FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00/AS/LSC/2021/0201**
Property	:	**1-38 GARDEN CLOSE RUISLIP MIDDLESEX HA4 6DB**
Applicant	:	**All Leaseholders**
Representative	:	**Frode Jenssen**
Respondent	:	**Ultrahome Limited**
Representative	:	**Mr Comport**
Type of Application	:	**Application for a determination pursuant to s 27 A Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge Shepherd** **Antony Parkinson MRICS MIRPM**
Date of Decision	:	**December 2021**

1. In this case the Applicants, the leaseholders of 1 to 38 Garden Close, Ruislip HA4, 6DP ("The premises") are challenging the service charges at the premises. They were represented by Frode Jenssen the leaseholder at 16 garden close. The Respondents, Ultrahome Limited are the freeholder of the premises. Their managing agents are Parkgate Aspen. They were represented at the Tribunal by Mr Comport.

2. The premises at 138 Garden Close consist of six co-joined blocks with a total of 38 individual two or three bedroom flats each block having three or four floors with six or seven flats.

3. The challenge brought by the leaseholders is limited to the year 2017 2018 and relates to major works carried out in the blocks during that year. The application states that the managing agents were in breach of section 20 of the Landlord and Tenant Act 1985 in relation to the works concerned. This is because the works were carried out by a company called Tyndalls who were not included in the section 20 consultation. They also say that the work carried out by Tyndalls was of poor quality and some of the works listed were not carried out. For their part the Respondents' managing agents said that the floors in the premises had to be repaired urgently and that the contractor who had won the tender was unavailable at the time. The leaseholders say this is not right because at any point in the 11 months between the section 20 notice and the works starting the urgent floor repairs could have been carried out. They also point to the fact that the Respondents had not applied for dispensation pursuant to section 20ZA of the Landlord and Tenant Act 1985.

4. The dispute relates to the refurbishment of the communal areas in six blocks at the premises. This refurbishment was carried out during 2017. Parkgate Aspen sent section 20 consultation letters to all leaseholders on 15 February 2016. Three companies with quotes were shortlisted for the decoration work and two companies for the flooring works. For the decorating works the following quotes were received: Complete homes (£26,370); NN maintenance Ltd (£27,530) and KBK Property Services Ltd (£36,800).

5. The flooring replacement quotes were the following: Wallpaper and Flooring Centre Ltd (£14,792) and MN Maintenance Ltd (£19,800).

6. On 13 January 2017 Parkgate Aspen sent an email stating that Tyndalls would be undertaking the work starting on 16 January 2017. The email stated the following:

   Please note that Tyndall property services Ltd will be redecorating the internal common parts to the building from Monday 16th of January 2017 there will be on site for four weeks and working between the hours of 8:30 AM to 4:30 PM Monday to Friday. Please note that Tyndall will not be doing any works to the flooring of the internal common areas-this will be carried out as a separate project. Whilst Park Aspen will be overseeing the works as project managers the lead contractor for Tyndall property services will be Mr Trevor Bourne who can be contacted on (01992) 580085 should you have any concerns throughout these works. There is likely to be disruption to the common areas with various individuals working throughout the building. We hope that residents will assist Tyndall ensuring any disruption is kept to a minimum.

7. The Tribunal heard evidence that this was the first time that the leaseholders were told that Tyndalls were going to carry out the works to the common areas. In fact despite what is said in the email they also did the flooring works

8. The leaseholders were disappointed with the quality of the work that Tyndalls carried out. Pictures were enclosed with the application. It was not clear whether the pictures related to one or more blocks. In June 2018 the leaseholders were sent an invoice of roughly £1000 each depending on their flat size. In October 2020 a representative from Parkgate Aspen sent a summary of the amount spent as well as the quote that they'd received from Tyndalls. The Applicants point out that all payments were made to Tyndalls who were not on the section 20 notice. The total cost was £54,624 including £4320 for some unspecified door repairs. There is a property expenditure listing at page 47 of the bundle breaking down the works involved in the project.

9. Mr Jenssen obtained an alternative, retrospective quotes for the decoration and flooring works. TMCD quoted £19,000 for the decorations and £11,500 for the flooring. Howard's Property services quoted £6000 for the decoration works.

10. The Respondents' justification for using Tyndalls is contained in the witness statement of Elliot Unsdorfer the Director of Parkgate Aspen. Under the heading *works are not urgent it is stated;*

Parkgate Aspen on behalf of the Respondent commissioned a health and safety report to ensure that the premises complied with all health and safety matters under that report by Monarch Safety Services Ltd (box 10) it was stated that the floor surfaces in the common parts were a significant tripping hazard and that the work should be completed within three months. This would be within three months of the report i.e. three months from 17 December 2016. In fact Parkgate Aspen had already noted that the flooring needs to be replaced hence the consultation notices in early 2016 around the same time Parkgate Aspen commissioned a report from CGS (electrical surveyors) to inspect the wiring which Parkgate Aspen could see was in need of replacing. Their report recommended urgent complete overhaul of the electrical wiring. If that was going to be undertaken then Parkgate Aston felt that fire safety work should be undertaken at the same time not only because the work was needed but also because it was cheaper to have one large contract as opposed to 2 small contracts the electrical work including fire safety work required drilling new cables through the common parts floors from the ground floor intake room through to the sub- mains of each of the flats. Therefore to suggest doing a cheap temporary fix would not have helped and would have met meant greater expense for which the respondent would have been criticised. Once the fire safety and electrical work had been undertaken the redecoration and floor renewal works were undertaken as soon as possible thereafter so as to comply with the health and safety report.

