

10799



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

Case Reference : BIR/OOCS/LSC/2013/0021

Property : 292-314 Newton Road, Great Barr, Birmingham, B43 6QU

Applicant : The Anne and John Walters Charitable Trust

Representative : Mr S. Gallagher of Counsel
Mrs L. Cannon-Leach MIRPM AssocRICS of Messrs
Pennycuik Collins Chartered Surveyors

Respondents : Mr P.Singh Flat 1
Mr M.F.Breen Flat 2
Mr S.G. & Mrs K.V.Partridge Flat 3
Mr D.Timmins Flat 4
Roma Business Services Ltd. Flat 5
Mr & Mrs M.Finn Flat 6 & 7
Mr J.Warner Flat 8
Ms A.Reeves Flat 9
Lonsdale Midlands Ltd. Flat 10
Mrs N.Starling-Booth Flat 11
Mr I.Gill Flat 12

Representative : The Lessees in person.

Type of Application : Application to determine liability to pay and reasonableness
of service charges under s.27A of the Landlord & Tenant Act
1985

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
D.R. Salter LLB Hons.

**Date and Venue of
Hearing** : 13th November 2013 at the First-Tier Tribunal, Property
Chamber, Priory Courts 35 Bull St., Birmingham, with
further written submissions made after the Hearing.

Date of Decision : 18 MAR 2014

DECISION

Introduction

- 1 This is an application by the landlord of a block of flats in Great Barr, Birmingham for the Tribunal to determine service charges for 2007, 2009 and 2010, as a precursor to commencement of forfeiture proceedings for non-payment of service charges by Mrs Starling-Booth.
- 2 The application was received by the Tribunal on 5th August 2013. Directions were issued and the case was heard on 13th November 2013. Further Directions were made after the Hearing and Submissions received from the parties that have been considered by the Tribunal.

Items in Dispute

- 3 The application requested the Tribunal to determine a reasonable charge for three items:

<i>Year</i>	<i>Description</i>	<i>Amount£</i>
2007	Internal Decoration	3,261.81
2009	Fascia and Soffit Replacement	15,147.11
2010	External Painting and Decoration to Garages	14,511.14

- 4 The Applicant's bundle included details and copy invoices of other items contained in the service charges for these years and, as an initial issue, Mr Gallagher for the Applicant asked the Tribunal to find all the other costs for these years payable and reasonable. However, after a short adjournment the Respondents asked the Tribunal to determine only those items listed in the Application to which the Tribunal agreed. Accordingly, this determination is limited to the three items listed above.

Facts Found

- 5 The Tribunal inspected the property before the Hearing on 13th November 2013 with representatives of the parties.
- 6 It is a three storey block of flats built in the early 1960s in a suburban area about six miles north west of Birmingham city centre. The property occupies a triangular plot fronting the A4041 Newton Road at Great Barr with a wide frontage tapering in to the rear. It has an open plan lawn to the front with gardens to the rear and a track leading to two blocks of lock up garages, four in one block and eight in the other.
- 7 The block of flats has brick and rendered elevations with a pitched concrete tile roof. There are twelve flats in total with four on each floor accessed from three common stairwells.
- 8 Each flat also has a small brick bin store with timber door and flat roof located in separate blocks around the site.

Relevant Law

- 9 The Tribunal's powers derive from statute.
- 10 Section 27A(1) of the Landlord & Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal (LVT), now the First-tier Tribunal in the Property Chamber (Residential Property), for determination of whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date

payable and manner of payment. The subsection applies whether or not payment has been made.

- 11 Section 18 of the Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 12 Section 19 of the Act provides that relevant costs shall be taken into account in determining the 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 carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.
- 13 These are the statutory criteria for the Tribunal's jurisdiction but it is also bound to take account of precedents set by the Courts for interpretation of the standards to be applied.

Leases

- 14 Five of the twelve leases have been extended but the Applicant supplied a copy of the original lease of Flat 11 and all the leases are understood to be in similar terms, at least in respect of the service charge provisions.
- 15 The lease of Flat 11 is dated 18th January 1962 granted for a term of 99 years from 25th December 1960. The demise comprises a first floor flat, half the depth of the floor between this flat and the flat below, half of the ceiling between the flat and the flat above, the 'internal and external walls' and a garage. It is subject to a ground rent and service charge of 1/12th of the landlord's expenses.
- 16 The landlord's expenses are the costs incurred in complying with its obligations in clause (3) and set out in the Fourth Schedule to maintain the structure and exterior of the building including the roof and gutters (but not the external walls of individual flats which are the tenant's responsibilities), to redecorate the common halls and carry out external redecoration every four years. The covenant for external decoration includes the garages.

