



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

**Case Reference** : **CAM/22UJ/LSC/2020/0003**

**Property** : **82, The Hides, Harlow, Essex CM20 3QW**

**Applicant** : **Mr Jake Jackman (Tenant)**

**Respondent** : **Harlow District Council (Landlord)**

**Date of Application** : **2<sup>nd</sup> January 2020**

**Type of Application** : **to determine the reasonableness and  
payability of the Service Charges (section  
27A Landlord and tenant Act 1985)**

**to determine whether the landlord's costs  
arising from the of proceedings should be  
limited in relation to the service charge  
(section 20C of the Landlord and Tenant  
Act 1985)**

**to reduce or extinguish the Tenant's  
liability to pay an administration charge in  
respect of litigation costs (paragraph 5A of  
Schedule 11 of the Commonhold and  
Leasehold reform Act 2002)**

**Tribunal** : **Judge J R Morris**

**Date of Decision** : **20<sup>th</sup> August 2020**

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**DECISION**

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## **Decision**

1. The Tribunal determines the cost of the Major Works, taking into account the omission, in the Applicant's case, of the cost of the insulation and replacement store room door as agreed by the Respondent, and any agreed prompt payment discount, are reasonable and payable by the Applicant to the Respondent.
2. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable.
3. The Tribunal makes an Order extinguishing the Applicant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
4. The Tribunal makes no order for the reimbursement of the Application Fee.

## **Reasons**

### **Introduction**

5. On 2<sup>nd</sup> January 2020 the Applicant applied for a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the Service Charges of £10,631.85 as his contribution towards Major Works are reasonable and payable.
6. The Applicant also seeks an order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.
7. The Tribunal has identified the following issues to be determined from the Application Form and Parties' Statements of Case:
  - (1) The reasonableness and payability of the disputed Service Charges for the Major Works;
  - (2) Whether an order under section 20C of the 1985 Act and /or paragraph 5A of Schedule 11 to the 2002 Act should be made;
  - (3) Whether an order for the reimbursement of application fees should be made.
8. Directions were issued on 19<sup>th</sup> February 2020 and amended on 3<sup>rd</sup> March 2020. On 23<sup>rd</sup> April 2020 the Directions were further amended taking into account the Coronavirus restrictions, the parties having agreed to the matter being determined solely on paper and without a hearing. Further Directions were issued on 28<sup>th</sup> May 2020 to take account of the failure by the Applicant to comply with the Directions of 19<sup>th</sup> February 2020 and amended on 3<sup>rd</sup> March 2020 to provide details of and reasons for disputing items and amounts of the Service Charge relating to the Major Works, together with

supporting evidence such as alternative invoices and other documents including photographs.

9. The Directions identified the charges for the Major Works of £10,204.61 (discounted from £10,631.65) to be the only matter in issue and specified dates for submission of the parties' cases and the bundle.
10. The Respondent provided a Bundle which included the submissions of both parties, in accordance with the Directions, details of which are set out below under the respective parties' cases. This Decision is based upon that Bundle.

### **The Lease**

11. A copy of the Lease was provided. The Lease is dated 15<sup>th</sup> June 1987 between Harlow District Council (Landlord, referred to in the Lease as "the Council") (1) and Geoffrey Yates (Tenant, referred to in the Lease as the "Purchaser") (2). The Lease is for a term of 125 years from 20<sup>th</sup> August 1984 at rent of £10.00 per annum. The Lease was assigned to the Applicant on 25<sup>th</sup> September 2015. It appears from the Lease that it was granted under the 'Right to Buy' provisions of the Housing Act 1985.
12. The Provisions of the Lease relevant to these proceedings are as follows:
13. Under Clause 4 (b)
  - (i) *to pay the Service Charge assessed in accordance with Schedule G and the Improvement Contribution (if any) shown in Schedule H to this Lease by monthly instalments in advance and on account thereof in such amounts as the treasurer to the Council may from time to time determine;*
  - (ii) *such instalments shall be paid on the first day of each month by variable direct debit to the Purchasers' bank or such other method as the Council may agree;*
14. Under Clause 7 of the Lease the Council covenants:  
*To repair*
  - (a) *to maintain and keep in repair the structure and exterior of the Flat and the Property (including the drains, gutters and external pipes) to make good any defects affecting the structure;*  
*To repair other premises*
  - (b) *to maintain and keep in repair any other premises over or in respect of which the Purchaser has rights as specified in Schedule B*
15. Schedule B of the Lease specifies in paragraph (3) *A right in common with the Council and all others entitled to pass: -*
  - (i) *on foot along the external paths (if any) shown coloured blue on Plan 1 and along the internal passageways stairs and lobbies of the Property (if any) shown coloured yellow on Plans 1 and 2 (copies of the coloured plans were provided)*
16. Schedule G of the Lease sets out the Service Charge
  - (1) *The Service Charge is payable for: -*

