

LON/00BD/LSC/2006/0430

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 27A & 20C
OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Applicants: Mr P Kirby and others

Respondents: Festalfine Ltd

Re: Lichfield Court, Sheen Road, Richmond, TW9 1AY

Application received 11 December 2006

Hearing date: 3 & 4 May 2007

Appearances: Mr P Kirby - (for Applicants)

Mr J Lyde - Festalfine Ltd (for Respondents)
Mr J May - Solicitor, JohnMay Solicitors
Mr Goodman- John Goodman Associates

Members of the Leasehold Valuation Tribunal:

Mrs B Hindley LLB
Mr I Holdsworth Bsc Msc FRICS
Ms T Downie Msc

1. This is an application by some 20 leaseholders to determine the reasonableness of service charge costs proposed in connection with three different major works projects - replacement windows, rewiring and roadway resurfacing.
2. Before the hearing the Tribunal inspected the subject block and found it to comprise two purpose built blocks of flats, in art deco style, situated in the centre of Richmond Upon Thames. The blocks are known as the Major and Minor blocks and respectively contain 152 and 59 flats, surrounded by estate grounds which are a mix of estate gardens and unallocated parking, with the Major block having a decorative inner courtyard garden. At ground floor level beneath both blocks on Sheen Road are terraces of shops known as Litchfield Terrace. The grounds of the blocks also provide vehicular and pedestrian access to another block of flats – Northumbria Court – situated to the north of the site.
3. The subject block is owned by the leaseholders who, in 1978, had enfranchised and the present respondent company was created with each leaseholder entitled to one share. As a result Festalfine Ltd is a company exclusively owned by the owners of all of the flats, the Board of directors being elected by the shareholders from time to time.
4. Of the 211 flats, 201 are held on long leases for terms expiring in 2098 and the other 10 are held directly by Festalfine Ltd. Mr May said that they provided an income for the company which was used to meet the administrative and other costs of the company not recoverable by way of service charge.
5. On 14 February 2006 the Board of directors of the respondent company issued a paper - 'The Way Ahead' - to leaseholders, stating that since the company had been formed there had been 'no serious attempt to set aside money to fund major capital expenditure' but that a number of capital works had now become essential including the three which are the subject of the application.
6. The Way Ahead paper stated that it was hoped to commence the window replacement in 2007 and complete it in 2009 at an estimated cost of £2.7million. An initial survey of the electrical infrastructure upgrade, necessary to comply with current electrical regulations and to satisfy the insurers, had suggested a cost of £300,000. This work was to be completed between 2006 and 2009 with £83,000 of the £300,000 included in the budget for 2006. Road resurfacing at an estimated cost of £150,000 was to be delayed until 2010 but essential remedial work in 2007 was budgeted at £50,000.

WINDOW REPLACEMENT

7. In October 2002 the respondents had obtained a report from John Mason and Partners proposing the phased (2004 – 2007) replacement of the original Crittall windows with aluminium windows at an estimated cost of £2,159,000.
8. In April 2003 the ATP Group Partnership had produced a more detailed report with estimates of £938,200 if UPVC was used and £1,096,500 for aluminium windows.
9. On 9 February 2004 the block was unexpectedly listed and given Grade 2 status.

