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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/OOML/LSC/2013/0062**
Property	:	**Victoria Court, Victoria Road, Portslade, BN41 1XX**
Applicant	:	**Ault Investments Limited**
Representative	:	**Mrs T Healy, Property Manager, of Parsons Son & Basley**
Respondents	:	**The Lessees of Victoria Court (as listed on page 2)**
Representative	:	**Those participating: all in person**
Type of Application	:	**Application with respect to proposed service charges under section 27A of the Landlord and Tenant Act 1985 ("the Act")**
Tribunal Members	:	**Judge E Morrison (Chairman)** **Mr N I Robinson FRICS (Surveyor Member)**
Date and venue of Hearing	:	**Portslade Town Hall, 23 September 2013**
Date of Decision	:	**27 September 2013**

DECISION

List of Respondents

Mr and Mrs M A J Van Twest (Flat 1)
Mr R Jahanmehr (Flat 2)
Mr K P South (Flat 3)
Miss T L Moore (Flat 4)
Mr P M Hodgson (Flat 5)
Mr and Mrs S C Kenneally (Flat 6)
Mr and Mrs N P Lewis (Flat 7)
Mr W Richards and Ms M C Chapman (Flat 8)
Mr G H Y Ho (Flat 9)
Mr B T Donahue and Mr C S Merryfield (Flat 10)
Ms L J Fox and Ms N M McLoughlin (Flat 11)
Mrs J Franklin-Johnson (Flat 12)
Mr C Fernando (Flat 13)
Mr and Mrs G W Brown (Flat 14)
Ms S J and Mr A J Burchell (Flat 15)
Mrs J Dunn (Flat 16)
Mrs C Carter (Flat 17)
Mrs L Marchant (Flat 18)
Mrs P R Pullinger (Flat 19)
Mr S L Howse and Mrs S J Instone (Flat 20)
Mr M Carman (Flat 21)

The Applications

1. Under the application dated 4 June 2013 the Applicant freeholder, acting through its managing agents Parsons Son & Basley, applied under section 27A (and 19) of the Act for a determination as to whether the cost of proposed works to the balconies and garages at Victoria Court would be recoverable from the lessees through the service charge.

2. At the hearing Mr Kenneally (lessee Flat 6) and Mr Fernando (lessee Flat 13) made an application under s 20C of the Act that the Applicant's costs of these proceedings should not be recoverable through future service charges.

Summary of Decision

3. Subject to meeting the requirement of reasonableness under section 19 of the Act, the cost of repairs to the balconies and the garages is recoverable from all the flat lessees at Victoria Court, each lessee being responsible for an equal share of the cost.

4. No order is made under s 20C of the Act.

The Inspection

5. The Tribunal inspected the subject property on the morning of the hearing. Mrs Healy and (for part of the inspection) Mr Fernando were present.

6. Victoria Court comprises two purpose built blocks of 21 flats, built around 1959/60. The two blocks are similar but one comprises a ground floor flat with two first and second floor maisonettes over and the other six ground floor flats with twelve first and second floor maisonettes over. The blocks are both of brick faced construction with tiled infill panels to the front elevation under tiled roofs. Access between the blocks leads to a parking area and a block of twelve brick and block construction garages, understood to have been built at the same time as the flats, with a continuous corrugated asbestos roof.

7. The exterior of the flats, with the exception of the balconies, appeared to be in generally fair condition although during the brief inspection the tribunal noted a section of dislodged lead flashing to a chimney stack and guttering that was in need of clearing out. Some of the pointing to brickwork was needing attention. The balconies, which are all at first floor level and therefore serve the maisonettes only, appeared to be of concrete construction, cantilevered out from the building structure, with an asphalt covering and metal railings. The asphalt and railings were both clearly in need of major repair or replacement.

8. The garages generally appeared to be in a fairly dilapidated state and in need of repair, including possibly replacement of the asbestos roof covering, attention to brickwork, garage doors and door frames. The tribunal could see that at least one garage occupier had attempted to improve the water tightness of his garage by providing a second roof covering on top of the asbestos one. The tribunal was told that the asbestos back gutter to the garages was also in need of attention and given the existence of the asbestos roof to the garages it could be seen that access could be difficult to undertake maintenance.