- (ii) repairs (not amounting to the making good of structural defects) carried out to the Property (including the Flat) by the Council in pursuance of its obligations under this Lease;
  - (iii) the making good of structural defects specified in Schedule E of this Lease or which the Council does not become aware within five years from the date of this Lease;
  - (iv) maintenance (not amounting to repair) by the Council pursuant to its obligations under this Lease of :
    - (1) those parts of the property which the Purchaser may use (in common with others by virtue of Schedule B;
    - (2) the structure and exterior of the Property (including the Flat);
  - (v) the repair and maintenance of installations connected with the provision of the services and facilities specified in Schedule B to this Lease;
  - (iv) the Council's costs of management
  - (x) the repair and maintenance of by the Council of the Council's fixtures and fittings within the Flat;
- (3)
- (i) The Service Charge shall be calculated in three parts namely the basic part, the specific part and the advance payments part
  - (ii)(1) The basic part shall consist of those costs of the Council which relate not only to the Property but also to other properties held by the council under Part II of the Act
  - (iii) The specific part shall consist of those costs that relate to the Property...
  - (iv)(1) The advance payment shall consist of such items as the Councils' Treasurer shall determine to be reasonable in order to meet future expenditure of a capital nature recoverable from the purchaser
- (4) As soon as practicable after the end of each year the Council shall calculate the Service Charge for that year and any necessary adjustments shall be made to reflect the difference between the Service Charge and the total paid by the Purchaser under clause 4 (b) in respect of that year

17. Schedule A described the Flat (the Property) as follows:

- (1) The Flat consists of: -
  - (a) (in the horizontal plane) the space (including the plaster covering) between the inner faces of the walls which divide the Flat from the exterior and from the other parts of the Property Together with the glass in the windows of the Flat;
  - (b) (in the vertical plane) the space between the ceiling and the upper surfaces of the Floor (including the plaster covering and any lathes or battens connected therewith of the ceilings and any floor screed and any tiles, parquet or other fixed finish laid on the floor);
  - (c) the internal non-structural partition walls of the Flat;
  - (d) any garden area reserved of the exclusive use of the occupier of the Flat which is shown coloured green or green hatched red on

- Plan 1 and any other external area which is shown coloured pink on that Plan all being within the Property*
- (e) the loft space as shown on Plan 3*
- (2) *the right to use and fixtures or fittings of the Council in the Flat is granted to the Purchaser for the Term*
- (3) *There are not included in the demise of the Flat*
- (a) the roof foundations and structural walls of the Property nor the window frames of the Flat*
  - (b) any wall which separates the Flat from
    - (i) any corridor which is used in common with others or*
    - (ii) which separates the Flat from other parts of the Property;**

### **Description of the Property**

18. No inspection was made but from the Lease, the Respondent's Statements of Case and the photographs provided the Tribunal found the Property to be as follows:
19. The Property is a one bedroomed second floor flat within a three storey Block of flats and maisonettes numbered 77 to 86. At ground and first floor level there appear to be five duplex maisonettes with gardens and at second floor level there are five flats accessed via a concrete staircase to an open walkway off which are the front entrances to the flats.
20. The Block, is one of 6 leasehold blocks forming 15 to 96 The Hides, Harlow, probably built circa 1960, and is of brick under a shallow pitched built up felt roof.

### **The Law**

21. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations).

### **The Major Works and Issue**

22. Where works are undertaken on leasehold properties which are held under long leases and the costs are charged to the service charge, if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250 then the landlord must carry out a consultation procedure under section 20 of the Landlord and Tenant Act 1985 ("the Consultation Procedure"). If the procedure is not complied with and no dispensation from the Procedure has been granted, the tenant will only be liable for £250.00. These works are referred to in the Act and related subordinate legislation as qualifying works but referred to in this Decision and Reasons as "the Major Works".
23. The Applicant submits in the Application that the cost of the Major Works is not reasonable and therefore not payable as an item of the Service Charge.

24. The following is an abbreviated table of works and costs setting out the Total Cost for the Block based upon the Individual Cost for the Property. The Tribunal calculated the total cost (individual x 10) to determine the reasonableness of the costs for the whole Block because:
- it is understood that each block on the Development has its own set of costs and the individual cost for the Property is 1/10<sup>th</sup> of the total amount for the Block;
  - the works undertaken are in respect of the whole Block apart from the replacement windows, the costs of which appear to relate to each unit;
  - the 'Before' and 'After' photographs show the whole Block, focusing on works undertaken.
25. If the total costs for the Block are reasonable then the Applicant's portion will be reasonable subject to individual allowances for insulation and the store room door and the individuality of the windows.