10. In September 2006 John Goodman Associates produced an analysis of possible costs for replacement steel windows. This suggested potential costs of £2,616,750.
11. Indicative quotes were obtained from the only two window manufacturers which, Mr Goodman said in evidence, were capable of producing steel windows which would satisfy the local planning authority. These gave costs of £1,982,710 + VAT (Clements) and £1,782,248 + VAT (Crittall).
12. At the AGM in October 2006 questions were put by leaseholders concerning the replacement window costs and these were answered in an attachment to the minutes. This stated that the consultants' opinion was that the overall estimated cost would be £3.3million.
13. In evidence Mr Goodman explained that in his opinion the quotations previously obtained were nonsensical because the included scaffolding costs were for the total scaffolding of the building for the duration of the contract. He envisaged the work being carried out from long mounted cranes with only limited scaffolding being necessary. Questioned by the Tribunal he gave his professional opinion that the works could be completed at an approximate cost of £2.35/4million, to include the supply and fix cost of the windows at £1.75million. This figure was based on revised quotations from both potential window suppliers who had received a revised specification. He said that he was still negotiating with both window manufacturers and the local planners. Architect drawings of all the windows had now been obtained and copies were provided to the Tribunal. Mr Goodman was concerned that because of the delays it would now be impossible to commence the work until 5 November 2007 which, he agreed, was not an ideal time to begin such works
14. From Mr Lydes' evidence it became apparent that a number of other issues affecting the final contract price had still to be considered. These included whether the windows at the rear of the shops were also to be replaced (the Tribunal was shown a specimen shop lease which required payment of a fair proportion only, with no obligation to pay in advance) and the possibility that VAT might not be chargeable.
15. Mr Kirby said that the windows on the internal courtyard areas of the building were not in such poor state as those on the outer walls. He had shown the Tribunal the windows in his flat which were 'all right'. He was, therefore, of the opinion that the works could be phased, as originally planned, over a number of years. Moreover, he was concerned that the leaseholders who had already replaced their own windows were being told that they would have to pay again.
16. Mr Goodman said that the almost total neglect of the windows previously meant that all the windows were, to a greater or lesser extent, defective and needed replacement. He described pitting, rusting and glass cracking. He said that few of the windows (the Tribunal was told that between 34 and 36 flats already had replacement windows) had been replaced to an acceptable standard. In any event, he saw total replacement in the same design as creating a more cohesive whole and as putting additional value on the flats. He explained that the costs for the works undertaken in a single programme would be significantly less than a phased programme and said that long term guarantees would be provided on completion. He added that in March 2007 a planning application had been submitted to the London Borough of Richmond Upon Thames but no response had yet been received.

THE ELECTRICAL WORKS

17. In 'The Way Ahead' document this work was estimated at £300,000.
18. In evidence Mr Stapley said that in October 2005 his firm had been asked to do a condition survey and they had estimated the required works (renewal of the electrical supply cabling from the mains to the buildings and thence to the individual flats) at £40,000 per tower (x 6) exclusive of VAT and professional fees. However, in July 2006 they had been asked to prepare a specification and at that stage difficulties had arisen with both the Electricity Board and the local planners as to how the works were to be undertaken. Presently the very considerable problems had not been resolved. As a result as yet no specification had been prepared nor had any consideration been given to required works in the minor block. He said that a letter had been received from the Norwich Union requiring works detailed in an electrical report of 31 October 2005 to be completed by 2007 but that an extension had since been agreed.
19. Asked by the Tribunal to give his professional opinion of the likely total costs he gave an estimate of £300,000 - £400,000 plus professional fees. He saw the urgently required replacement by the Electricity Board of the mains supply as likely to cost £180,000 plus VAT.
20. Mr Kirby said that he and other leaseholders had not been made aware of any of these unforeseen difficulties.

RESURFACING WORKS

21. These were estimated in 'The Way Ahead' document at £200,000.
22. In October 2005 Tuffin, Ferraby, Taylor had produced a report suggesting a number of alternative solutions for the upgrading of the existing roadway surfaces. These were, exclusive of VAT and professional fees, (a) localised repair (works to make safe) £102,500 + VAT, (b) overlay repair £163,000 and (c) complete renewal £304,600.
23. Mr Lyde in evidence agreed that it was not now sensible to do this work until after the installation of the windows and the electrical work but he maintained that some immediate patch repairs were necessary for health and safety reasons. He admitted that no consideration had yet been given to the possible contribution due from Nothumbria Court under the terms of its lease. He said that, in any event, that lease did not provide for any advance contribution to be made.

THE PROVISIONS OF THE FLAT LEASES

24. The Tribunal was provided with a copy of a sample lease which contained provisions for the collection of the costs of providing services. Collection on

account of anticipated charges is permitted as is also the build up of a reserve fund. Service charge payments are collected quarterly in advance.

THE INVOICED SERVICE CHARGE PAYMENTS

25. On 10 January 2007 the respondents issued invoices to each leaseholder which included payments on account of proposed capital expenditure as well as 'operational service charges'. The Tribunal struggled to understand the service charge contributions demanded and it was not until the second day of the hearing when Mr Lyde produced an explanation, after consultation with Mr Shah, an ex leaseholder who was now paid an honorarium to advise the Board of directors, that the basis on which they had been demanded was made clear.
26. Mr May explained to the Tribunal that these service charges had been demanded on the basis that replacement windows were going to cost £3,300,000, the electrical work £214,000 and the resurfacing £160,000, making a total of £3,674,500.