Submissions and Tribunal Determinations

- 17 The parties' submissions on each of the disputed items and the Tribunal's decision are set out below.

2007 Internal Decoration: £3,261.81

- 18 For the Applicant
Mr Gallagher submitted that the landlord's liability was set out in the respective leases and the amount of service charge payable by the tenants was limited by section 19 of the Landlord & Tenant Act 1985. It was therefore necessary to show that the expense was reasonably incurred and that the work was of a reasonable standard. He referred to *Forcelux v Sweetman* [2001] 2 EGLR 173 and said that, in accordance with that decision, as the landlord was responsible for repair it had a wide discretion on the way it carried out work and even if the costs were 'high', they would not necessarily be 'unreasonable'. For a party to prove that a cost was unreasonable it would need to submit alternative contractors' quotes and show that the amount spent by the landlord was outside the range of 'reasonableness'.

- 19 He described the terms of the lease and submitted that the external walls of the flats were the tenants' responsibilities and that the landlord was only responsible for decorating the exterior together with repairing and decorating the common parts such as stairwells. Each of the leases contained an anomaly as there was no reference to the bin stores but as they were treated in the leases as part of the 'demise', the tenants should be responsible for their repair leaving the landlord only responsible for decoration. The Applicants submitted statements by three witnesses, each of whom also gave oral evidence at the Hearing:
- 20 1 Mr Peter Dening
Mr Dening was the Partner in charge of residential property management at Pennycuik Collins (PC), the landlord's managing agents. He explained that day-to-day management of the block was carried out by property managers among his staff and that various managers had been employed by his firm who had moved on and were no longer employed by PC. The current manager was Charlotte Daragh who did not attend the Hearing. He made no specific submissions regarding the internal decorating contract relating to the property.
- 21 2 Mrs Lyndsey Cannon-Leach
Mrs Cannon-Leach MIRPM submitted two statements in which she explained that she had been employed by PC since 2005, but had only been involved with the property from January to September 2010 while the previous manager was on maternity leave.
- 22 She said the interior of the property had been decorated in 2007 in accordance with the terms of the lease and that PC had prepared a specification of work and invited three contractors to submit tenders. The lowest quote was from Hardyman & Co Ltd. which was accepted in the sum of £3,261.81 including VAT. She said this was below the consultation limit required by s.20 of the Landlord & Tenant Act 1985. The tenants were advised of the tenders and schedule of work.
- 23 The work was then carried out and signed off by the firm's building surveyor.
- 24 One of the tenants, Mrs Starling-Booth, had complained about the quality of work being carried out but 'no other leaseholders aside from Natalie Starling [Mrs Starling-Booth] had complained about the workmanship'.
- 25 However, as a result of the complaint, one of the firm's Building Surveyors was asked to inspect the site and report on the alleged defects. There is a Site Report at tab 5.13 in the Applicant's bundle commenting on allegations 1) that woodwork had not been rubbed down prior to painting 2) wiring along walls should have been boxed in and 3) skirting boards should have been replaced. Curiously, the identity of the party making the request for inspection is blanked out and the surveyor's name is not typed on the report although there is a signature which is illegible. The Site Report was prepared in April 2007 and said 'there are no obvious signs of sanding dust situated in any of the staircases' but generally 'the quality of the decorating seems reasonable for the level of specification and budget that was agreed. ... However on reviewing the specification the contractor does clearly state the level of preparation the work will be carried out to.'
- 26 Furthermore, PC obtained a report from ICI Dulux Trade in January 2013 (January 2013 Report) that commented on the condition of the internal paintwork. This report by Mr Baggott of ICI Dulux Trade is very brief and points out the difficulty in commenting on work carried out six years previously, but makes two comments - 'On the whole, coatings are still tightly adhering' and 'there are however a few areas of rotten timber that will require attention on the next painting programme.'

27 3 Mr Adam Summerfield
At the Hearing, Mr Summerfield pointed out that ICI Dulux Trade said in the January 2013 Report that the paint was adhering, but made no other comment on the internal painting contract.

28 For the Respondents

Several of the Respondents attended the site inspection and Hearing, namely Mr Timmins, Mr Warner, Mrs Starling-Booth, Mr Partridge and Mr Gill. Mrs Starling-Booth acted as the lead Respondent and spoke on behalf of the others at the Hearing.