	<b>External Refurbishment Works to Block 77 – 86 (10 Units)</b>	<b>Final Account</b>	<b>1/10<sup>th</sup></b>
		£	£
	<b>Preliminaries</b>	19,238.10	1,923.81
1	<b>General</b>		
	Scaffolding	11,620.00	1,161.20
2	<b>Site Preparation</b>		
	Site Clearance	1,800.00	180.00
	Asbestos Survey	100.00	10.00
3	<b>Roof</b>		
	Roofing	26,323.80	2,632.38
	Insulation	1,540.00	154.00
	Roof repairs	22.30	2.23
	Deep flow guttering	646.10	64.61
	Eaves Replacement fascia & Soffits	2,995.00	299.50
	Stairwell Soffit	395.00	39.50
	Remove/re-fix pvcu gutters	1,000.00	100.00
	Replace cast iron stairwell downpipe with pvcu	245.00	24.50
4	<b>Walls</b>		
	Replace downpipes at rear with pvcu		
	Install Brackets		
	Repair render	575.00	57.50
	Capping to concrete surrounds	950.00	95.00
	Repoint brickwork around windows	240.00	24.00
	Remove & renew unstable brickwork	450.00	45.00
	Repair brickwork below dpc	672.00	67.20
	Repoint	409.00	40.90
	Vegetation Clearance	1,800.00	180.00
5	<b>External Doors</b>	N/A	N/A
6	<b>External Windows</b>		
	Replacement Windows	12,244.60	1,224.46
	Render Repairs	625.00	62.50

	Render Repairs	2,400.00	240.00
	Window restrictors	252.70	25.27
	Windows amended to Tilt & Turn	582.60	58.26
7	<b>External Walkways</b>		
	Removing biological growths	379.80	37.98
	Concrete repairs to window surrounds & copings	2,640.00	264.00
	Replace balustrade brackets	568.00	56.80
8	<b>External Communal Grounds</b>		
	Remove and replace coping to boundary/store walls	396.00	39.60
	Renew boundary wall coping	260.00	26.00
	Clearing walkway gullies	60.00	6.00
9	<b>Communal Fittings and Furniture</b>		
	Communal stair nosings	88.00	8.80
	Block signs	55.90	5.59
10	<b>External Decoration</b>		
	Preparation works	266.40	26.64
	Painting all existing external painted communal elements	5,486.00	548.60
	Uplift from Crown to Johnson	451.20	45.12
11	<b>Fire Risk Assessment Works</b>		
	Health & Safety no smoking signs	31.50	3.15
	Fire door signs	94.50	9.45
	Replacement fire-resistant electric cupboard	860.00	86.00
	Replacement low-level fire-resistant cupboard	1,250.00	125.00
	<b>Sub total</b>		9,888.25
	Administration Fee	7,436.00	743.60
	<b>Total</b>	<b>106,318.40</b>	<b>10,631.84</b>

### Applicant's Case

26. The Applicant only set out his submission on the Application Form and did not provide a Statement of Case and supporting documents as required by the various Directions. Nevertheless, the Respondent's Case included correspondence, which set out the Applicant's comments and objections to the Major Works and their cost which the Tribunal took into account as well as the Respondent's replies.
27. On the Application Form the Applicant stated that he had received a bill for £10,631.85, which had been discounted to £10,204.61, for Major Works. He submitted that the costings were extortionate. The bill should be around a maximum of £6,000 to £7,000. He said that his Block which is 10 flats, has been charged around £20,000 in Preliminaries which included a telephone line which was not used and other amenities which were not necessary.
28. He said that he had been billed for work that had not been done and the cost of the work that had been done had been doubled. £154.50 per flat had been charged for insulation which amounted to £15,400.00 clear profit. Wages have been charged and paid for separately.

29. He said that the breakdown of costings provided needed to be reviewed, especially the Preliminaries.
30. He said he had raised these matters with the Respondent over many months but had not received a satisfactory reply. He said he believed he was entitled to thousands of pounds and he was not happy with the Respondent holding the money. He said he had been to the tribunal previously and the Respondent had been found to have overcharged. In addition, on that occasion the Respondent had not taken account of costs shared with another project and had charged each site separately.

### **Respondent's Case**

31. The Bundle included:
  - a) A Statement of Case from the Respondent prepared by Kathy Conway, Major Works and Dispute Resolution Officer of the Respondent's Home Ownership Section, together with supporting documents including:
    - Details of the Consultation Procedure with copies of correspondence between the parties;
    - Colour copies of the Lease identifying the Property etc;
    - Detailed tables of works and costs setting out:
      - The Estimated Total Cost for the Block and
      - The Individual Cost for the Property
    - Colour photographs of the Block including the Property showing the condition of the Block before the Major Works and after the Major Works.
  - b) A Witness Statement by David Prescott, Project Manager and Contract Administrator for the Respondent in respect of the Major Works together with supporting documents.
32. The Statement of Case referred to the Applicant's obligation under clause 4 and Schedule G of the Lease to pay Service Charges. (Exhibit 1) It was said that the annual Service Charge covers the smaller items of repair and the general maintenance of the Block. However, an additional Service Charge has to be raised, as in this case, when Major Works are carried out on a programmed basis. The costs are then demanded when the works are completed.
33. On 26<sup>th</sup> November 2019 the Applicant was sent an invoice (number 54011) with an itemised breakdown of the charge for £10,631.85, later discounted by £165.58 to £10,466.27 for the Applicant's share (1/10<sup>th</sup>) of the Major Works. The Applicant paid the invoice in full on 19<sup>th</sup> December 2019. (Exhibits 2 & 3)
34. The invoice was for Major Works which were the refurbishment of the Block including new roof covering, replacement fascias and soffits, asbestos surveys where applicable, concrete repairs, repairs to balustrades, external redecoration, repairs to brickwork, repairs for shed blocks replacement doors to the sheds, replacement windows, repairs to common staircases, party wall



compartmental works, upgrading of loft insulation, repairs and replacement of rain water goods and gullies, health and safety checks and Block signs to 77 to 86 The Hides. The total cost of the work is divided by the number of flats within the Block.

