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**HM COURTS & TRIBUNALS SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**S. 27(3) of The Landlord and Tenant Act 1985 (as amended)  
(Future service charges)**

<b>Case Number:</b>	<b>CHI/21UD/LSC/2012/0072</b>
<b>Property:</b>	<b>12 Brittany Road St Leonards on Sea East Sussex TN38 0RD</b>
<b>Applicant:</b>	<b>The Personal Representatives of J.C Wright decd</b>
<b>Respondents:</b>	<b>The 12 leaseholders of the Property</b>
<b>Date of Hearing:</b>	<b>6<sup>th</sup> November 2012</b>
<b>Tribunal:</b>	<b>Mr R T A Wilson LLB (Lawyer Chairman) Mr N Cleverton FRICS (Surveyor Member)</b>
<b>Date of the Tribunal's Decision:</b>	<b>23<sup>rd</sup> November 2012</b>

## **BACKGROUND**

1. This was an application made by the Applicants under S.27A (3) of the 1985 Act for a determination whether, if costs were incurred for a programme of external and internal repair works to the building in accordance with a tender schedule costed by Packham Construction dated 13<sup>th</sup> November 2009, a service charge would be payable for the costs and if so the amount which would be payable. The tender price submitted by Packham Construction was stated to be £43,256.10.
2. By an order dated the 8<sup>th</sup> August 2012 the Tribunal gave directions for the Applicants to serve on the Respondents a statement of case with copies of documents in support of their application and if any of the Respondents objected to the application then they should attend the hearing.
3. The Applicants filed a written statement of case which had also been sent to each of the leaseholders and attended the hearing to develop their case.
4. None of the leaseholders had written to the Tribunal to contest the application but a small number of lessees attended the hearing and made oral representations.

## **INSPECTION**

6. The property is a four storey block standing in its own grounds forming 12 self contained flats, three on each floor. The property has solid external walls with a part pitched and tiled and part flat roof. The exterior of the property shows signs of neglect and is in need of rendering and redecoration. A number of the gutters have weeds growing in them and at a previous inspection carried out in August 2012 the Tribunal was shown sections of the roof, which exhibit structural damage due to prolonged water penetration. The Tribunal was shown the interior of flats 9, 10 and 12. In flats 9 & 12 there was evidence of damp penetration and in flat 10 a workman was seen plastering the walls.

## **THE LAW**

9. The law relevant to the determination of service charges is to be found primarily in sections 18, 19 and 27A of the 1985 Act. In brief summary, section 18 defines what is a service charge in terms that present no difficulty here and section 19 provides in the context of this case that a service charge must be reasonably incurred. Section 27(3) allows the tribunal to determine in this context 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. It is this latter provision that is particularly relevant to the present application.

## **HEARING**

10. Mr Nigel Stonard of Remus Management presented the case for the Applicants and he began his evidence by summarising the background to the application. He told the Tribunal that as long ago as 2009 his firm had been commissioned by the freeholders to organise a programme of external works to the building. Unfortunately the freeholder had died unexpectedly leaving a large portfolio of residential properties. This had led to difficulties in the decision making progress and unfortunate delay. Recently it had been discovered that substantial major repairs were required to certain parts of the roof and

the valleys. The ceiling over the communal stairwell and the ceiling in Flat 10 had been partially removed exposing serious damage to the roof structure and in particular the beams. This work was urgent and had recently been the subject of a dispensation application to the Tribunal and an order had been granted to allow the urgent works to be carried out. Scaffolding had been erected and the urgent work was being carried out. The Applicants had funded the cost of this work.

11. However much more work was still outstanding and the Applicants wished to proceed with this as soon as possible. However before proceeding they wished to have the assurance that the cost of this work would ultimately be recoverable from the leaseholders, hence this application.
12. Mr Stonard then called Ms Katie Smith of Messrs Ellis Sloane chartered surveyors who gave evidence that all of the work described in the summary tender analysis, appearing at tab D of the Applicants bundle, was necessary to restore the building to a proper state of repair.
13. At the request of the parties the Tribunal then adjourned the hearing to allow the parties time to discuss the application. Following discussions between Mr Stonard and the attending lessees the Tribunal received confirmation from all lessees that they did not wish to adduce any evidence to oppose the scope of the proposed works. They did however continue to challenge the costings as these had been tendered some three years ago and were therefore no longer safe to rely on.

#### **CONSIDERATION**

14. The evidence put before us establishes: -

- (i) There is structural damage and rot to the roof joists by the Velux roof light on the second floor landing of the building, which is in the course of being repaired. There is substantial damage to the adjacent plastered ceiling and it is clear that the structural roof members have suffered from water ingress over a prolonged period. This conclusion is confirmed by a very recently obtained structural engineers report. Similar damage may affect the roof timbers above flat 10.
- (ii) Apart from the roof, other areas of the structure and exterior of the property require attention. Large sections of the rendering on the South and North elevations require remedial work and sections of the guttering require replacement and/or repair and clearance.
- (iii) The internal common ways shown signs of neglect and require redecoration.