29 In Mrs Starling-Booth's written submission she was clearly unhappy with the quality of work carried out in 2007. On 2nd March 2007, she arrived home to find that she was unable to access her flat as the front door had been gloss painted shut and was starting to dry. She called her father who had to force entry. She emailed the PC property manager at the time, Laura Lock, complaining that the contractor had not contacted her to arrange access before the work had been carried out and that joinery had not been properly prepared as required by the specification provided to the tenants.

30 Miss Lock replied by email on 5th March 2007, quoting the specification which read:

'Specification: Prepare, stop up, rub down filler and paint 2 coats Vinyl Matt Emulsion on plaster ceilings and soffits. Prepare, stop up, rub down filler and paint 2 coats Water Base Eggshell on plaster walls. Prepare, stop up, rub down filler and paint 1 Undercoat and 1 coat Gloss finish on windows, doors, framework, timber box, staircase string, skirting, balustrade and railings. Where strong colour exists paint additional undercoat on doors.'

and:

'I will also be discussing this with them this morning as it is clear *they have not kept to their own specification.*' (Emphasis added by the Tribunal).

31 Following this email and further enquiries with the contractor, Miss Lock emailed Mrs Starling-Booth again on 5th March 2007:

'A supervisor has visited the site and also raised the issues with the contractors on site. They have painted most of the doors whilst they are open; however, *the supervisor has advised that those that have been painted closed will be addressed. He has also identified the areas that have not been 'sanded down'* and the contractors will also put this right'. (Emphasis added by the Tribunal).

32 Tribunal Decision

The Tribunal notes that the only witness for the Applicant able to give first-hand knowledge of the decorating contract in 2007 was Mr Denning who had not been directly involved with the contract. By contrast, Mrs Starling-Booth was able to give first-hand evidence and produced copies of the specification and emails sent by the Applicant's property manager at the time, Laura Lock, admitting that the contractors had not complied with the specification. Mrs Cannon-Leach said Mrs Starling-Booth was the only tenant who had complained about the work but this was not the case when the Tribunal inspected the property in November 2013, when several tenants were present and keen to demonstrate defects in the paintwork. The evidence of Mrs Cannon-Leach would also seem to be inconsistent with the Applicant's decision to list all the tenants as Respondents in the Application.

- 33 The Tribunal inspected the property on 13th November 2013 which was some six years after the work had been carried out by which time some deterioration could have been expected. However, the Tribunal noted rough paintwork, rotten joinery and top hung casements in stairwells that would not close due to the amount of paint applied to the joinery and the Tribunal found that the degree of deterioration was greater than could reasonably have been expected over this period of time.
- 34 The fact that the windows would not shut was clear evidence that the joinery had not been properly prepared or rubbed down in accordance with the specification and as they were in common areas, rather than within specific flats, they were within the landlord's responsibility.
- 35 Mr Gallagher in his closing comments at the Hearing sympathised with Mrs Starling-Booth's predicament. However, it is clear from the previously cited extracts from Laura Lock's email correspondence with Mrs Starling-Booth that hers was not the only door painted shut at the time. Furthermore, if Mrs Starling-Booth's door had been undercoated prior to glossing as required by the specification, she would have been asked to give the contractors access on the day the work was to be undertaken. She stated that the contractors gave her no such notice which brings into question whether her door had been undercoated.
- 36 On balance and from its own inspection, the Tribunal finds Mrs Starling-Booth's evidence more compelling and while there is no evidence to suggest that the contract sum would have been excessive had the work been carried out to specification, the work carried out was not to the required standard. Preparing and rubbing down surfaces takes significant time. The Tribunal was provided with no evidence from the parties to show how much of a painting contract cost would be due to preparation, but using its own general knowledge and experience it finds a reasonable sum to be 20% of the contract value. The Tribunal determines that the contractors did not keep to the specification and consequently deducts 20% from the cost as a reasonable sum for the work carried out, leaving a net sum of £2,609.44 including VAT as the reasonable amount recoverable by way of the service charge.

