FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference :	CHI/21UC/LSC/2020/0044
Property :	Carillon House, 18 Eversfield Road, Eastbourne, East Sussex BN21 2AS
Applicant :	Andrew Collingwood (Flat 1) Simon Naish (Flat 4) Neil Baker (Flat 5) (the Lessees)
Representative:	Simon Naish
Respondent:	Carillon House Eastbourne Limited (the Landlord)
Representative:	Hunters Estate and Property Management Limited
Types of Application:	Determination of service charges - Section 27A Landlord and Tenant Act 1985 (the 1985 Act)
Tribunal Members:	Judge P J Barber Mr R Athow FRICS, MIRPM
Date of Decision:	30 November 2020

DECISION

Decision

(1) The Tribunal determines that the costs relating to major works being £36,517.61 were reasonably incurred and are payable by the Applicant lessees in accordance with the provisions of the Lease.

(2) The Tribunal makes no order for costs.

Reasons

INTRODUCTION

1. The application received by the Tribunal was dated 3 May 2020 and was for determination of service charges payable by the Applicant lessees to the Respondent, in the service charge years 2018 and 2019. Application is also made in respect of costs under Section 20C of the 1985 Act, and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). The Applicants state that Carillon House, 18 Eversfield Road, Eastbourne BN21 2AS (the Property), is a large house converted into 7 flats, and that the application broadly concerns major external decoration works to the Property completed following a Section 20 consultation process. Directions were issued on 8 July 2020, providing for the matter to be determined by way of a paper determination, rather than by an oral hearing, unless a party objected; no such objections have been made and accordingly, the matter is being determined on the papers.
2. The Applicant has provided an electronic bundle of documents to the Tribunal which variously included copies of the application, service charge accounts, specimen lease, the Respondent`s statement of truth, documents and photographs.
3. The specimen lease provided is in relation to Flat 4, and being a Lease dated 21 December 1989 made between Beresford International (UK) Limited (1) Paul Anthony Holder (2) ("the Lease") for a term of 125 years from 28 November 1989.
4. Due to Covid 19 restrictions, no inspection was carried out in respect of the Property.

THE LAW

5. 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

6. The electronic bundle includes at Pages 2-7, the Applicants` statement of case dated 1 August 2020, which in broad terms refers to complaints regarding the Section 20 consultation process in regard to the works, an excessive specification and also the cost of the works. The Applicants say that Section 20 consultation was initiated by the previous managing agent, Park Lane, in November 2017; Mr Naish says that he responded to the first notice, nominating his company, Affordable Roofing Eastbourne Limited ("Affordable Roofing"), to provide a quote. Mr Naish says that the managing agent changed part way through the consultation process, following the appointment of Hunters Estate and Property Management Limited ("Hunters"); Hunters issued a notice in June 2018 detailing two quotations and advising of an award to CRB Contractors for £31,015.00. Mr Naish said that his nominated contractor, Affordable Roofing, had not been asked to quote. However Affordable Roofing were then asked by the agents to provide a quote, which they did for a price of £18,900.00 including VAT. Affordable Roofing was asked to provide a more detailed breakdown as to their costs which Affordable Roofing considered was not required. The Applicants say that Hunters wrote to the lessees in August 2018 advising of the Affordable Roofing quote, but rejecting it on the basis that it did not include a detailed price specification for each individual piece of work. The Applicants state that in September 2018, Hunters indicated that their preferred contractor was to undertake the work, notwithstanding the lower price from Affordable Roofing, adding that it was outside the consultation process and not based on the specification of works. Mr Naish says that he challenged the fees proposed including those which would be payable to Hunters, given that as these were a percentage of the accepted tender, it would be in Hunters` best interests not to accept the lowest tender, or to review the specification which Mr Naish considered to be excessive in regard to what was actually required. Mr Naish said that in November 2018, Hunters wrote again to lessees, saying they were aware of an

unwillingness by some lessees to pay, and that they would seek two further quotations, although Affordable Roofing was not to be asked to quote.

7. Mr Naish said that by March 2019, Hunters had written again to lessees, stating that one further quote had been obtained, being for £26,431.00 plus VAT from M R Roberts. In April 2019, Mr Naish said that he obtained a report from an independent surveyor, Mr Kevin Westgate MRICS, who was not known to the Applicants and who questioned various aspects of the specification as being necessary, including certain front elevation decoration, work to roof tiles and ridge tiles and other replacements. Mr Naish said that in May 2019, Hunters wrote again to lessees referring this time to a new invoice for the works, for £36,517.61 including VAT. Mr Naish said that the works were finally completed around the end of December 2019, although on inspection he was alarmed to discover that the whole of the rear elevation had been painted, despite being previously only rendered. Mr Naish said that Hunters` response to his query regarding this in January 2020, was that during the work, the render and condition of some of the windows was quite poor, whilst the roof was in reasonable order, and that in consequence the budget was used to improve the weather resistance of the building envelope, by painting. Mr Naish said this confirmed that some of the original specification had been too high.

8. Mr Naish submitted that it was clearly demonstrated that the Section 20 consultation process was not properly followed, given the late appointment of M R Roberts as contractor, over specification of the works, lack of opportunity to offer further nominations and carrying out of inappropriate works. Mr Naish also submitted that the Lease does not allow for changes to the fabric of the building. Mr Naish concluded by saying that the total cost of the works was £36,517.61 and that since the Section 20 consultation process was not followed, the liability of each lessee should be capped at £250.00; in the alternative he said that if the Tribunal felt that the Section 20 process only partly failed, then judgement should be based upon how much the works were over specified, and which works were carried out, but not necessary or authorised. Mr Naish submitted that there was a good argument for saying that the scope of the works was unnecessary and, in that case, the lessees should pay only half of the total, being £18,258.80. Mr Naish further stated that the Applicants request a refund of the application fees and for orders to be made for costs under Section 20C of the 1985 Act and Paragraph 5A of Schedule 11 of the 2002 Act. Mr Naish also referred to a separate issue concerning company management charges.

