FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/21UC/LSC/2021/0004
Property	:	Flat 6 Chalvington House, Ocklynge Road, Eastbourne, BN21 1PZ
Applicant	:	Keith R Jones
Representative	:	
Respondent	:	L.B.R. Properties Limited
Representative	:	Stredder Pearce, Property Managers and Surveyor
Type of Application	:	s.27A Landlord and Tenant Act 1985 – Service charge
Tribunal Member(s)	:	D Banfield FRICS Regional Surveyor
Date of Decision	:	28 April 2021

DECISION

The Tribunal determines that the sum of £7,646.60 referred to in Stredder Pearce's demand of 5 December 2019 is reasonable and payable.

Background

1. The Applicant seeks a determination in respect of the proposed cost of reroofing a block of 12 flats in 2021 at a cost of £95,582.52.

2. The Tribunal made Directions on 11 February 2021 which identified the following issues to be determined:

    - Whether the works were necessary
    - Whether the costs are recoverable under the terms of the lease
    - Whether the required consultation procedures have taken place
    - Whether the costs are reasonable for the work involved

3. The Tribunal considered that the application was likely to be suitable for determination on the papers alone without an oral hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.

4. No objections have been received and after examining the hearing bundle the Tribunal remains satisfied that the issues can be satisfactorily determined on the papers.

5. The Tribunal's Directions set out a timetable for the exchange of cases and the production by the Applicant of a hearing bundle and it is upon the evidence contained therein that this determination is made.

The Lease

6. The Applicant's lease is dated 17 October 1972 for a term of 99 years from 25 December 1963. Clause 3 (1) obligates the landlord to "*keep in good and substantial repair the main walls and floors roof and exterior of the said Building and all enclosures ceilings and walls to the same belonging and also all cold water storage tanks pipes wires conduits sewers and drains and the lift or lifts (if any) whether the same be in or upon the parts of the said Building used in common by the tenants thereof or the parts thereof*"

7. Clause 4. (i) obliges the Tenant to make "*payments for the maintenance of the said Building at the times and in the manner hereinafter provided"* and

8. Clause 4. (ii) states that *"The maintenance charge hereinafter referred to shall be the total of all sums actually paid and expended by or on account of the landlord during each calendar year in connection with the management and maintenance of the said Building……"*

9. Clause 4 (iv)requires the Tenant to pay the Landlord 8% of the maintenance charge.

Applicant's case

10. In a statement of case the Applicant says that although Stredder Pearce had been managers of the block from 2014 ponding on the roof was only identified in 2017 and the lessees informed by way of their letter of 15 August 2019.

11. The statement went on to say;

- *"The photos show sagging midspan and do not show the roof falling to the drainage on the back of the building. Clearly the roof is not in compliance with the required statutory fall. BS6229 requires a minimum finished fall of 1:80.*
- *Stredder Pearce proceeded with the procurement of roofing work.*
- *Stredder Pearce approached the roofing material supplier IKO to inspect the roof and to provide the materials and the proposed roofing system without any competition from other suppliers of roofing materials and roofing systems. IKO prepared the technical specification for their materials and roofing system.*
- *Stredder Pearce failed to obtain at least two priced proposals for different materials and roofing systems as required by Section 20 of the Landlord and Tenant Act of 1985. Also, they have failed to address the many concerns raised by leaseholders regarding the proposed roofing works. Again, in contravention of Section 20 of the Landlord and Tenant Act of 1985.*
- *Based on IKO finding some isolated dampness of the existing fibre board underlay Stredder Pearce decided to tender based on the removal of all the existing roofing to the decking. This although to the best of my knowledge there have been no leaks.*
- *By following this method of procurement Stredder Pearce avoided the need for them to prepare a technical specification and to compare technical proposals of the tenderers. They preferred to let IKO do the work that they are paid for through their 10% fee.*
- *Three roofing contractors were chosen to tender the work. Only contractors approved by IKO could tender.*
- *Tender results were:*
    - *Clarke Roofing £72,411*
    - *Byford Roofing £76,455*
    - *Sussex Asphalte £77,000"*

- *Stredder Pearce issued their Statement of Estimates on 5th December 2019 together with invoices billing leaseholders £95,582.52 including their 10% fee and VAT. This even before the consultation period.*