2009 Fascia and Soffit Replacement: £15,147.11

- 37 For the Applicant
By 2009 the plastic gutters to the building were in poor condition with loose fixings and moss growing in them resulting in twists in the gutter sections and leakage. They clearly needed attention as demonstrated by the photographs in Mr Summerfield's initial Statement for the Applicant at Appendix AS1-2.
- 38 Mr Summerfield is a Building Surveyor employed by PC. He prepared a Specification of Works dated 10th June 2009 for replacement guttering, downpipes and fascias in uPVC together with the installation of an eaves protection system and decoration of soffits. The specification included a specialist report by ICI Dulux specifying the appropriate paint to use on asbestos based soffits.
- 39 Tenders were sought and three quotations obtained, the lowest being £12,668 plus VAT from Ravenscroft Developments Limited which was accepted and the work was carried out.
- 40 The Applicant's three witnesses stated as follows:

- 41 1 Mr Peter Dening
In response to a complaint from Mrs Starling-Booth, Mr Dening arranged a meeting on 13th June 2012 attended by Mrs Starling-Booth and Helen Silvester, then Head of the Department, to discuss the matters in issue. Following the meeting, Mr Dening asked Mr Roddick, a Building Surveyor in his firm, to attend on site and to ascertain whether the complaint was justified. Mr Dening acting on Mr Roddick's advice stated that the work complied with the specification.
- 42 A further meeting was held on 22nd November 2012 between Mrs Starling-Booth, Mr & Mrs Partridge, Helen Silvester and Mr Baker, another Building Surveyor employed by PC, at which Mr Partridge questioned the quality of the work carried out.
- 43 2 Mrs Lyndsey Cannon-Leach
Mrs Cannon-Leach's statement advised that the work was carried out in accordance with the terms of the lease and section 20 of the Landlord & Tenant Act 1985. The initial specification for replacing the soffits had been amended to allow for decoration.
- 44 3 Mr Adam Summerfield
Mr Summerfield had acted as the Contract Administrator. As indicated above, he was responsible for preparing the Specification of Work and obtaining tenders. He had not supervised the work which would have been the role of a Clerk of Works.
- 45 At the Hearing, he said the contractors had used bituminous felt for the eaves protection system and explained the difference between this and sarking felt. He also said that, in his opinion, for access, health and safety reasons, the work had to be carried out from scaffolding rather than a moveable tower.
- 46 For the Respondents
Mrs Starling-Booth's written submission accepted that the work needed to be carried out and questioned why it had not been carried out sooner. However, she complained about the quality of work carried out, dirt left on white upvc window cills and disused aerials left on the side of the building.
- 47 Mr Partridge had also complained to PC in a letter dated 1st November 2012:

'I have repeatedly raised the issue of the work which was carried out on the fascias and the roof a couple of years ago when the roofing company used the wrong felt (sarking felt is the correct product for this job as it is breathable) under the roof tiles and also the tiles have been put back on without cross bonding the tiles. Your surveyor should have picked up these mistakes at the time the work was being carried out.'
- 48 Tribunal Decision
Both parties agreed that repairs were needed. No alternative quotes were provided by the Respondents and their complaint is that 1) the work could have been carried out from a moveable tower rather than by erecting expensive scaffolding and 2) that the contractors had not complied with the specification and had used the wrong type of felt.
- 49 On (1), the Tribunal finds Mr Summerfield's evidence carries more weight in that scaffolding was the appropriate method to use for this work.
- 50 On (2), the Tribunal noted that Mr Summerfield's drawing forming part of the specification at document PND28 [diagram on p.17 of the specification] shows sarking felt dressed over the eaves protection system, although at the Hearing he defended the use by Ravenscroft of bituminous felt instead. He answered all the questions put to him at the Hearing and described the system of cross bonding and the vented eaves

protectors. On balance, the Tribunal does not find that significant evidence has been produced by the Respondents to dispute the cost or quality of work carried out and, accordingly, finds the amount requested to be reasonable.

2010 External Painting and Decoration of Garages: £14,511.14

51 **For the Applicant**

Mr Gallagher said that while the lease required the landlord to decorate the exterior of the property, the structure of the timber window frames was the tenants' responsibility. Their liability extended to the garage since the definition of the demise in clause 1 of the lease included the garage. Further, Mr Gallagher said there was an implication that this liability also covered the doors of the bin stores.

52 The Applicant's witness evidence was as follows:

53 **1 Mr Peter Dening**

Mr Dening made no comment on the external decorating work carried out in 2010.

54 **2 Mrs Lyndsey Cannon-Leach**

Mrs Cannon-Leach submitted in a written statement that the external decorations had been carried out in accordance with the consultation requirements of section 20 of the Landlord & Tenant Act 1985. The residents had been consulted. No written observations were received at the time from Mrs Starling-Booth. An order had been placed with the contractor offering the lowest tender, Artisan Painting and Decoration. An information pack was sent to the residents advising that work was due to commence on 12th July 2010. When the contractors arrived on site Mrs Starling-Booth refused to allow them to paint her garage or bin store. The remainder were then decorated as planned in line with the specification and no objections were received from other lessees. Reports were obtained from Building Surveyors and Dulux in confirmation of the completion of the work.

