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

Case reference : **LON/00AJ/LVA/2014/00386**

Property : **100 Garrick Close, Ealing, London
W5 1AT**

Applicant : **Mr C. Polydorou**

Representative : **In person**

Respondent : **Notting Hill Home Ownership Ltd**

Representative : **Mr Byron Britton, barrister
instructed by Glazer Delmar,
solicitors**

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

Tribunal members : **Ruth Wayte
Mr P Tobin FRICS
Mr L Packer**

**Date and venue of
hearing** : **6 November 2014 at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **16 December 2014**

DECISION

Decisions of the tribunal

- (1) The Respondent has complied with their consultation requirements in respect of the cleaning contract.
- (2) The tribunal determines that the sum of £136.58 is payable by the Applicant in respect of the cleaning costs for the service charge year ending 31 March 2013.
- (3) The tribunal determines that the sum of £186.19 is payable by the Applicant in respect of the cleaning costs for the service charge year ending 31 March 2014.
- (4) The tribunal determines that the sum of £186.19 is payable by the Applicant in respect of the estimated cleaning costs for the service charge year ending 31 March 2015.
- (5) The tribunal makes the determinations as set out under the various headings in this Decision.
- (6) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 limiting the landlord's costs of the tribunal proceedings that may be passed to the lessees through any service charge to 50% of the costs incurred.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") payable by the Applicant in respect of cleaning costs for the service charge years ending 31 March 2013, 2014 and 2015, the latter being based on estimated costs.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person at the hearing and the Respondent was represented by Mr Byron Britton.
4. Immediately prior to the hearing the Respondent handed in a skeleton argument. The start of the hearing was delayed while the tribunal and the Applicant considered that new document, the Applicant having agreed to its submission.

5. During the hearing, it became apparent that further information in relation to the pricing of the bids and an additional bidder would be relevant to the decision of the tribunal and the parties were invited to make further written submissions on these points. The submissions were received within the timescale ordered by the tribunal and are therefore taken into account in this decision.

The background

6. The property which is the subject of this application is a flat in an estate of 112 properties, arranged in 12 blocks in grounds which include substantial woodland. All of the properties are held on long leases.
7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The Applicant holds 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 specific provisions of the lease and will be referred to below, where appropriate.
9. The dispute is in relation to cleaning costs which have increased significantly from around £6,500 in 2011/12 to just over £20,000 a year in 2013/14. This followed the Respondent's decision to enter into a 5 year contract for cleaning services across its properties in West London, covering 2,878 individual properties (1,413 on long leaseholds) and a competitive procurement process.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) whether the Respondent had regard to the observations of lessees of Garrick Close in respect of the section 20 consultation process;
 - (ii) whether the cleaning costs are properly charged and accounted for in the Accounts;
 - (iii) whether the cleaning costs are unreasonably high; and
 - (iv) whether an order under section 20C of the 1985 Act should be made.

11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Consultation process

12. The Applicant had already made it clear in correspondence before the hearing that he did not wish to challenge the legality of the process as a whole. His challenge was in relation to whether the Respondent took into account observations from Garrick Close before letting the cleaning contract. At the start of the hearing the Respondent further confirmed that he now understood the extent of the duty to have “due regard”, which he paraphrased as “take a look”. In these circumstances he did not pursue his objection other than in relation to reasonableness.
13. The Respondent confirmed that the process for this contract was appropriate to a Qualifying Long Term Agreement for which a public notice is required (Schedule 2 to the Service Charges (Consultation Requirements)(England)Regulations 2003 (as amended). The landlord is obliged to consider the observations and make a response to those observations within 21 days. The Respondent’s witness Kevin Dunleavy, leasehold manager, gave evidence that he had supervised a summary of the observations which had been considered before awarding the contract. A copy of the summary was in the bundle.

The tribunal’s decision

14. In the light of the summary which contains both the observations and the Respondent’s response, the tribunal determines that the Respondent has had regard to the observations in accordance with the appropriate regulations and has therefore complied with the requirements for consultation.

The Accounts

15. During the hearing it became clear that this issue was really more to do with the reasonableness of the cleaning costs, as detailed below, although following representations from the Applicant the Respondent made two concessions on the accounts: that in 2012/13 cleaning had been charged for 13 months rather than 12 and that the cleaning charge for 2013/14 should be limited to the contractual fixed fee in the absence of any evidence to justify charging a higher amount. Given that the actual amount charged would depend on the outcome of the tribunal’s decision on reasonableness, this is dealt with in the conclusion to the following section.

