this matter appears to the tribunal to be generally excessive. The tribunal does note however that the managing agent has conceded that time should be charged at the junior officer's rate.
21. Doing the best it can on the information available and taking into account the comments made by the Respondents the tribunal allows legal costs in the sum of £2,500 plus Vat and disbursements in full of £2,271.50 plus Vat. The managing agent's costs are allowed at £5,000 plus Vat plus disbursements of £500 plus Vat.
22. The Applicant also asks for the further advice of the tribunal in relation to the relocation of the controller in the light of correspondence with the City of Westminster in relation to the Abatement Notice. In its

decision dated 17 September 2013 the tribunal found that the costs of relocating the controller were not recoverable as they constituted improvements. However it was suggested that the landlord may wish to consider attempting to agree the relocation with the lessees given the modest cost. The tribunal has no further comments to make in this regard. It is not this tribunal's remit under this application to approve any notice of estimates as included in the bundle.

23. The Applicant also asks for the further advice of the tribunal in relation to further professional costs and fees. The tribunal is unsure as to which costs it refers. The tribunal's decision in relation to costs is limited to the costs incurred to date. Further application under section 27A may be made in relation to any further costs should that be necessary.

Name: S O'Sullivan

Date: 25 November 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

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.