35. A Consultation Procedure was carried out in 2018/19 as follows:
- Notice of Intention sent 25<sup>th</sup> April 2018. (Exhibit 4)
  - Written response received and replied to. (Exhibit 5)
  - Notice of Estimate sent 10<sup>th</sup> September 2018 to which no comments were received. (Exhibit 6)
  - Award Tender Letter naming Durkan Ltd and estimated Breakdown of Works sent on 20<sup>th</sup> November 2018. (Exhibits 7 & 8)

36. Exhibit 5, the observations and reply stated as follows:

The Applicant made the following observations:

- (1) I don't want any of the improvements to be carried out as the Council send too many people around in suits.
- (2) I will do the works myself if it needs doing.
- (3) I am sure a few improvements can be made using the service fee money everyone pays every month.

The Respondent replied as follows:

- (1) The proposal to carry out the works was after an internal stock condition survey was carried out to the Block. Due to the condition of the internal communal areas, it was deemed necessary to carry out the works in order to bring the internal areas of the Blocks up to a reasonable standard as part of the Council's obligation in maintaining its stock.

Our records show that the last works of this kind were carried out approximately 15 years ago. The costs of the communal areas are divided equally between the properties within the Block.

As the Landlord, Harlow Council is responsible for the upkeep of the flat blocks and undertaking any works proposed to be carried out. Harlow Council follows the correct consultation procedures for major Works and will tender any future works [Reference was then made to Schedule G (iv) (1) and (2) if the Lease].

- (2) Please note you are not allowed to carry out any works to any communal areas of the flat block as you do not own this area...I would refer you to Schedule A of your Lease that provides you with details of what is included within your flat and therefore responsible for. I would also refer you to the information supplied to your solicitors prior to your purchasing the property that confirmed that subject to budgets, surveys this work would be carried out to the flat block within five years.

(3) The annual service charge is for the day to day running costs of the block such as landlord's lighting, cleaning, insurance and reactive repairs. It does not cover cyclical works or any improvements. Again, this is confirmed in the Solicitors information pack supplied prior to the purchase of these properties.

37. Residents were sent an invitation on 19<sup>th</sup> December 2019 to an evening consultation meeting which was held on 10<sup>th</sup> January 2019 to discuss the works. The meeting was attended by Kathy Conway, Major Works and Dispute Resolution Officer, Claire Hicks, the Home Ownership Manager, Lee Brace, Senior Building Surveyor, David Prescott, Project Manager and Contract Administrator, representatives for Durkan Ltd and a number of Leaseholders. The Applicant did not attend. (Exhibit 9)
38. The Applicant sent an email on 7<sup>th</sup> February 2019 requesting an on-site visit which took place on 20<sup>th</sup> February and was attended by the Applicant and Kathy Conway, Major Works and Dispute Resolution Officer and Lee Brace, Senior Building Surveyor. The Applicant had a number of questions which were responded to by email on 27<sup>th</sup> February 2019. (Exhibit 10)
39. Exhibit 10, the email responding to the Applicant's concerns stated as follows:

The Applicant had asked at the meeting whether the windows could be omitted from the Schedule of Works or whether he could replace them himself. He was of the opinion that their condition was perfectly fine and had been up dated. The Respondent replied that although they are serviceable for a couple of years, they were fitted in 1992 and are now 27 years old and are first generation replacements. Even though they have been upgraded with locking handles, and trickle vents the hinges, frames etc are still original. The Respondent added that for the Applicant to replace the windows a number of permissions would have to be obtained which would be costly. The Respondent's decision to replace the windows was based on advice from Savills which was to 'future proof' the block by bringing it up to current legislative and Decent Homes standards as they are nearly 30 years old. Any further refurbishment should not be needed for at least 20 years.
40. The works were undertaken and a Practical Completion Certificate was issued on 30<sup>th</sup> August 2019. (Exhibit 11)
41. On 2<sup>nd</sup> September 2019 residents were invited to a meeting which was held on 17<sup>th</sup> September 2019. (Exhibit 12) At the meeting attended by Kathy Conway, Major Works and Dispute Resolution Officer, Lee Brace, Senior Building Surveyor, the Site Manager from Durkan and the Clerk of the Works, Lee Brace went through all the works that had been carried out and answered any questions. The Applicant attended the meeting and raised an enquiry about his shed door being replaced when it had been agreed that this would not be part of the works. it was agreed that the cost of replacing the door would not be re-charged.
42. Kathy Conway said that she received a telephone call from the Applicant on 10<sup>th</sup> December 2019 querying the breakdown of the invoice. He questioned the