11. The report of Monarch Safety Services Ltd is at page 122 onwards of the bundle. The risk assessor was Ian Everett. At page 173 the report states that the floors and floor coverings in the common parts are uneven and in a poor condition and present a significant tripping hazard. It then states that actions to deal with these problems should be dealt with as soon as possible as soon as reasonably practicable and work should be completed within three months.

The hearing

12. Mr Jenssen for the leaseholders said that they were dissatisfied by the quality of the work and the snagging works had taken a considerable amount of time to carry out. He also complained that the agents Parkgate Aspen had not been involved in the works to any great degree. He put forward the comparables already referred to above.

13. In cross-examination Mr Jenssen accepted that he had been informed of the intention to carry out the works under the section 20 procedure. He also accepted that no leaseholders had provided observations in relation to the proposed work. He agreed that the internal decorations were generally poor before the works. He said that the photographs of the poor condition of the communal areas at page 203 to 209 of the bundle were pictures of one block only and the other blocks were not as bad. He'd provided photographs of the work immediately afterwards which showed that the quality of the work was not very good. He agreed that the cost of the Tyndalls works was around the same as the cost of the other quotes provided during the section 20 process.

14. Mr Unsdorfer gave evidence on behalf of the managing agents he said that once they'd received the health and safety risk assessment and appreciated the urgency of the work they had asked whether the contractors involved in the tender were available. He had spoken to somebody called Sydney on the telephone. He said he could not start for several months. Mr Unsdorfer was

asked why he had not applied for dispensation. His answer was inconclusive and he referred the tribunal to his lawyer's submissions.

15. The parties gave brief closing submissions. Mr Jenssen said that if the Respondents had wanted to rely on Tyndalls as their contractor they should have applied for dispensation. Mr Comport said that Tyndalls had submitted the lowest estimate albeit that this was not within the section 20 consultation. He asked the tribunal to consider staying proceedings if we were minded to find that they were in breach of the separate section 20 consultation regulations so that a dispensation application could be made. The tribunal were unwilling to do this because a section 20ZA application should have been made a long time ago and there was no reason given why it had not.

Determination

16. The Tribunal's hands were tied by the Respondent's failure to comply with the s.20 requirements. There was no application for dispensation before us. S.20 is clear. It states the following:

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

2) In this section "relevant contribution" , in relation to a tenant and any works or agreement, is the amount which he may be required under the terms

of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

17. Self evidently under subs (1) if consultation is not carried out properly or dispensed with the Tribunal cannot do anything other than limit costs to the appropriate amount , ie £250 per unit. Mr Comport sought to suggest the Tribunal had wider powers but it does not.

18. The Respondents didn't follow the s.20 procedure because they didn't appoint any of the contractors involved in the tender process. The section 20 consultation is not merely to allow leaseholders to determine the cost of the works that they could expect. It is also so that the leaseholders are aware of the identity of the contractors involved. Leaseholders may have concerns about a particular contractor involved. It makes a nonsense of the consultation process if the freeholder or his agents can simply pick another contractor that better suits their needs but were not involved in the consultation process. It is patently clear that the Respondents are in breach of the section 20 consultation process and no application for dispensation had been made. In these circumstances the tribunal is only able to allow costs of £250 per unit. In any event the Tribunal were skeptical about the Respondents' reasons for not following the procedure properly. There was no documentary evidence showing that the contractor with the lowest tender could not start the work. It's also not clear why the works had not been started well before the risk assessment was carried out. For whatever reason the Respondents chose to use Tyndalls because it suited them only. This flies in the face of the purpose of consultation.

19. On the basis of £250 per unit with 38 units involved this means that the total cost of the works recoverable for the communal redecoration and flooring is £9500 respectively – total £19000. The service charge accounts will need to be adjusted accordingly and the leaseholders reimbursed any overpaid sums.

20. The parties and Mr Comport particularly were anxious that we addressed the quality of the works question even if we decided the consultation question against the landlord. It was difficult for the Tribunal to make a proper assessment of this based on the evidence that it had before it. The photos

concerned areas within some but not all of the blocks. They showed evidence of slightly shoddy work with gaps which had not been filled between flooring and timber joinery including the staircase and skirting boards. There was also evidence of inadequate preparation of timber joinery as evidenced by images of significant imperfections in the gloss paint finishes.

21. Doing the best we can the Tribunal considers that a deduction of between 10 and 15% would be appropriate from the total cost of the work. In light of our findings in relation to the consultation it would be disproportionate to impose this further deduction however.

22. Accordingly, the cost of the major works is limited to £19000. Mr Comport indicated if this was going to be our decision he would be applying for an appeal and making a retrospective application for dispensation. That is clearly his prerogative. The Tribunal does however highlight the fact that if an application for dispensation was going to have been made it should have been made a long time ago. If dispensation is given and the focus then switches to the quality of the work it will be necessary for an inspection by a tribunal to be carried out in order to properly assess the quality of the work.

Judge Shepherd

December 2021

ANNEX 1 - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.