12. The Applicant goes on to say that the lack of competition has led to grossly inflated prices and that when roofing works were carried out in 2007 at a cost of £13,348.24 "*Clearly the scope of this work was inadequate and that both LBR Properties and their property managers NRB were negligent. If the work had been done properly then no work would be necessary now. Even though there is no leakage we are left with the problem that the ponding does need to be resolved.*

13. *The current proposal at a cost of £95,582.52 represents an extra £77,000 compared with the roofing work in 2007. This for the removal of the current roofing and the extra cost to provide the IKO roofing system with tapered insulation to give the statutory falls. This additional amount is over twice what would be expected*"

14. "*Due to the failure of Stredder Pearce to procure the works in a competitive manner the roofing work should be retendered allowing tenderers to propose their materials suppliers and roofing system to provide the statutory falls. This needs to involve additional tenderers to those proposed by IKO.*

15. *This action which is in the interests of the leaseholders will result in a considerably reduced cost of the works. Also, serious consideration needs to be given as to whether the existing roofing needs to be removed."*

16. In the Applicant's letter to Stredder Pearce of 11 September 2019 he states *"The ponding of rainwater on the roof of Chalvington House is of course of concern, however the issue of responsibility for this happening needs to be addressed. Roofing systems to flat roofs need to be finished to falls to allow rainwater to drain off to gutters then downpipes or directly to downpipes. This clearly is not the case with the roofing to Chalvington House. The minimum finished fall required by BS6229 is 1:80. Responsibility for the problem lies with the roofing contractor and the property manager responsible for the work previously carried out to a specification which clearly does not meet the basic and legal requirements of a roofing system to a flat roof."*

17. In a subsequent reply dated 11 November 2019 Stredder Pearce stated "*As part of the initial inspection of the roof carried out by IKO Roofing, core samples were taken of the existing roof. For your information the roof is made up of;*

- *Two layers of felt*
- *20mm asphalt*
- *18mm fibre board*
- *Bitumen vapour barrier*
- *Timber/ply decking*

Upon inspection the fibre board insulation was found to be damp. As such, the proposed works will be to strip back the existing roof to expose the existing timber decking. At this stage it is anticipated that the decking shall remain in situ but it will be inspected once the roof has been fully stripped. The new insulated roof will be fitted over the existing decking with tapered falls to the rear of the building. The existing chutes through the edge kerb detail, where water flows into individual hoppers, will be replaced with a deep flow gutter running the length of the rear of the buildings."

18. In a letter of 11 June 2020 he states *"I have for many months expressed my concerns that the roof of Chalvington House is not constructed to statutory falls and that this information has been withheld from existing lessees and new lessees. I have asked several times for a level survey to be carried out, most recently in my letters of 11th and 27th May. I have not received a response from Stredder Pearce. This issue was first addressed in my letter of 11th September 2019. My concerns were not passed to the other lessees in Stredder Pearce's letter of 5th December 2019. I have also expressed concerns that the lessees have not been advised of the risk that there may be significant financial implications for replacing any timber decking or joists that may have deteriorated."*

Respondent's case

19. The Respondent states*; "There was no evidence or report of any roof leakage in 2014. It was not a surprise to Stredder Pearce that there was some dishing of the roof surface. When Chalvington House was constructed the design recommendation was that flat roofs should achieve a fall of 1:80. The guidance changed in the early 1980s, stating that roofs should be designed with a minimum fall of 1 :40 to ensure that a finished fall of I :80 was achieved. The relevant British Standard BS6229 was revised in 1982. It is common to find that flat roofs of this era do not have an adequate fall, but there was no evidence of roof leakage when Stredder Pearce took on the management of Chalvington House and there were other, more pressing maintenance issues to be dealt with at the property. ln 2017 access plant was erected to the exterior of the property for external works and at the time access to the roof was gained. In March 2019 we were instructed by the Landlord's representative to bring forward the renewal of the roof covering as, although no water ingress had been reported as occurring to top floor flats, they were keen to undertake this work on a planned basis, particularly in view of the necessity for Section 20 consultation, to avoid inconvenience to top floor flat owners if a leak occurred."*

20. *"There is a range of different roofing systems available. These various systems differ in their technical performance, available guarantee periods and the extent of technical support available*

from the manufacturers. The TKO system was selected as Stredder Pearce have successfully used this system at a number of properties in the past. It is not possible to invite directly comparable tenders for different roofing systems.
The manufacturers of roofing systems, as a pre-cursor to the tendering of the work to approved contractors, require that their technical specification forms part of the tendering process. It is now essential that the technical specification for the roofing product is provided by the manufacturer in order to ensure that they will issue a guarantee.