Preliminary item and the Cavity Wall Insulation and the grass area where the Contractors compound was situated. An email response to the Applicant's questions was sent on 11<sup>th</sup> December 2019 in which it was agreed that he should not have been charged for cavity wall insulation and a credit was raised for £165.58 reducing the final invoice to £10,466.27. (Exhibit 13)

43. Exhibit 13, the email from Kathy Conway answered the concerns as follows:
- (1) With regard to the Preliminaries it was said that these costs were calculated according to the value and works carried out to that Block.
  - (2) With regard to the Cavity/Loft Insulation this was carried out to all top floor flats however as the Applicant has an old lease and loft insulation is classed as an improvement this should not be recharged to the Applicant and a credit will be put to the Applicant's account.
  - (3) With regard to the green area where the site office etc has been set up it was said that this area will be re-seeded with grass and made good when the work is complete.
44. A further email was received from the Applicant on 11<sup>th</sup> December 2019 raising further queries in respect of the Preliminaries and other aspects of the works. (Exhibit 14) A response was sent by email on 3<sup>rd</sup> and 7<sup>th</sup> January 2020. (Exhibits 15 & 16)
45. Exhibit 14, the Applicant's further email, raised the following concerns, the answers are shown below (items 8 and 10 of the matters raised regarding anti-social behaviour and videos taken were considered not to be relevant to this Application):
- (1) The Applicant said that he was not happy with the cost of the Preliminaries at £1,270.99 which, on his apportioned bill, had now increased to £1,923.81. He said that this amount should be broken down. The workers from Hornbeams were sharing the site office etc for The Hides and when this was raised the workers from Hornbeams got their own containers. With around 100 flats the cost is nearly £200,000. The area also has not been re-seeded when it was vacated.  
Answer: The Respondent said with regard to the Preliminaries that these costs were calculated according to the value and works carried out to each Block.
  - (2) Loft insulation should not be added. £154.00 to his invoice, for 100 units raises a further £154,000.  
Answer: The Respondent said that the sum of £154.00 had been credited to the Applicant's account.
  - (3) The Applicant asked why the new deep flow gutter had been added at a cost of £64.61 to his invoice which over the Block is £646.10 (which is excessive) when it was down to be replaced.  
Answer: The Respondent said that in the estimate there was a provisional sum for roof repairs including guttering etc. - on the Final Account the provisional sum has been omitted and the gutter added to show what the costs covered, it is not an additional cost.

- (4) The Applicant said he was not aware of a brick wall having been removed which at £456.00 or £45.60 per unit is just too much. The addition of pointing at £409.00 or £40.90 per unit and repair of a wall at £672.00 or £67.20 per unit, making a total of £1,537, is excessive.

Answer: The Respondent said that the item of “removal of bricks to unstable wall and rebuild” at £456.00 was carried out to the stairwell gable adjacent to the gutter. The replacement bricks at £672.00 was for the spalled brick to the internal face of the gable at the top of the Block. The repointing works were to all the brickwork carried out to the Block. There were various areas of the Block where the brickwork was cracked, exposed and in poor condition and so required repair.

- (5) The Applicant said that he felt the additional work to the windows was expensive, for example, the repair to render at a cost of £240.00 per unit was excessive. This is not an addition but was part of the original estimate of £320.00 for the Block.

Answer: The Respondent said that these works were carried out to all Maisonettes and Flats within the Block and were not an additional cost as they were in the original estimate as £320.00 for the Block, the final account being £240.00 for the Block.

- (6) The Applicant said that there was an additional charge of £204.00 on concrete repairs.

Answer: The Respondent said that this cost related to the copings which were found to be cracked and in poor condition exposing the reinforcement below. The work had to be carried out to resolve these problems.

- (7) The Applicant said that £6,000.00 on paint was extortionate.

Answer: The Respondent said the Johnson paint had been found to be better able to withstand external conditions such as rain. Historically the paint that had been used on this Block failed due to its porous nature, the Respondent had been advised to use Johnson paints which were non-porous.

- (8) ...

- (9) The Applicant said that he understood the Preliminary items were over 10 Blocks whereas it appeared that his Block was paying more than 15%. In a further email the Applicant said that wages were being paid through the Preliminaries with £40,000 being paid for the site manager which he said was excessive for 3 months work and nearly £30,000 had been paid for the contract manager surveyor and labourer. He said that the setting up of the phones, and for water and electric, all of which were not needed had cost £8,000. A further £2,000 had been paid for cleaning the offices. He asked what a TLO was which had cost £19,500.00.

Answer: The respondent replied that the Preliminaries are calculated in the cost of the works carried out on that block. The larger blocks would pay more than the smaller blocks. Preliminaries cover everything that the contractor would require to carry out the works.

(10) ...