15. The Tribunal first considered the terms of the lease and in particular the repairing covenants contained therein. The lease places an obligation on the Applicants to maintain the exterior and structure of the property and also an obligation to keep the Common Parts well cared for. These obligations stand on their own regardless of whether or not the Applicants are in funds from the lessees who have to contribute their share only once the work has been carried out. In short, the Applicants have to pre-fund the works and it is therefore understandable that they wish assurance that the costs of the work will be recoverable from the leaseholders in due course.

16. The Tribunal reviewed the tender specification and concluded that subject to one exception, the work comprised in the schedule and also the work currently being carried out to the roof does fall within the Applicants obligations as set out in the lease. The exception is the installation of roof spikes to prevent birds nesting. Whilst the Tribunal

can see that this work could be of benefit to all the residents, no such spikes currently exist and therefore the work would constitute an improvement. Accordingly the leaseholders consent to this work will have to be obtained before the Applicants commission it.

17. The Tribunal considered the construction of Paragraph 1(2) of the Fifth Schedule of the lease, which requires the Applicants to keep the communal parts of the building well cared for, and considered that this covenant could embrace the decorating of these areas.
18. During the course of the hearing the parties were granted an adjournment so that they could discuss the scope of the work costed by Packham Construction in 2009. On returning to the room the Tribunal heard from Mr and Mrs Daly, the lessees of Flat 11 and Mr Watts of Flat 12. They confirmed that other than the bird protection methods they had no quarrel with the scope of the work costed by Packham Construction. They accepted that it was for the Applicants to carry out the work and that on completion they would be liable to contribute their share of the reasonable costs.
19. Their objection related to the costings. Bearing in mind that the costings had been assessed as long ago as 2009 they could not accept that the prices necessarily reflected the current market and they opposed any attempt to fix this sum as being a reasonable amount to pay for the works.
20. The Tribunal accepts the submissions of the leaseholders over the costings. In the absence of reliable evidence demonstrating that the works have been the subject of a recent competitive tender process, the Tribunal is not in a position to make a determination as to what figure would be payable if the works were carried out. In this case no such evidence is before the Tribunal. Accordingly what the Applicants must do is once more go out to competitive tender to ensure that they obtain value for money in today's market. In addition to this they must engage with the lessees in the statutory consultation procedures on the basis that the cost to each lessee will be substantially in excess of the consultation threshold of £250 per leaseholder.
21. As to the scope of the Works, the Tribunal is satisfied that these fall within the responsibility of the Applicants under the occupational leases and if costs were incurred to carry out the works specified in the specification/tender forming part of the Applicants evidence, then a service charge would be payable for those costs payable by the lessees on demand in accordance with the provisions of their leases.

### **Section 20C Application (Costs)**

22. The legislation gives the Tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it being treated as relevant costs to be taken into account when determining the amount of service charge. The Tribunal has a wide discretion to make an order that is just and equitable in all the circumstances. In arriving at its decision the Tribunal has considered both the outcome of the case and also the conduct of the parties during the course of the proceedings.
23. At the hearing the Respondents invited the Tribunal to make an order under S20C. They told the Tribunal that there had never been any issues regarding the scope of the work and that what was proposed fell fairly and squarely within the Applicant's responsibility. In short there was no need for the Applicants to have made an application to the Tribunal and it was not reasonable for the leaseholders to have to bear the costs.

24. As to the financial information, the figures were more than two years old and it was not reasonable of the Applicants to expect either the leaseholders or for that matter the Tribunal to agree figures, which were so historic. Had the Applicants wanted the Tribunal to sanction and approve specific expenditure then they should have provided up to date financial information in their evidence. This they did not do.
25. The Applicants representative confirmed that their clients were content to leave the issue of costs to the discretion of the Tribunal and they offered no evidence on this issue.
26. The Tribunal has no hesitation in exercising its discretion by making an order under S20C of the Act to the effect that no part of the Applicants costs in relation to these proceedings are recoverable from the leaseholders by way of service charge or otherwise. The Tribunal agrees and accepts the Respondents' submissions that in reality there was no real need for such an application to be made. There is no doubt that the proposed work falls within the scope of the Applicants' repairing obligations and that there is an urgent need for the work to be carried out as soon as possible. The longer that the Applicants delay in commencing the work the more likely it is that the leaseholders will be able to plead a successful claim for damages arising out of historic neglect. The Tribunal raises this point, as it is aware that the issue was raised by one of the lessees in a dispensation application in respect of this property decided earlier in the year by another Tribunal.

Signed

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Mr. RTA Wilson LLB

Dated 23<sup>rd</sup> November 2012