



FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/00HN/LIS/2021/0007

Property : 29C Seamoor Road, Bournemouth, Dorset
BH4 9AA

Applicant : Monterolle Properties Limited
(the Landlord)

Representative: David Andrews - Director

Respondent: Richard Gittings
(the Lessee)

Representative: ---

Types of Application: Determination of service charges - Section 27A
Landlord and Tenant Act 1985 (the 1985 Act)

Tribunal Members: Judge P J Barber
Mr K Ridgeway MRICS

Date of Decision: 24 May 2021

DECISION

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Decision

- (1) The Tribunal determines in accordance with the provisions of Section 27A of the 1985 Act, that the sum of £75,723.95 demanded in advance on an estimated basis, for proposed major works, by two instalments respectively on 24 June 2020 and 25 December 2020, is reasonable and payable by the Respondent to the Applicant.

Reasons

INTRODUCTION

1. The application received by the Tribunal was dated 2 February 2021 and was for determination of service charges payable by two half-yearly instalments, by the Respondent lessee to the Applicant landlord, in the service charge year commencing 24 June 2020. The Applicant states that the Property is a one-bedroom flat in a converted Grade II listed building comprising 2 flats over 2 shops.
2. Directions were issued on 10 March 2021, providing for the matter to be determined by way of a paper determination, rather than by an oral hearing, unless a party objected; no objection has been received by the Tribunal and accordingly, the matter is being determined on the papers.
3. The Applicant has provided an electronic bundle of documents to the Tribunal, comprising 176 pages and which included witness statements, copies of the application, the directions, copy leases, Section 20 consultation documents, emails, description of works, specification, bill of quantities, analysis of tender returns, Listed Building consent and service charge invoices / demands.
4. The lease provided in relation to Flat 29C, is a Lease dated 19 October 1984 made between Cecelia Mary Cotton (1) Antonia Gail Aldridge (2) (“the Lease”) and being for a term of 99 years from 19 October 1984.
5. Due to Covid 19 restrictions, no inspection was carried out in respect of the Property.

THE LAW

6. Section 27A Landlord and Tenant Act 1985 provides that:-
 - (1) *An application may be made to the appropriate 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, the date at or by which it is payable, and*
 - (d) *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 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.*
- (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)-(7)....

WRITTEN REPRESENTATIONS

7. The electronic bundle included witness statements dated 23 March 2021 and 30 April 2021, and each made by David Andrews, being a director of the Applicant company. In his first statement, Mr Andrews broadly submitted that the Applicant is the freehold owner of the building which is known as 24 Westbourne Arcade / 29 Seamoor Road, Bournemouth, and that a Section 20 consultation process had been commenced by the Applicant`s surveyor, Peter May on 26 July 2019; the lessee of 29B Seamoor Road had nominated a contractor to take part in the tender process, although that contractor had subsequently declined to submit a tender. The consultation procedure had been completed on 24 May 2020 and Mr Andrews said that the lessee of 29B was in agreement with paying the service charge and to completing the works, whilst Mr Andrews said that the Respondent had made no comments or observations, and had not nominated any contractor. Mr Andrews indicated that the lowest price estimate for the works had been from Greendale Construction, that the estimate was accepted, and also the Listed Buildings Officer`s approval obtained, given that the building is Grade II listed. Service charge demands had been issued on or about 24 June 2020 and 25 December 2020, each in a sum of £37,861.97. Mr Andrews submitted that no objections to the works had been received from either of the two commercial tenants of the ground floor shops, and that they had been provided with a copy of the application in the matter made to the Tribunal, but had made no comment. Peter May had produced a matrix of apportionments, although Mr Andrews said that the provisions for contributions to costs are clearly set out in the Lease at clauses 3 and 8. Mr Andrews said that the contribution demanded of the other flat lessee, being Flat 29B, had been for £66,312.32 plus £9,946.85, being a 15% addition for the managing agent as provided for, he said, at clause 3.1(b)(ii) of the Lease, resulting in a total of £76,259.17. Mr Andrews said that the Respondent had been in credit for service charges in a sum of £535.22 and that accordingly the total amount demanded of him had been

£75,723.95; Mr Andrews submitted that the only thing preventing the work from being started was the non-payment of the service charges by the Respondent.