21. *The Section 20 Consultation procedures do not require that two priced proposals are obtained for different materials and roofing systems. No contractors were nominated by any lessees to be invited to tender within the period of the Notice of Intention or roofing systems suggested and thus the contractors approached were approved contractors for the installation of the IKO roof system as selected, The importance of ensuring that contractors were tendering on the same basis was drawn to the attention of Mr Jones in the response to his email of 6 January 2020 Item l which was sent by Mr Burrage by email on 8 January 2020."*

22. *"The presence of dampness in the fibreboard as identified in the core sample taken on the roof certainly suggested that water ingress was occurring, indicating failure of the water proof layer of the roof covering. The presence of a vapour barrier reduced the possibility of the dampness in the fibre board being a consequence of condensation. Furthermore, areas of damp fibreboard insulation would result in colder patches on the ceilings of the top floor flats increasing the risk of condensation within those flats. Overlaying the existing roof with simply another layer of bitumen felt would not have dealt with the inadequate falls. Whatever method is used to improve the roof falls, the material used must be laid on a firm surface in good condition. The damp fibreboard in our opinion would not meet this requirement. If the existing roof had simply been overlaid again, the moisture in the fibreboard would become trapped in the built-up roof."*

23. *"It is acknowledged that the roof work in 2007 did not include an adjustment to the falls. There was no legal requirement under the Building Regulations or other legislation current at that time to do so. The lessee of Flat 6 at the time clearly had knowledge from the letter dated 30 May 2007 of the scope of the works and the cost of the work did not include for adjustment of the falls."*

Applicant's reply

24. In his reply the Applicant says; "*Tenders can be compared for different roofing systems. Stredder Pearce were just trying to avoid the work necessary to do this. The close relationship between Stredder Pearce and IKO is noted. With no other roofing*

system being considered IKO were free to charge whatever they liked for their materials, knowing there was no competition. Stredder Pearce avoided the need to prepare a technical specification by getting IKO to prepare this. A specification should have been prepared allowing different roofing systems to be tendered. In the event only three contractors approved by IKO could tender. Byford roofing did no more than quote a lump sum with no other information.

25. *The Statutory Notice of Intention to Carry Out Work makes no mention of Stredder Pearce's intention to approach only one supplier for the roofing materials. This total lack of competition was hidden from the leaseholders. In the Statement of Estimates there was no mention of IKO being the sole supplier of materials or that the only tenderers were ones approved by IKO. Again, the lack of competition was hidden from the leaseholders. It only became apparent when I saw the tenders in Stredder Pearce's office on 30 December 2019. My consultation letter of 6 January 2020 and subsequent communications raised this and other issues. Stredder Pearce advised that they were not required to convey my concerns to the other leaseholders.*

26. *The IKO survey of the roof found dampness of the fibre board in the two core samples. This description changes to saturation when justifying their recommendation to remove all the previous roofing to the decking level. There is a big difference between dampness and saturation. No leaks have occurred which indicates that the fibre border is only damp not saturated. The leaseholders are now being asked to pay for removal of roofing, the top layer of which they paid for just 14 years ago and it has no leaks.*

27. *It was irresponsible and negligent that the legally required falls were not introduced by the roofing work in 2007. If this had been done no work would be required now. The Freeholder and his building manager at that time are responsible for this creating significant unnecessary cost to the leaseholders. Dampness in the fibre board is not a leak. My understanding is that no leaks have occurred since the roofing work in 2007.*

28. *A decision needs to be made as to whether the existing roofing needs to be removed given that the top layer is only 14 years old and that there are no leaks. If there is concern regarding dampness of the fibre board venting of this layer should be considered. A retender is necessary allowing contractors to decide on the roofing materials and system they propose using to provide the necessary insulation and falls. This will allow for competitive prices to be submitted which will protect the interests of the leaseholders. If Stredder Pearce deal with this in an expeditious manner roofing work can be carried out this summer."*

The Law

29. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can construe the tenancy agreement where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable.

30. 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. Section 19 (2) concerns where a service charge is payable before the relevant costs are incurred no greater amount than is reasonable is payable.