46. The Respondent submitted that the Major Works were managed efficiently and cost effectively and to a satisfactory standard. Copies of Photographs before and after the works were carried out were provided. (Exhibits 17 & 18)
47. In his Witness Statement David Prescott, Project Manager and Contract Administrator, stated that following a competitive tender exercise conducted in compliance with relevant procurement rules a one-off refurbishment contract was awarded to Durkan Ltd under JCT Minor Works Building Contract 2016 Edition including Special Conditions of Contract. The contract was below the official journal of the European Union thresholds for procurement.
48. Tenders were sought from 6 contactors. The works were for the refurbishment of six leasehold blocks forming 15 to 96 The Hides, Harlow. The tender documents were on 6<sup>th</sup> June 2018 and returned by 18<sup>th</sup> July 2018 Bids were evaluated against a predetermined evaluation model with a 30% quality 70% price split. The quality evaluation was carried out separately by three persons without knowledge of the price. Durkan Ltd was awarded the highest score on quality. The priced tenders were examined arithmetically and technically by quantity surveyors and Durkan Ltd was found to be the lowest price at £929,376.35 for the total works to 15- 96 The Hides. £68,048.07 lower than the next lowest bid and £292,412.54 lower than the highest bid. Durkan was therefore awarded the contract.
49. The works were to achieve the following key objectives:
  - Keep properties wind, water, weather proof and 'Decent';
  - Preserve the value, presentation and integrity of the blocks and properties therein through a planned maintenance programme, by repairing, making good or replacement of deteriorated or failing elements which are in poor repair or at the end of their lifecycle;
  - Reduce future maintenance and repair costs;
  - Ensure health and safety of residents and visitors to the block.
50. In defining the scope of the works a review was made of completed works and repair records, Electrical and Installation Condition Reports and Fire Risk Assessment recommendations. A validation survey was undertaken detailing the work for each Block together with budget pricing and was approved by Harlow Council as part of the affordability and scoping process. In addition, a presentation was made to tenants and leaseholders at a meeting prior to starting the work to explain what was to be done and why (copies of the power point slides were provided).
51. Mr Prescott referred to the meeting held between Mr Jackman on 20<sup>th</sup> February 2019 and the email response made following it (set out in the Statement of Case above).
52. Mr Prescott said that the works were subject to on-going inspections throughout their completion by representatives of the Respondent. Where

applicable elements of work which are subject to industry certification and quality control schemes were undertaken, inspected and/or registered and approved as appropriate including roof replacement (Langley Quality and Guarantee Scheme), window replacement (FENSA), fire safety (FIRAS Certificate of Conformity). Each Block was subject to inspection prior to handover on completion of works.

53. Mr Prescott referred to the 'walkover' meeting with leaseholders on 17<sup>th</sup> September 2019 to answer queries etc. A summary of the report generated from that meeting was provided. Residents were generally satisfied with the works and queries raised were answered including from the Applicant (mentioned in the Statement of Case).
54. In addition to the tendering process and Consultation Process referred to, Mr Prescott said pricing and charging was reviewed by Sachindra Sharma, Quantity Surveyor with Pick Everard LLP, the Respondent's Third-Party QS Consultants. Tender rates were compared or benchmarked independently or against the National Schedule of Rates of Building Works. Mr Sharma also made regular visits to the site to ensure that the costs and quantities agreed were appropriate. In the event the Final Account was £825,285.18 which was £104,091.17 (13%) lower than the awarded contract sum. An invoice in the sum of £10,631 was raised in respect of the Property representing a reduction of 19% against the initial estimate.
55. Mr Prescott stated that in his opinion the work had been carried out to a reasonable standard and at a reasonable cost.

## **Discussion**

56. The Tribunal considered all the submissions. The Applicant did not challenge the Consultation Procedure and the Tribunal found from the evidence adduced that this had been carried out according to the legislation. The Applicant had been given opportunity to make observations and that these had been replied to by the Respondent except for the Applicant's email of 11<sup>th</sup> December 2019 relating to the Preliminaries.
57. The Applicant also did not challenge the standard of work.
58. The Applicant's case is based upon the cost of specific items being excessive or the work unnecessary. The items the cost of which the Applicant submitted were excessive or unnecessary were:
  - 1) The Preliminaries
  - 2) The deep flow guttering at a cost of £646.10
  - 3) Repointing External Brick/Concrete Window surround junction to ground and second floor lounge bay window surrounds and repointing clay brick walling at a cost of £240.00
  - 4) Remove and Renew unstable brick wall at a cost of £456.00
  - 5) Repairing brickwork below damp proof course at a cost of £672.00
  - 6) Repointing brickwork at a cost of £409.00
  - 7) Repairs to render around the windows at a cost of £625.00 and £2,400.00

- 8) Concrete repairs to stairwell soffits and window surrounds and second floor walkway, copings in poor condition cracked or spalling with exposed reinforcement at a cost of £2,640.00
- 9) Remove and replace coping to boundary/store walls store yard and stairwell boundary walls, remove concrete coping, renew precast concrete boundary coping at a cost of £396.00
- 10) Renew boundary wall coping at a cost of £260.00
- 11) Painting all existing or replaced previously painted external elements at a cost of £5,486.00
- 12) The Applicant considered that the replacement of the windows was unnecessary.