8. The bundle also included a witness statement made by Mr Ben Grewcock, a joint lessee of Flat 29B, in which he broadly stated that he had been in full consultation with Mr Andrews and Mr May, and was in agreement with the costs proposed, and for the work to be carried out. Mr Grewcock said he had been asked by the Applicant not actually to make payment of the sum demanded from him, until the works are about to commence, adding that he considered that the works are nevertheless urgently needed to protect the fabric of the building, and that he does want them to be completed as soon as possible. A letter from Mr May addressed to Mr Andrews and dated 3 February 2021, was included in the bundle, and it indicated that various attempts to engage the Respondent in dialogue over the course of time had failed; Mr May went on to describe the Section 20 consultation process carried out.
9. A letter dated 15 December 2021 from the Respondent to Mr Andrews referred to the ceiling at the top of the stairs collapsing due to water ingress, happening because of guttering on the east wall needing replacement, and also referring to the landing window rotting, and damage to the west wall of his flat requiring remediation. Mr Gittings also said that the street door serving Flats 29B & 29C was not opening remotely and he questioned when fire exits and smoke alarms had last been checked, requesting “*Please get on with these minor works – overrule your surveyor who insists it must be done as one project.*”
10. Various other correspondence was included in the bundle, including a response by Mr Andrews to the email from Mr Gittings, and an email from Mr Gittings dated 26 January 2021, in which Mr Gittings said he had paid £2,649.19 to meet outstanding ground rent, the repair of a leak in the bathroom, and insurance to date; Mr Gittings also referred to his being in Greece and with limited internet access, although he said the situation should improve in the following month when he was due to move to permanent accommodation in that country.
11. Relevant provisions in the Lease are as follows:-

Clause 3(1) is a covenant by the Lessee with the Lessor to pay on demand for each accounting year the aggregate of:

Clause 3(1)

(a) The following proportions.....

- (i) One half of the expense of performing and observing clause 8(a) and*
- (ii) One half of the expense of performing and observing clause 8(b) and*
- (iii) One third of the expense of performing and observing clause 8(c) and*
- (iv) (as regards the first floor unit only) one half of the expense of performing and observing clause 8(d) and the whole of the expense of performing and observing 8(e)*

(b) One third of:

- (i) The sum expected to be incurred by the Lessor in the ensuing year in employing managing agents for the Block or*
- (ii) in the absence of such managing agents fifteen percentum per annum of the total amount actually expended by the Lessor in the preceding accounting year of*

the term under clause 3 subclauses (a) (i) (ii) (iii) and (iv) above and during the ascertainment of such actual expenditure Fifteen percentum of the Lessor`s estimate of the same.

Clause 3(2) of the Lease broadly provides for half yearly service charges due on 24 June and 25 December, to be paid in advance with a provision for reconciliation at each year end.

12. Clause 8 of the Lease is a covenant by the Lessor with the Lessee that in consideration of the service charge, the Lessor will:

(a) Maintain repair and renew:

(i) The roof

(ii) All exterior stonework and the pointing of the exterior brickwork in each case only above the level of the upper edge of the stonework forming the fascia of the ground floor shop Number 24 Westbourne Arcade

(iii) The communal access including the floors of the hall and landings

(b) so often as reasonably required:

(i) Redecorate the exterior of the two units and the communal access including the external surfaces of the entrance doors and frames of the two units which adjoin the same and the window and window frame on the second floor landing.