The Leases

9. The Tribunal had before it copies of sample leases at Victoria Court as follows: (1) a two bedroom flat lease for a maisonette, without a garage (2) a one bedroom flat lease for a ground floor flat, without a garage (3) a flat lease including the demise of two garages (4) a stand-alone lease of a garage. All leases are for a term of 999 years and they were granted on various dates in 1960 and 1961.

10. The flat leases each provide for the lessee to pay, in addition to ground rent, a 1/21st share of the service charges incurred by the lessor in carrying out its obligations under the Seventh Schedule.

11. Paragraph 4 of the Seventh Schedule requires the lessor to "keep the Reserved Property and all fixtures and fittings therein and additions

thereto in a good and tenantable state of repair decoration and condition including the renewal and replacement of all worn and damaged parts".

12. The Reserved Property is defined in the Second Schedule as follows:

"FIRST ALL THOSE the gardens drives paths and forecourts forming part of the Property and the Staircases and other parts of the buildings forming part of the Property which are used in common by the Owners or occupiers of any two or more of the Flats or Maisonettes ALL WHICH premises are for the purpose of identification only delineated in the plan annexed hereto and therein coloured Brown and Green and SECONDLY ALL THOSE the main structural parts of the buildings forming part of the Property including the roof foundations and external parts thereof (but not the glass of the windows or the window frames of the Flats or Maisonettes nor the interior faces of such of the external walls as bound the Flats or Maisonettes) and all cisterns tanks sewers drains pipes wires ducts and conduits not used solely for the purpose of one Flat or Maisonette and the joists or beams to which are attached any ceilings except where the said joists or beams also support the floor of a Flat or Maisonette".

13. The Property is described in the First Schedule and identified on the lease plan. It includes the two buildings in which the flats are situated and a block of 12 garages, coloured pink, the driveway and parking areas coloured brown, and other exterior common areas coloured green. The lease plan does not show the balconies.

14. The flat leases make no specific reference to the balconies, and there are no provisions that relate specifically to repair or maintenance of the garages.

15. Under the Sixth Schedule, the lessee is responsible for the repair and decoration of the Premises. The Third Schedule defines the Premises by identifying the particular flat or maisonette [and where applicable the garage] demised to the lessee and specifically excludes from the demise "the main structural parts of the building of which the said Flat forms part including the roof foundations and external parts thereof but not the glass of the windows or the window frames...".

16. The stand-alone garage lease is also for 999 years. In addition to ground rent of £2.00 p.a. the lessee is required to pay £3.00 p.a. towards the maintenance and upkeep of the driveway and parking area as well as a contribution towards the cost of insuring the garage. The lessee is also required to keep "all parts" of the garage in good repair and decorative condition.

The Law and Jurisdiction

17. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable. Section 27A(3) specifically provides that application may be made to the tribunal to decide whether a service charge would be payable for costs that have not yet been incurred.

18. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

19. Under section 20C a tenant may apply for an order that all or any of the costs incurred by a landlord in connection with proceedings before a tribunal 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.

Procedural Background

20. Directions were given by the Tribunal on 8 July 2013, which provided for the parties to submit written statements of case. The managing agents, Parsons Son & Basley, filed a statement of case dated 31 July 2013 on behalf of the Applicant. Mr and Mrs Lewis (Flat 7) made written submissions by letter dated 13 August 2013, and Mr W Richards (Flat 8) sent a letter dated 1 August 2013. A local councillor wrote in on 6 September 2013 making representations on behalf of Mr Van Twest (Flat 1). No other lessees made written submissions.

Representation and Evidence at the Hearing

21. The Applicant was represented by Mrs T Healy of the managing agents. The following lessees attended the hearing:
Mr Van Twest (Flat 1)
Mr Kenneally (Flat 6)
Ms McLoughlin (Flat 11)
Mr Fernando (Flat 13)
Mrs Dunn (Flat 16)
Mrs Pillinger (Flat 19)
Mrs Towse (formerly Miss Instone) (Flat 20)
Mr Carman (Flat 21)
All represented themselves, save that Mrs Pillinger's daughter spoke on her mother's behalf.
The Tribunal heard oral evidence from all those attending, despite the fact that the lessees had not complied with the Directions. The Tribunal also took into account the written submissions referred to at paragraph 20.

The Applicants' Case

Balconies

22. Mrs Healy explained that the balconies required substantial repairs, not only to the concrete but also to the steel reinforcement. The extent of the work to the metal could not be ascertained until it was exposed. Once this and the concrete had been repaired, the asphalt surface would need to be renewed. Repair, or possibly replacement, followed by redecoration was necessary to the metal balustrades.