- 59. The Tribunal considered each of these items and noted the reply made by the Respondent and examined the photographs and found as follows (reference is made to the items as numbered in paragraph 58 above):
- 60. The Tribunal considered the Preliminaries (Item 1). Although the Applicant and a Respondent had copies of the breakdown of the Preliminaries neither party provided a copy to the Tribunal. It appeared from the Applicant's comments that these costs included the project management fees as well as such items as the office and welfare unit for the workers, as is generally required. In the knowledge and experience of the Tribunal the total cost of the Preliminaries appeared relatively high for the overall cost of the project, although not excessively so, taking into account what appeared to be included and without evidence to the contrary, The Tribunal therefore determined them to be reasonable and payable.
- 61. The Tribunal considered that deep flow guttering (Items 2) is appropriate for a Block of this kind and the cost is found to be reasonable and payable.
- 62. The Tribunal considered the repairs and repointing of the clay brick work (Items 5, 6, 9 and 10) and on examining the 'before' photographs found that faced clay brick below the damp proof course required replacing and that other areas of brick work, including boundary walls, required repair and repointing. In addition, coping stones were missing and it followed that, taking into account the age of the property, other coping stones would be damaged and need replacing. On viewing the 'after' photographs the Tribunal found that repairs and repointing of brick work had taken place in these areas, and coping stones had been reset or replaced.
- 63. There were no specific photographs of the boundary wall (Item 4) that had been removed and rebuilt but such work was likely for a building of this age.
- 64. The Tribunal considered the concrete and render repairs and repointing around the windows following their replacement (Items 3 & 7) and the repairs to the concrete and coping of the stairwells and walkway (Item 8). On examining the 'before' photographs it was noted that the concrete around the windows and the stairwell copings and the walkway required attention, as might be expected of a building of this age. In addition, it could be anticipated that the render and clay brickwork would need to be made good after the windows were replaced. Some general render repair would also be expected.

65. The Tribunal viewed the 'after' photographs and found that the specified work in respect of the render, concrete window surrounds, stairwell copings and walkway and the making good that might be anticipated to the render and brickwork following the replacement of the windows had been carried out.
66. Having found the specified work in respect of Items 3, 4, 5, 6, 7, 8, 9 and 10 had been completed, the Tribunal assessed whether the cost for each was reasonable.
67. The Tribunal noted from the photographs that the Block contained in the region of 50 windows and that the repair of concrete and render and the repair and repointing of clay brickwork is labour intensive which is reflected in its cost. The Applicant provided no alternative quotations or other evidence. In the absence of such evidence the Tribunal found that in its knowledge and experience the cost was reasonable and payable.
68. The Tribunal found that it was reasonable for the Respondent to select a paint that it was advised was particularly suitable. The Applicant provided no alternative quotations or other evidence. In the absence of such evidence the Tribunal found that in its knowledge and experience the cost of redecorating the render and paintwork was reasonable and payable.
69. The Tribunal noted the Respondent's statement that the windows were 27 years old and were advised that they were dated notwithstanding that new locks and trickle vents had been fitted. The age was not contradicted by the Applicant although he felt that they were still serviceable but provided no alternative expert opinion or other evidence that the replacement of the windows was unnecessary. The Tribunal took into account the cost, particularly that of scaffolding, of renewing the windows to the Property alone at a later date and considered that it was more efficient to renew all the windows as part of the Major Works. The Tribunal found that in the absence of evidence to the contrary the renewal was necessary and that in the Tribunal's knowledge and experience the cost was reasonable and payable.

### **Decision**

70. The Tribunal therefore determines the cost of the Major Works, taking into account the omission, in the Applicant's case, of the cost of the insulation and replacement store room door as agreed by the Respondent, and any agreed prompt payment discount, are reasonable and payable by the Applicant to the Respondent.

### **Section 20C & Paragraph 5A of Schedule 11**

71. The Applicant applied for an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant. The Applicant also applied for an Order to reduce or extinguish the Applicants' liability to pay an administration charge in respect of litigation



costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

72. Leases may contain one or both provisions enabling a landlord to obtain their costs of proceedings. The difference between these two types of provisions was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258. The provision enabling the landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other lessees as part of the service charge. The provision enabling the landlord to claim its costs directly from the tenant might be seen as an individual liability, whereby the tenant alone bears the landlord's costs of the proceedings. Where the lease contains these provisions, the costs of the proceedings could be claimed by the Respondent under either Lease provision but not both.
73. The first issue is whether the Lease contains either or both of these provisions enabling the Respondent to claim its costs in respect of these proceedings through the Service Charge or directly from the Applicant.
74. The Tribunal examined the Lease and found the only provision which might relate to these costs being claimed through the Service Charge is paragraph (1) (vi) of Schedule G which states that the Service Charge may include "the Council's costs of management of the Property. The Tribunal is of the opinion that costs relating to "management of the property" do not include the costs incurred in taking or defending proceedings.
75. With regard to claiming these costs directly from the Applicant the Tribunal found that the only provision was contained in Clause 4 (d) which states "to pay all costs charges and expenses (including Solicitor's costs and Surveyor's fees) incurred by the Council for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court". The Tribunal is of the opinion that these proceedings are not "for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925" and therefore they cannot be claimed directly from the Applicant.
76. However, if it is considered to be wrong in its interpretation the Tribunal addressed the second issue of whether an Order should be made under the respective legislative provisions.
77. This only enables the Respondent to claim its costs against the Applicant for a breach of lease and the service of a section 146 Notice, which is not the case here.
78. The Tribunal therefore finds that the Respondent cannot claim its costs under either the service charge or directly from the Applicant. Nevertheless, Tribunals are encouraged to make orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 if it is thought appropriate, as the judicial body hearing the matter at first instance.