(ii) Clean repair and renew the carpet in the communal access

(c) maintain repair and renew the main structure and the communal service

(d) maintain redecorate and renew the mansard roof (but not the windows therein) shown edged green on the Plan

(e) redecorate the exterior of the windows in the said mansard roof

13. The Tribunal noted and took into account that the bundle also included a Notice of Intention to carry out works dated 26 July 2019, a Notice Inviting Observations on Tenders dated 20 April 2020, and a notification by way of a letter dated 10 June 2020, referring to the appointment of Greendale Construction as the lowest tenderer. The bundle also included a detailed Description of Works, referring to scaffolding, external decorations & maintenance, internal repairs and roof repairs, together with a detailed Specification dated January 2020. Also included in the bundle were a Bill of Quantities for the works, Analysis of Tender Returns and a Listed Building Consent for the work. Copies of the invoice / demands were also included, respectively issued in June and December 2020 and apparently incorporating a summary of tenant rights and obligations.

CONSIDERATION

14. The Tribunal, have taken into account all the case papers in the bundle.
15. The issue for determination under Section 27A of the 1985 Act is as to whether or not the amounts demanded in advance for proposed major works, by way of two half-year service charge demands made in 2020, are reasonable and payable.
16. In regard to the Section 20 consultation process, the Applicant appears to have carried out consultation, although the Respondent chose not to make any observations in response to it. The Respondent has neither challenged the sufficiency of the consultation process, nor raised any submissions to suggest that any material prejudice to him would arise from the work being carried out, even if there were to have been any flaws involved in the process. The cost of the proposed works involves a relatively substantial sum; however, the building is Grade II listed and as such, the cost for carrying out exterior works, including stonework, lead work and repairs to what appears to be an unusually shaped and relatively complicated mansard roof structure, is likely to be higher than it might otherwise be for an unlisted building of generally more standard construction. The witness statements refer to the building being on the corner of Westbourne Arcade and Seamoor Road; the plans in the Lease and also the specification, indicate a building being of a slight wedge shape, under a relatively complex mansard roof, with parapet detailing and with elements of stonework to the elevations.
17. The Applicant selected the lowest tender, being that submitted by Greendale Construction at £134,031.24; this tender was considerably less than the other tender submitted by Spetisbury Construction Limited at £288,338.11. The Tribunal notes that two other contractors who were invited to tender, chose not to do so. The Description of Works included in the bundle referred to four broad categories involving scaffolding, external decorations and general maintenance, interior repairs, and roof repairs.
18. In regard to the major works proposed, the Respondent has not challenged the Section 20 consultation process itself. The Respondent did however, in hand written letter to Mr Andrews dated 15 December 2020, request that what he referred to as “minor works” be carried out, and apparently disputed the Applicant`s view that a much wider scope of work was required.
19. The Applicant has employed a professional surveyor who produced a specification for the works which appear to be within the scope of the landlord`s obligations under clause 8 of the Lease. The specification appears, on the face of it, to incorporate provisions and references of a usual nature and type to be expected in such documents. The Tribunal takes the view that the Applicant is reasonably entitled to follow the specification of works as detailed by its own professional surveyor. The Tribunal notes that the Respondent chose not to nominate any contractor, or to request further quotes through the Section 20 consultation process. Conversely, the Applicant confirmed that two estimates had been obtained, and that a 15% amount had been added to the selected tender amount, for supervision, apparently in accordance with clause 3(1)(b)(ii) of the Lease. On the evidence provided, there is no managing agent appointed; in such circumstances, clause 3(1)(b)(ii) provides for an addition to be made, by reference to fifteen percentum of the total amount actually expended by the Lessor in the preceding accounting year....and during the ascertainment of actual expenditure, fifteen percentum of the Lessor`s estimate.

20. The Tribunal notes that the Applicant has elected to bring these proceedings itself, without incurring further expense through additional professional legal or other third-party costs, and which it may or may not have sought to recover in further addition, depending on whether or not the Lease may allow for it.
21. The two service charge demands for June and December 2020, expressed as invoices, appear to include a summary of tenant rights and obligations, and no clear evidence has been provided in regard to any specific challenge to the same by the Respondent. Accordingly, on the basis of the evidence as actually presented and, absent any significant challenge by the Respondent or other evidence presented to the contrary, the Tribunal considers the amounts demanded in advance for the works proposed, to be within the provisions of the Lease and for the reasons as indicated above, to be reasonable and payable.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case, by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.