The Cleaning Costs

16. This was the crux of the Applicant's case. Put briefly, he submitted that there was no good reason to change from World Wide Plants, the cleaning company used by the Respondent before the new contract with Just Ask came into effect and significantly increased the costs for Garrick Close. There appeared to be three reasons for the increase: a more detailed specification, the application of the London Living Wage to the prices tendered and the fact that a much larger area was covered, which the Applicant felt had caused the costs to Garrick Close to be increased so that the leaseholders were in effect subsidising tenants at other properties owned by the Respondent. The Applicant also submitted that the profit element was unreasonably high under the contract, given that the actual cost of cleaning was on his calculations some £7,000 at London Living Wage prices.
17. The Applicant had provided a number of quotations to support his application, including one from Rose Property Services for £10,900 plus VAT. It subsequently became clear that Rose had also tendered for the new bulk contract but been unsuccessful and details were requested by the tribunal by way of written submissions as set out above. These submissions indicated that Rose had bid a total of £758,531 for the contract as opposed to the winning bidder's price of £584,255. The Applicant submitted that applying his quote from Rose for Garrick Close to their bid for the West London portfolio indicated a percentage of 1.73%, which when applied to the winning bidder's price indicated that a reasonable charge for Garrick Close would be £10,107 – consistent with his assertions that this was a more reasonable cost for cleaning that estate.
18. The Respondent's evidence fully explained the background to the decision to let a larger contract, on the basis that this would secure better value for its leaseholders, following complaints about the standard of cleaning across its portfolio. It conceded that the actual costs had increased but asserted that Worldwide Plants had charged a subsidised fee in relation to Garrick Close and therefore the costs for that estate were likely to increase in any event. Worldwide Plants did not tender for the new contract.
19. In terms of the specification, the Respondent explained that the new contracts would provide better consistency across its properties, a better quality service and therefore value for money. No objections had been received from Garrick Close to the proposals to let larger contracts, although the Respondent conceded that concerns were expressed about the end result and, in particular, the price. Based on the fixed price of £20,238 for Garrick Close, the cost to the Applicant of the new contract with Just Ask was £3.58 per week, which the Respondent submitted was plainly not unreasonable.
20. Mr Dunleavy for the Respondent gave evidence that the Respondent had decided as a matter of policy that the new contracts should include

a commitment to pay all workers the London Living Wage. Not only was that wage considered proper and appropriate for London workers, the intention was that it would help to secure a better standard of cleaning. The effect of the London Living Wage (LLW) policy on the cost of cleaning was explained by the Respondent in their written submissions after the hearing. In particular, the Respondent clarified that the tenderers were asked for a price with and without the LLW, with the difference for the Just Ask tender being 16%. Evidence had also been given that Just Ask were the second cheapest bidder and obtained the highest overall score once the quality of their bid (described as a method statement) was taken into account, the bids having been assessed on a 50:50 split between the two.

21. In terms of the larger contract leading to a greater burden on Garrick Close, Mr Dunleavy denied this claim, giving evidence of the cleaning costs for a number of other estates included in the new contract, which gave an indication that the costs for Garrick Close were reasonable. To single out comparators at the top and bottom of the range: Shaftesbury Place was priced at £30,000 per annum for 75 flats (although there was a cleaner on site), compared to £10,000 for Douglas Close which was a new estate of about 50 units in 5 blocks. Mr Dunleavy submitted that would indicate that a charge of some £20,000 for Garrick Close, being 112 flats in 12 blocks, was a reasonable allocation.

The tribunal's decision

22. Although the tribunal understood the Applicant's objection to the significant increase in the cost for cleaning the estate, there was no doubt that the Respondent was entitled to procure its cleaning services differently and that an open procurement exercise had been conducted. The winning bidder, Just Ask, gave the second cheapest quote and had the highest scored bid against all tender criteria. The stipulation that the cleaners should be paid the London Living Wage was a reasonable criterion and, currently at £9.15, is clearly not an unreasonable hourly rate. Following the further explanation from the Respondent, there was also no evidence that this criterion had unreasonably increased the cost of the service. The Applicant's own evidence supported the Respondent's position that the cleaning costs under World Wide Plants were lower than the market rate, with his quote from Rose Property Services amounting to £13,080 including VAT.
23. That said, the tribunal did not accept that there could be a direct comparison between the quote provided by Rose on the old specification it previously worked to, as opposed to its bid price for the new contract and therefore did not accept that the Applicant's estimated percentage of 1.73% of the total bid price was an appropriate apportionment for the cleaning costs to Garrick Close. Mr Dunleavy's comparators were a much better indication of the relative scale of the task and in the circumstances the tribunal determines that the

apportionment by the winning bidder of £20,238 (the contract price) to Garrick Close is reasonable. Rose's quote to the Applicant on the basis of a much reduced specification would break down to a price differential of some £66 per year or £1.27 per week for the Applicant, based on his service charge contribution of 0.92%. Given the additional services contracted for on the basis set out in the Invitation to Tender, the Tribunal determines that this differential is justified in this case. In any event, Rose's bid price for the contract was considerably higher than the Just Ask bid. The tribunal did not accept that there was any evidence to support the Applicant's claim that the leaseholders at Garrick Close were subsidising the cleaning costs for tenants across the Respondent's estate.

24. Applying this finding to the years in dispute, the service charge year ending 31 March 2013 saw the transition from World Wide Plants to Just Ask and a charge of £16,532.50. At the hearing, the Respondent conceded that this figure was incorrect as an additional month had been charged for Just Ask by mistake. That reduced the item to £14,846.05 in the service charge accounts and the Applicant's contribution to £136.58. The tribunal determines that this is a reasonable and payable sum.
25. Given the lack of evidence at the hearing to support a price higher than the contract sum, the Respondent limited its claim for cleaning costs for the service charge year ending 31 March 2014 to the contract sum of £20,238. The Applicant's contribution is £186.19 and the tribunal determines that this is a reasonable and payable sum.
26. Finally, again in the absence of any evidence to support a price higher than the contract sum for the estimated service charge for the year ending 31 March 2015, the tribunal also determines that £186.19 is a reasonable and payable sum for the Applicant's contribution towards those estimated charges.

Application under s.20C

27. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Although the majority of the determinations have gone in favour of the Respondent, the tribunal considers that its case could have been prepared in a much more cost effective way. In particular, there was no need for the majority of the additional bundle prepared by the Respondent and the additional submissions were also much more voluminous than required, with the exception of the important cost comparisons which were illegible and had to be requested again. In the circumstances the tribunal determines that it is just and equitable for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass more than 50% of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Ruth Wayte

Date: 16 December 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 27A

- (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,
 - (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 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) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.