9. The Respondent`s statement of truth is provided in the form of a letter from its representative dated 22 September 2020, at Pages 94-96 of the bundle. In their letter, Hunters referred to a Section 20 notice having been served by the previous managing agents, Park Lane and which firm had been taken over by Hunters on 19 January 2018. Hunters said that the nomination of Affordable Roofing by Mr Naish had unfortunately not been passed to them or their surveyor, Mr Gavin Bayfield, but was subsequently included. Hunters submitted that the Applicants had been made aware of the change of managing agents and that Affordable Roofing had been invited to tender in June 2018. Hunters said that in September 2018, the lessees suggested that a further surveyor be appointed and other smaller companies asked to quote for the cost of the works, adding that although the Section 20 process took longer than envisaged, the landlord had wanted to ensure that all options were considered. Hunters were instructed in November 2018 to advise that two further quotes would be obtained.

10. Hunters submitted that there is no provision in the Lease stating that only surfaces previously painted, may be so painted and that their surveyor had considered painting to be the most cost-effective means of dealing with the render. Hunters submitted that the lessees had not raised the suggestion of over-specification until March 2020, and that they were surprised at this, as the work had commenced in August 2019. Hunters referred to various appended photographs of the building after the repairs had been carried out. In regard to professional fees, Hunters said that Mr Naish was only complaining about these because of the extent of the specified works, not because the fee proposal was unreasonable. In regard to the landlord`s ability to recover managing agent`s fees through the service charge, Hunters said that Clause 6 of the Fourth Schedule of the Lease allows for this.

CONSIDERATION

11. The Tribunal, have taken into account all the case papers in the bundle.

12. The issue for determination under Section 27(A) of the 1985 Act, is as to whether the service charges demanded, are reasonable and payable.

13. The Applicants submit that the Section 20 consultation process carried out had been breached for various reasons including failure to request a tender from Mr Naish`s nominated contractor, Affordable Roofing; failure to serve a revised statement of estimates once the Affordable Roofing tender was produced; failures arising in November 2018 when further quotes were obtained; delays in the process between the original Section 20 notice being served and commencement of the works in August 2019; and variation to the scope of works once contractors were on site, without further consulting. Whilst there may have been some issues regarding the consultation process and the timescales over which it was conducted, the Tribunal notes nevertheless, that the landlord had endeavoured to carry out some consultation and evidently when some resistance was expressed by the lessees regarding the amount of the estimates, the landlord did obtain further quotes. Similarly, the landlord did at least consider the lower quote provided by Affordable Roofing, although rejected it on the basis that it had not in its view, made allowance for all of the items listed in the specification.

14. Mr Naish referred to the views of the tenants` own surveyor Mr Westgate, as contained in the latter`s letter dated at Pages 44 & 45 of the bundle. Mr Westgate said that the building was in need of some repairs and redecoration, adding "*observations*" in regard to the specification prepared by the landlord`s surveyor, including to the effect that redecoration was not needed to all elevations, that a scaffold alarm was unnecessary, that he had not seen any defects to roof or ridge tiles, and otherwise in regard to the extent of use of render, beading, mastic pointing, and mortar flaunching, as well as in regard to absence of wrought iron, and as to whether or not it would be necessary to replace eaves guttering. In broad terms, the landlord had a specification prepared and took the view that it wished to adhere to such specification, in the long-term interest of the building. The Tribunal accepts the difference of views as between the respective surveyors, but takes the view that the landlord was reasonably entitled to decide to follow the specification prepared by its own professional advisor.

15. No clear evidence was provided by the Applicants to indicate that the cost of the works actually carried out was excessive; rather, the Applicants` concern was in regard to the quantum of works, and in relation to what they considered to be unnecessary works. In particular the Applicants raised concern about the painting of

the rear elevation which they said had been previously only rendered. The Applicants rely on clause 5(f) in the Lease at Page 85 of the bundle, being a landlord covenant to *"…decorate the external parts of the building usually painted with at least two coats of good paint*". However, the Tribunal notes that elsewhere in the Lease, namely clause 5(d) on Page 86, there are more general lessor obligations "*…to maintain repair decorate and renew (i) the main structure and in particular the external walls…"* The Tribunal considers that such provision allowed sufficient latitude to the landlord, if it so reasonably decided, to paint the rear elevation. In regard to this and other variations, it would not be wholly unusual for additional work to be revealed as necessary, during the course of such major works as in this case, and for which there may be justification in terms of carrying out such work, whilst scaffolding and appropriate equipment were all available on site, rather than deferring until a future occasion.

16. On the basis that the work carried out is accepted as being not wholly excessive, and in the absence of any specific challenge by the Applicants to the actual costs, the Tribunal finds no evidence that the interests of the Applicants may have been materially prejudiced by any shortcomings which may have occurred through the Section 20 consultation process. In regard to the challenge raised concerning the managing agent`s fees, it does not follow as the Applicants suggest, that these should not be recoverable and it is standard practice for surveyors to charge their fees based on a percentage of the final contract price.
17. In regard to the applications made in respect of costs under Section 20C of the 1985 Act and Paragraph 5A of Schedule 11 of the 2002 Act, the Tribunal is not minded to exercise its discretion to make any order.
18. Accordingly, the decision of the Tribunal is that the costs of £36,517.61 for major works in the year 2018/19, were reasonably incurred and are payable by the lessees.

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.