THE TRIBUNAL'S DETERMINATION

27. The Tribunal was asked to determine the reasonableness of costs in connection with three different major works projects. They were also being asked to determine the reasonableness of the works themselves. No Section 20 notices had been served and Mr Lyde, questioned about this by the Tribunal, said that the Board had considered that it was too early to start the process.
28. The Tribunal accepted that all of the works were necessary and, therefore, were they to take place would be reasonably incurred. However, on the basis of the evidence the Tribunal had been given, they found it impossible to judge whether the works should take place all together or whether they should be phased. It seemed to them that the electrical works were the most urgent since they were being demanded by the insurers.
29. From their own inspection and the evidence given the Tribunal accepted that the windows needed replacement. However, whether that was best done in one go or phased, as Mr Kirby suggested with the windows on the internal courtyard being installed after those on the exterior facades, they again considered that they had insufficient information to make such a judgement. Mr Goodman in response to a question at the hearing had thought phasing was not the best option but no feasibility study had considered the idea.
30. Again, with regard to the resurfacing no documentary evidence had been produced to show the seriousness of the risks posed. At the hearing Mr Lyde had admitted that overall resurfacing work would best be left until after the other two projects had been completed but the extent of the immediately required patch repair work was unquantified.
31. All of the above issues obviously have a considerable impact on possible costs. Added to them are a number of other, as yet unanswered, questions on the individual projects.
32. Among the unanswered questions relating to the windows is the issue of whether VAT is payable or not. Are there only two window companies who could do the work? If there are no others in this country would it be worth

- while exploring foreign suppliers after consultation with the planners? Do the planners agree with the presently proposed specification? Has consideration been given to the management of a project of this size and magnitude?
33. Mr Stapley said quite candidly in evidence that how the electrical work was going to be done was not yet known. He gave his best guess as to the likely outturn cost but admitted that this might well not be sufficient in view of other attendant works. He emphasised the need for further consultation with all parties before any specification could be written.
 34. The precise timing, nature and extent of the resurfacing work planned or required was extremely vague and, therefore, the estimated cost seems to the Tribunal a wholly unreliable figure. The potential contribution from Northumbria Court also would seem to be a material consideration.
 35. All in all the Tribunal shares with the applicants a sense of unease about the costs of the works. Throughout the hearing Mr Lyde emphasised the part time and unpaid position of the Board members and whilst the Tribunal understands this they, nevertheless, consider that the costings on which the service charges are currently invoiced to be so unsubstantiated as to be unacceptably unreliable. The Tribunal certainly is not in any position to determine that these costs are reasonable.
 36. It would appear to the Tribunal that the way forward is for Section 20 notices to be served, consultants to be appointed to manage the projects, firm estimates obtained and definitive answers obtained to all the so far unanswered questions.
 37. The Tribunal agreed with Mr Goodman that the plan of the respondents to include new windows in their refurbishment of Flat 81 would provide valuable practical experience, as a pilot project, for the total replacement window scheme.
 38. Furthermore, it was apparent at the hearing from remarks made by Mr Kirby, that there was a measure of distrust and suspicion stemming from information, revised in March 2004, which was sent to solicitors acting for purchasers of flats in the block. It stated that future major works would be funded from a range of options available to the company and, specifically, would not include requesting direct lump sum contributions for major works. No excess service charges were anticipated for the future .
 39. At the hearing it emerged that there was a reserve fund totalling £406,960 in place at the end of 2006 and Mr Lyde was non committal about the use to which it might be put. This was a cause of further uncertainty to the lessees about the costs of the major works.
 40. Finally, in the course of their deliberations the Tribunal noted that the accounting procedures adopted by the company in connection with the collection of service charges do not accord with the RICS Management Code, in particular paragraphs 7 and 10. This may have caused an element of misunderstanding and mistrust which detailed invoicing of the service charge costs might dispel.
 41. Therefore, for all of the above reasons the Tribunal considers that were it to determine the costs to be reasonable it would be conferring an unjustified and unjustifiable legitimacy on major works, the parameters of which have not yet been determined and the costs of which have not yet been tested in the open market. Notwithstanding this opinion the Tribunal does not dispute the need to carry out the works.

APPLICATION UNDER SECTION 20C

42. This was made by Mr Kirby and resisted by Mr Lyde. The Tribunal noted that the respondents had themselves considered the value of making an application under Section 27A with a view to obtaining official endorsement of their proposals relating to the major works. In these circumstances the Tribunal is of the opinion that it would be unjust to allow the respondents to charge the applicants and particularly now that the endorsement has not been forthcoming.

Chairman

R D Handley

Date

23/5/07