23. She submitted that although only the maisonettes had balconies, all 21 lessees were required to pay an equal share of the cost of the repairs. She relied on the provisions of the lease, specifically the definition of the Premises and the Reserved Property. She argued that the balconies formed part of the Reserved Property which the lessor was required to keep in repair because (a) each balcony structure is used by two flats (there being a dividing railing at the half-way point) (b) they should be considered as part of the "main structure" of the building. It would also be impractical for an individual lessee to repair only his half of a balcony. When asked about a letter dated 16 October 2006 from her firm to the lessees, which stated that balconies were the responsibility of individual lessees, Mrs Healy said she thought the writer of that letter was incorrect.

Garages

24. By way of background Mrs Healy stated that of the 12 garages, 10 had originally been demised with flat leases. One flat had been demised with 2 garages (Flat 16). The other 2 garages (nos. 5 and 11) had been demised to third parties with stand-alone full repairing leases. Over the years, some lessees had "sold off" their garages to non-lessees. She thought that now about 8 of the garages were in third party ownership, but it was impossible to be sure about this, or to identify the owners, as none of the garages, apart from no. 11, were registered with separate titles at the Land Registry.

25. The proposed works by the lessor were removal of the existing asbestos covering, re-roofing the entire area, and re-pointing and repairing brickwork where required. It was submitted that repair of the garage doors and frames was the individual lessee's responsibility.

26. Mrs Healy argued that the flat leases required all flat lessees, not just those whose lease included a garage, to contribute to the cost of repairing all the garages.

The Respondents' Cases

27. Mr Fernando (has garage but no balcony) told the Tribunal he had carried out repairs to his own garage to stop water ingress at a cost of £1215.00. Parsons Son & Basley had given him permission to do this. He said he thought it unfair that other garage owners were paying nothing for ground rent or for the repair of the driveway and parking area. He suggested that someone should buy up all the garages, carry our repairs, and then sell them back to flat lessees only. As to the balconies, if the balcony above his flat collapsed, it would damage his exterior wall. The balcony above his flat blocked light and led to debris on his windows.

28. Mrs Howse (balcony, but no garage) submitted that all lessees should contribute to the cost of repairing the balconies. The value of all the flats would decrease if they were not looked after. However as she had no garage, she did not agree with having to contribute to the cost of repairing the garages. The lease was poorly-written and confusing.

29. Mr Kenneally (balcony, but no garage) agreed repairs were required to the balconies. With regard to the garages, there were now small businesses operating from them, with occupiers using the communal water supply and obstructing the parking area. He did not understand how the cost of repairs to the garages could be his responsibility.

30. Mr Van Twest (no garage or balcony) referred to the letter sent on his behalf by a local Councillor, and objected to paying for any of the repairs which he said were of no use to him.. He said he was a pensioner and could not afford to pay for facilities he didn't use. He also complained about the activities of those using the garages.

31. Ms McLoughlin (balcony, but no garage) queried the involvement of the freeholder. Mrs Healy said "he" lived in France, and took little interest in the block, leaving matters in the hands of the managing agents. Ms McLoughlin suggested that the garage block be demolished. However as the balcony was structural all the lessees should contribute to the cost of repair.

32. Mr Carman (balcony, but no garage) agreed that the balconies required repair. He thought that so many garages had been sold it was not fair to charge the cost of repairs on all the flats.

33. Mrs Pullinger (garage, but no balcony), whose daughter Ms Pullinger spoke on her behalf, submitted that the garages were clearly part of the estate, and the intention of the leases was that each lessee should pay their share even if they did not own a garage. Mrs Pullinger had paid for waterproofing of her own garage. She also complained about the activities of those using the garages.

34. Mrs Dunn (no balcony, no garage) is the lessee of Flat 16, originally demised with garages nos. 1 and 2. When Mrs Dunn purchased her flat over 20 years ago, only Garage 1 remained and she had sold this in 2003. She had employed a solicitor and thought matters had been dealt with properly. She did not know why Garage 1 would not be registered at the Land Registry under a separate title. With regard to the cost of the proposed repairs of the balconies, she thought everyone should pitch in as they were part of the structure. The same should apply for the garages if the current owners could not be located.

