



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

Case Reference : LON/00AH/LSC/2013/0251

Property : Coombe Court, St Peter's Road,
Croydon, Surrey CR0 1HH

Applicant : Chalfords Limited

Representative : BLR Property Management Limited

Respondents : Lessees of Flats 1 to 10 Coombe
Court

Type of Application : For the determination of the
amount of service charges payable
if costs are incurred by the
Applicant on repairs/maintenance.

Tribunal Members : A.J.ENGEL M.A.(Hons.)
R.POTTER F.R.I.C.S.
J.FRANCIS

**Date and venue of
Hearing** : 18th July 2013
10 Alfred Place, London WC1E 7LR

Date of Decision : 5th August 2013

DECISION

A service charge of £97,278-69 would be payable in respect of the 10 flats in Coombe Court if the works set out in the Schedule of Works (Pages 77 – 82 of the Bundle) are carried out to a reasonable standard.

REASONS

(Reference to Page Numbers are to Pages in the Bundle)

Coombe Court

1. Coombe Court is a two and three storey block of flats built in about 1930 comprising 10 flats let on long leases. The Applicant is the Freeholder and Landlord. The Applicant's Managing Agent is BLR Property Management Limited (BLR).

The Leases

2. We were informed that the 10 Leases have the same wording. We have seen specimens.
3. The Leases are in ancient form. There is no provision for a reserve (sinking) fund and there is no provision for the advance payment of estimated service charges.
4. The Leases (Clause 4 (ii)) require:-

“That the Lessee will contribute and pay on demand one-tenth part of all costs charges and expenses from time to time incurred by the Lessor in performing and carrying out the obligations and each of them under Clause 9 and the Sixth Schedule hereof.....”

5. Thus, service charges are not payable until after costs have been incurred.

The Proposed Works

6. A Schedule of Works (Pages 77 to 82) in respect of Roof Recovering and General External Repairs was drawn up by HR Surveyors in 2009 and revised in July 2012.
7. Atlas Building and Maintenance Contractors Limited (Atlas) have submitted a tender – which BLR is minded to accept.
8. This tender is in the sum of £69,115 – to which are added fees and VAT – making a total of £97,278-69 (see Page 46).

The Application

9. By written application, dated 5th April 2013, BLR (on behalf of the Applicant) applied for determinations:-
- (1) Whether the scope of the proposed building works and the associated costs are reasonable;
 - (2) Whether, if these costs were incurred by the Applicant, they would be payable as a service charge by the Respondents;
 - (3) Whether the requirements of Section 20 of the Landlord and Tenant Act 1985 (the Act) have been satisfied.
10. The Application was served on the Lessees of the 10 flats – as set out on Page 10 of the Bundle.

The Law

11. Section 18 of the Act defines service charges. The text of Section 18 is set out in Annex 1 hereto.
12. Section 19 of the Act provides that service charges are only payable for works:-
- (a) to the extent that they are reasonably incurred;
 - (b) if the works are of a reasonable standard.
- The text of Section 19 is set out in Annex 1.
13. Section 20 of the Act contains consultation requirements, with which there must be compliance if a Landlord is to recover the full costs of major works.
14. Section 27A(3) of the Act provides that a Tribunal can determine, in advance, the amount payable by way of service charges, if costs are incurred in the future. The text of Section 27A(3) is set out in Annex 1.

Comment on the Law

15. It is understandable why, having regard to the wording of the Leases, BLR decided to apply to the Tribunal for a determination under Section 27A(3) of the Act and, in our view, it is desirable for such applications to be made in these circumstances.

16. In our view, it would, however, be open to a Lessee, at a later stage, to apply to a future Tribunal for a reduction in service charges on the basis that works have not, in fact, been carried out to a reasonable standard. Mr Tucker agreed with this proposition at the hearing but, if this proposition is disputed at a later stage, it will be for the future Tribunal to decide the matter.
17. With regard to the application referred to at 9(3) above, this Tribunal has no power to issue declarations. However, in order to reach our decision on the amount payable pursuant to Section 27A(3) of the Act, we must determine whether or not there has been compliance with Section 20 of the Act.

Hearing

18. A hearing was held before the Tribunal on 18th July 2013. Mr Tucker (Legal Support Administrator of BLR) appeared for the Applicant. Mr Galliers, a Director of BLR attended as did Ms Biggs, the Lessee of Flat 9.
19. At the hearing, it was agreed by all present that in view of the evidence before the Tribunal an inspection was not necessary.
20. On 18th July 2013, at the conclusion of the hearing, we announced our Decision (as set out above) – so that the works could be started without delay.

Evidence

21. Oral evidence was given at the hearing by Mr Galliers and Ms Biggs.
22. Also in evidence was:-
 - (a) BLR's Bundle of documents – which included photographs;
 - (b) A quotation from A.L. Biden - Croydon Roofing (The Biden Quotation);
 - (c) Images on a mobile telephone – adduced in evidence by Ms Biggs.
23. The photographs showed that there is disrepair that requires rectification. Further, from the age of Coombe Court and the photographs, it is clear that the roof needs comprehensive work thereto. At the hearing, Ms Biggs agreed this was so.