55 **3 Mr Adam Summerfield**

Mr Summerfield acted as Contract Administrator and produced a specification of work including a paint specification from ICI Dulux. At the Hearing, he said that he visited the site several times during the contract period. In Further Directions issued by the Tribunal he was asked to detail the site visits recording the preparation of internal and external surfaces during the course of redecoration.

56 **For the Respondents**

Mrs Starling-Booth was unimpressed by PC, the managing agents. By July 2010 she had been raising issues relating to the property for three years and Mrs Cannon-Leach was the fifth property manager in that time. Consequently, she confirmed that she had refused to let the contractors decorate the parts of the property within her demise.

57 She said that rotting timber had been painted over leaving the property in no better condition than it had been before the project was undertaken in 2010.

58 On 20th July 2010 her partner, Mr Booth, had returned to her flat to find scaffold erected around the building that had damaged her Sky tv aerial, resulting in no signal. It was repaired at PC's request but the cost was added to the service charge.

59 Then, on 27th July 2010, Mr Booth returned to the flat to find that the contractors had painted the balcony door shut from the outside and Mr Booth had to scale the scaffolding to force it open from the balcony.

60 Mr Partridge was equally unimpressed with the work that had been undertaken. He questioned whether the garage doors had been undercoated. At the inspection, he showed the Tribunal areas of loose and flaking blue paint revealing the previous green paint beneath.

61 Tribunal Decision

The Tribunal noticed the poor finish to some of the external joinery and particularly to the garage doors during the inspection. Mr Summerfield had explained that he was only the 'Contract Administrator' and had not been directly involved in supervising the contractors on a daily basis. However, as he had visited the site during the carrying out of the work, the Tribunal, as indicated above, issued Further Directions in which it asked to see the records of his inspections.

62 A second Statement was duly received from Mr Summerfield, but the photographs accompanying this Statement did not match the descriptions of progress reported by Mr Summerfield. For example, the narrative for Photograph 1 was 'At the time of my inspection the communal door had been prepared, undercoated and filled ready for the application of gloss ...'

63 In fact, Photograph 1 showed white markings on a previously green or dark blue door to the building consistent with it having been prepared, but there was no sign that it had been undercoated. Furthermore, the original paint colour was reflective in areas such as the top rail of the door which was consistent with a gloss painted surface that had been inadequately sanded and prepared.

64 Again, it was claimed that Photograph 3 showed bin store doors that had been 'undercoated', but they were prepared, not undercoated.

65 Photograph 5 purported to show a garage door completely finished having been prepared, undercoated and glossed, but closer examination of the photograph showed a pair of blue glossed timber garage doors with a light coloured band showing through the paintwork on the left hand door, consistent with inadequate or no undercoating beneath.

66 None of the witnesses for the Applicant was able to confirm that they had seen undercoat being applied to the joinery before glossing, although the ICI Dulux specification at page 17 required 'One coat of Dulux Trade Weathershield Exterior flexible Undercoat of appropriate shade' before the gloss top coat. This was the basis on which the quote had been accepted.

67 The Tribunal notes that the complaints about this work were not just from Mrs Starling-Booth as indicated by Mrs Cannon-Leach. Mr Partridge had also complained. Moreover, each of the tenants had been listed as Respondents by the Applicant.

68 It is now three years since the work was carried out. The Tribunal would not have expected the paintwork to be in such poor condition now had it been properly prepared and undercoated in 2010. On the balance of probabilities therefore, the Tribunal finds the standard of work to be of a lesser quality than might reasonably be expected and below the standard required by the Applicant's specification. Accordingly, it deducts 15% from the sum claimed in order to derive a reasonable sum for the work in fact carried out. The Applicant claims £14,511.14 whereas the Tribunal, applying its general knowledge and experience, determines a reasonable sum for the work undertaken to be £12,334.46 including VAT.

Summary

- 69 Having read the parties' submissions, heard the oral evidence and inspected the property the Tribunal finds the following sums to be reasonable and to be recoverable by way of the service charge:

<u>Year</u>	<u>Item</u>	<u>Determination £</u>
2007	Internal Decoration	2,609.44
2009	Fascia and Soffit Replacement	15,147.11
2010	External Painting and Decoration of Garages	12,334.46

- 70 If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property). Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

I.D. Humphries B.Sc.(Est.Man.) FRICS

Date: 18 MAR 2014