35. Mr and Mrs Lewis (no balcony or garage) had drawn attention in their written submission to the existence of a previous Tribunal decision possibly in about 2000. A copy of this decision was unavailable but there were some other documents indicating that the Tribunal had decided that repair of the balconies and garages was the responsibility of individual lessees. Mr and Mrs Lewis also submitted that the balconies were not shared and were for the sole use of the flat from which they were accessed. Further, the garages were not part of the Reserved Property as defined in the lease as two had been demised with full repairing leases and others had been sold.

36. Mr Richards (balcony, but no garage) argued in his letter that only lessees with a balcony should contribute to the cost of the balcony repairs, and that only those with garages should pay towards the garage repairs.

The Determination

37. The Tribunal is required to determine this application by construing the provisions of the leases. Construction is the process of determining the intention of the parties to the lease by reference to the words that they have used. The lease must be read as a whole and in context. Words must be given their ordinary and natural meaning unless the context requires otherwise.

38. Previous tribunal decisions are not binding on later tribunals. In any event the earlier decision was unavailable and therefore cannot be relied on in this case.

39. Each flat lease at Victoria Court imposes the same service contribution on the lessee (1/21st), whether or not the flat has a balcony and whether or not the demise included a garage or (in the case of Flat 16) two garages. There are no separate provisions dealing specifically with service charges for balcony or garage repairs. It was therefore clearly intended that all lessees should contribute equally to works even if those works are of more benefit to some lessees than to others. Therefore, if the works to the balconies and garages are works for which the lessor is entitled to recover costs through the service charge, each and every lessee has an equal liability to contribute to the costs.

40. The lessor can recover the repair costs as part of the service charge only if the balconies and garages form part of the Reserved Property as defined in the Second Schedule to the leases.

41. Balconies: It is questionable whether the balconies can be considered as falling under the first category of Reserved Property because they are not identified or coloured on the lease plan as required. However the Tribunal determines that they undoubtedly fall within the second category of Reserved Property as they comprise "external parts", one of the elements listed in the Second Schedule. The balconies project beyond the main façade of the front of the building. Furthermore they are clearly not part of the Premises demised as the definition of the Premises specifically excludes "external parts".

42. The entire balcony, including the balustrade railings, therefore forms part of the Reserved Property.

43. Garages: The garage block appears on the lease plan coloured pink and is therefore identified in the First Schedule as being a building included in the Property. The second category of Reserved Property specifically includes the roofs and main structural parts of the buildings forming part of the Property. Therefore repair works to the roof and walls of the garages fall within the scope of the lessor's repairing obligations and the costs can be recovered through the service charge from all the 21 flat lessees.

44. The Tribunal also determines that the garage doors and door frames form part of the Reserved Property. Although window glass and window frames are the individual lessee's responsibility, the leases make no specific mention of doors or door frames. As they are clearly "external parts" they therefore fall within the Second Schedule.

45. In respect of Garages 5 and 11 the garage lessees also have an obligation to keep their own garages in repair.

46. For the avoidance of doubt, it makes no difference that some flat lessees whose lease included a garage, have "sold off" the garage. (A sale would have to be by way of sub-lease. Such sub-leases could have imposed an obligation on the sub-lessee to indemnify the flat lessee against any costs in relation to the garage. It is unclear why, if valid sub-leases have been granted, the leases are not registered at the Land Registry. Enquiries might usefully be made of those using the garages as to their right to occupy.)

Section 20C Application

47. Mr Kenneally stated that the managing agents had applied to the Tribunal without consulting the lessees, having taken "ludicrous

amounts" of money from the lessees. Mr Colombo stated that the property has not been properly managed.

48. Mrs Healy said the only costs that might be charged to the lessees were the Tribunal fees. She understood the lessees' point of view but said the situation was not of her making. It was difficult to manage the property effectively. She just wanted clarity from the Tribunal so matters could move forward.

49. In deciding whether to make an order under section 20C a Tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings. No order is made in this case as it was entirely reasonable and sensible to seek a ruling on the matters in issue. Repairs are obviously needed to both the balconies and the garages and a decision was required on who is responsible for carrying out the repairs and paying for them.

Concluding Remarks

50. Repairs to the balconies and garages will be of benefit to all lessees by enhancing the block generally. The managing agents appear to be doing what they can, without much support from the freeholder. The managing agents may be assisted in addressing some of the lessees' concerns about those using and occupying the garages if the lessees share all information they have with the managing agents.

Dated: 27 September 2013

Judge E Morrison (Chairman)

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.

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.