24. At the hearing, Ms Biggs also agreed that the work should be done as soon as practicable.

Consultation Requirements

25. At the hearing Ms Biggs agreed that there had been compliance with the consultation requirements of Section 20 of the Act. We also agree.

The Issues

26. The issues are:

- (i) Is the cost (£97,278-69) reasonable?
- (ii) Historic Neglect
- (iii) Spreading the cost.

Reasonable Cost

27. Mr Saleemi (Lessee of Flat 5) had written a letter, dated 17th January 2013, to BLR in which he states that he appreciates that the roof needs substantial repair works but he alleges that the proposed cost is unreasonable. However, no detail has been provided and Mr Saleemi has not provided any evidence to the Tribunal. Mr Saleemi's letter has not assisted us in our task.

29. Ms Biggs has provided both written and oral evidence to the Tribunal – as well as showing us images on her mobile telephone.

30. Ms Biggs relies on the Biden Quotation – which is in the sum of £63,300 (net of fees and VAT). At the hearing, Ms Biggs informed the Tribunal that Mr Biden had now withdrawn and did not now wish to carry out the works. It is, of note, that £63,300 is within 10% of the Atlas Quotation (£69,155)

31. There was some discussion at the hearing on the question of whether or not asphalt was the correct material to be used. However:-

- (i) there was no evidence that asphalt was not a reasonable material;
- (ii) there was no evidence that any other material would be suitable and less costly;
- (iii) HR Surveyors specified that asphalt was suitable.

On the basis of the above, we reached the conclusion that, on the evidence before us, it would be reasonable to use asphalt.

However, we are also of the view that the decision to use asphalt might be open to challenge at a later stage – if evidence that its use was unreasonable is provided to a future Tribunal – but (as explained at No.16 above) that would be a matter for determination by a future Tribunal.

32. The fees and VAT set out on Page 46 are unchallenged and, they are clearly reasonable.
33. In these circumstances, we are satisfied that it is reasonable for the Applicant to incur costs of £97,278-69 on the proposed works – provided they are done to a reasonable standard.

Historic Neglect

34. The Lands Tribunal case of Continental Property Ventures Inc. v White LRX/60/2005 – which was followed by a Leasehold Valuation Tribunal in Purelake New Homes Limited v John-Gray (LON/00AH/2008/0121) makes it clear that this Tribunal can take into account historic neglect and, if appropriate, make a deduction (set-off) from service charges on account thereof.
35. The Leases contain covenants which imposes on the Applicant an obligation to keep the roof and main structure in good repair.
36. The evidence satisfies us that problems with the roof are likely to have been visible for several years. Indeed, the roof was surveyed by HR Surveyors in July 2009.
37. However, it appears that none of the Lessees complained until 2012, which led to the revised survey by HR Surveyors.
38. The evidence established that BLR intend that Atlas should proceed with the proposed works as soon as practicable but Ms Biggs complains that her flat is not fit for habitation pending the completion of the proposed works – and Mr Galliers informed us that he was inclined to agree that was so.
39. The problem is that there would be disruption whenever the work was done and if it had been done earlier, Lessees may well have complained

that the works could wait. Obviously, if a roof is replaced later rather than sooner, the new roof is likely to last longer and service charges for the replacement are payable later.

40. In these circumstances, we find that the Applicant was not in breach of covenant and that, in any event, there is no loss to Ms Biggs (or any other Lessee) by reason of the proposed works not being carried out earlier.
41. It follows that, in this case, it is not appropriate to make a deduction for historic neglect.

Spreading the Cost

42. The Upper Tribunal case of Garside and Anson v RFYC Limited and Maunder Taylor [2011] UKUT 367 (LC) – Garside - determines that this (First-tier) Tribunal can, in an appropriate case, determine that it is unreasonable for the cost of all works to be charged in one service charge year.
43. One can readily understand Ms Biggs' concern that she is likely to be faced with a service charge demand for this year which is some £10,000 in excess of what it would have been but for the proposed works.
44. There is, in fact, no evidence before us that Ms Biggs or any other Lessee would suffer severe financial hardship by reason of the cost of the proposed works being charged in one service charge year.
45. Further, as is made clear at Paragraph 20 of Garside, even severe financial hardship is not a ground on which a Lessee can escape liability for paying for major works – which is, of course, different from phasing of works so as to spread the cost over more than one service charge year.
46. In this case, BLR expect the works to be completed this year (2013) and for the whole sum to be demanded by way of service charges this year.
47. The evidence establishes that it is reasonable (indeed highly desirable) that the proposed works are completed as soon as practicable – in particular bearing in mind that Miss Biggs' flat is, at present, not fit for habitation.
48. Accordingly, this is not a case where works should be phased so as to spread the cost over more than one service charge year.

Section 20C

49. At the hearing, Ms Biggs applied for an Order under Section 20C of the Act (limitation of service charges: costs of proceedings).

50. However, this is a case where the Applicant has acted perfectly properly in bringing and conducting these proceedings and, in our view, it would be neither just nor equitable, for an Order to be made under Section 20C of the Act.

Re-imburement of Fees

51. No application was made for re-imburement of Fees.

SIGNED: **A.J.ENGEL**
(Chairman)

DATED: 5th August 2013

Annex 1

Landlord and Tenant Act 1985 (as amended)

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

- (3) An application may also be made to the appropriate 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.