31. The consultation requirements required by S.20 of the Act are contained in Part 2 of Schedule 4 to the 2003 Regulations. A summary of which is):

- Stage 1: Notice of intention to do the works Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.
- Stage 2: Estimates The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.
- Stage 3: Notices about Estimates The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.
- Stage 4: Notification of reasons Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

32. In summary therefore, the Tribunal's task is to determine whether:

- Whether the work falls within the tenant's obligation to pay as referred to in the tenancy agreement,
- Whether the consultation requirements have been met
- Whether the cost and standard of the work is reasonable and: -

Discussion and Determination

33. Clause 3 (1) of the lease places an obligation on the landlord to "keep in good and substantial repair the main walls and floors roof and exterior of the said Building" and Clause 4(i) requires the tenants to pay their due proportion of those costs. Clause 4 (iv) states the due proportion in this lease to be 8%. In any event the Applicant does not appear to challenge his obligation to pay.

34. The Applicant does however challenge the manner in which consultation has been carried out in that by obtaining quotations from 3 contractors using the IKO system he says that the Respondent "*failed to obtain at least two priced proposals for different materials and roofing systems as required by Section 20 of the Landlord and Tenant Act of 1985".*

35. This is not however what S.20 requires. A statement with "two or more estimates" is all that is required and this requirement has been met. Whilst tenants are invited to make observations to which the landlord must "have regard" there is no obligation on the landlord to accept those observations or to alter their proposals in order to accord with them. **I am therefore satisfied that the Respondent has complied with the consultation requirements of S.20.**

36. Turning now to the proposed works the Applicant accepts at paragraph 16 above that the roofing system does not meet the "basic and legal requirements" of a flat roof and says that the responsibility is with the previous contractors and managers who carried out the work in 2007. that "*Roofing systems to flat roofs need to be finished to falls to allow rainwater to drain off to gutters then downpipes or directly to downpipes. This clearly is not the case with the roofing to Chalvington House. The minimum finished fall required by BS6229 is 1:80. Responsibility for the problem lies with the roofing contractor and the property manager responsible for the work previously carried out to a specification which clearly does not meet the basic and legal requirements of a roofing system to a flat roof."*

37. The Respondent (whilst not managing the property in 2007) says that there was no requirement in 2007 for the falls to be updated.

38. In determining this application the Tribunal does not however need to consider the adequacy of the 2007 works. The issue before it is whether the works now proposed are required and whether the cost of those works is reasonable.

39. Both parties agree that the existing roof does not meet current standards regarding falls and that water is pooling. The difference between them however is whether the existing roof can simply be overlaid or whether it must be stripped and replaced.

40. The Respondent says that tests have shown the fibre board insulation is damp and to cover it will lead it be trapped in the built up roof. The Applicant disagrees, firstly with the level of dampness which he argues cannot be great due to the lack of reports of leaks into the top floor flats and secondly that ventilating the roof will avoid any moisture build up.

41. The Applicant also expresses concern over the financial implications of needing to replace joist or decking once the roof has been stripped.

42. I accept that with all repairs there may well be alternative ways of carrying them out. There is the "quick fix" and the "long term" solution. Clearly the former may well have the advantage of lower cost but potentially at the price of a shorter life. It is a balance that must be struck and, as long as the landlord's proposed solution is reasonable the Tribunal will not disagree.

43. Here we have a roof that is failing and requires upgrading. The chosen solution is to deal with its shortcomings and bring it up to modern standards and with the benefit of a 25 year guarantee. Where there is doubt as to the state of the fibre insulation, joists or decking I do not accept that it is acceptable to simply overlay it. This would simply repeat the situation and criticism made of the adequacy of the 2007 works. I there determine that the works proposed are reasonable and subject to the costs also being reasonable are payable by way of service charge.

44. Turning now to the costs and criticism of the tendering process I do not accept that it is unreasonable to specify a reputable manufacturer, follow their recommendations and then obtain competitive quotations from approved contractors. Although the costs are substantial, I do not accept that a satisfactory comparison can be drawn with works carried out some 14 years previously to what is acknowledged to be a lower specification.

45. Given all of the above **the Tribunal determines that the sum of £7,646.60 referred to in Stredder Pearce's demand of 5 December 2019 is reasonable and payable.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.