79. Therefore, the second issue is whether an Order should be made under the respective legislative provisions. In deciding whether or not it is just and equitable in the circumstances to grant an order under either legislative provisions the Tribunal considered the conduct of the parties and the outcome and nature of the proceedings.
80. With regard to the conduct of the parties, the Tribunal considered that both parties, in general terms, acted reasonably. It would have assisted the Tribunal considerably if the Applicant had set out the submissions in a Statement of Case. As it was the details of the challenges had to be extracted from the correspondence provided by the Respondent in the Bundle. The Respondent's case was clearly presented although it would have been helpful if either party had provided details of the Preliminaries. In addition, the Respondent should have addressed the questions raised by the Applicant in his email of 11<sup>th</sup> December 2019.
81. With regard to the outcome the Tribunal has found in favour of the Respondent.
82. The Tribunal then considered the nature of the proceedings. They were for a determination of the reasonableness of the cost of Major Works. No hearing has been required and the information in the Respondent's Statement of Claim and Mr Prescott's Witness Statement is only what might be prepared when reporting to the Council on the completion of the Major Works. The Tribunal is of the opinion that the cost of producing the paperwork in this case is included in the Administration costs and Project Management Fees for the Major Works.
83. Therefore, the Tribunal is satisfied it is just and equitable to make:
- (1) an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable.
  - (2) an Order extinguishing the Applicant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
84. The Applicant is entitled to test the reasonableness of the cost of the Major Works by applying to the Tribunal but as the Tribunal finds these costs to be reasonable the Tribunal makes no order for reimbursement of the Application Fees.

**Judge JR Morris**

## **APPENDIX 1 - RIGHTS OF APPEAL**

1. If a party wishes to appeal the decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## APPENDIX 2 – THE LAW

### **The Law**

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
2. Section 18 Landlord and Tenant Act 1985
  - (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
    - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord’s costs of management, and
    - (b) the whole or part of which varies or may vary according to the relevant costs
  - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
  - (3) for this purpose
    - (a) costs include overheads and
    - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period
3. Section 19 Landlord and Tenant Act 1985
  - (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
    - (a) only to the extent that they are reasonably incurred; and
    - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
  - (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.
4. Section 20B Limitation of Service Charges: time limit on making demands
  - (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before the demand for payment of the service charge served on the tenant, then (subject to subsection (2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
  - (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

5. Section 21B Notice to accompany demands for service charges
  - (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
  - (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
  - (3) A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.
  - (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
  - (5) Regulations under subsection (2) may make different provision for different purposes.
  - (6) Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  
6. Section 27A Landlord and Tenant Act 1985
  - (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 arbitration agreement to which the tenant was a party
    - (c) has been the subject of a determination by a court
  - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
  
  - (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

7. Section 20 of the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount, which results in the relevant contribution of any tenant being more than £250. The provision limits the amount which tenants can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a First-tier Tribunal.

The consultation provisions are set out in the Schedules to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations).

The Procedure appropriate to the present case is in Schedule 4 Part 2 of the Regulations and may be summarised as being in 4 stages as follows:

*A Notice of Intention* to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days.

*Estimates must be obtained* from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

*A Notice of the Landlord's Proposals must be served on all tenants* in which an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. This is for tenants to check that the works to be carried out conform to the schedule of works, are appropriately guaranteed and so on.

*A Notice of Works* must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

Section 20ZA of the Act allows a Leasehold Valuation Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable, as follows –

Where an application is made to a First-tier Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

8. Schedule 11 Commonhold and Leasehold Reform Act 2002
  1. Meaning of “administration charge”
    - (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
      - (a) ...
      - (b) ...
      - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant,
      - (d) ...
9. Schedule 11 Commonhold and Leasehold Reform Act 2002
  - 5 A Limitation of administration charges: costs of proceedings
    - (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
    - (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
    - (3) In this paragraph—
      - (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
      - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.
10. 20C Landlord and Tenant Act 1985
  - Limitation of service charges: costs of proceedings.
    - (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 leasehold valuation tribunal or the First-tier 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 the county court;
  - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  - (ba) in the case of proceedings before the First-tier Tribunal, to the 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 the 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.