FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/29UC/LIS/2021/0046** **CHI/29UC/LDC/2022/0042**
Property	**:**	**Bridge Hill House, Higham Lane, Bridge, Canterbury, Kent, CT4 5AY**
Applicant	**:**	**Bridge Hill House Management Company Limited**
Representative	**:**	**Bamptons**
Respondent	**:**	**Timothy Stewart (Flat 2, s.27A), Long Leaseholders (s.20ZA).**
Representative	**:**	**In person**
Type of Application	**:**	**s.27A, s.20ZA of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge D Dovar**
Date of Decision	**:**	**29th June 2022**

DECISION

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1. These are two applications under the Landlord and Tenant Act 1985 ('the 1985 Act') in respect of the Property. The first, under s.27A of the 1985 Act, relates to the service charges claimed for the years ending 2019 and 2020. The second is for dispensation, under s.20ZA of the 1985 Act, for a failure to adhere to the statutory consultation procedure required by s.20 of that Act. There is also an application by Mr Stewart for the appointment of a manger under the Landlord and Tenant Act 1987, but that has been stayed by the Tribunal, in part, pending the determination of these applications. It was the joining of that application to these applications, that led to Mr Stewart to being the Applicant in these applications. Accordingly references to the Applicant are to Mr Stewart and to the Respondent are to the landlord company, albeit that in these applications they are in fact the applicant.

2. The s.27A application (reference 2021/0046) is for a determination of payability for a large number of the service costs claimed in those two years. The application is dated 29th September 2021. The subject matter of that application has evolved and been clarified with the assistance of various directions of the Tribunal. The Respondent has helpfully condensed the issues in the form of a Scott Schedule, which on reading and when compared to the evidence filed by the Applicant covers all his points in outline; with some additions. I have therefore taken that Schedule as the basis for the resolution of the issues below but have cross checked that Schedule against the Applicant's evidence to ensure that I have dealt with all the specific issues in dispute. Whilst there were a number of other issues raised in the statements of case, they did not have

a specific bearing on the issues to be determined in this application but were indicative of the increasing bad blood between the occupants of the Property. I did not consider that that evidence was relevant to the determinations I had to make and so have not commented on them. In particular, as was pointed out at the direction hearings on 10th December 2021 and 13th January 2022, this Tribunal does not determine how much is actually owed, but how much is payable

3. The s.20ZA application (reference 2022/0042) was made on 27th April 2022. It relates to expenditure incurred with South East Timber and Damp in the sum of £8,634 (which is one of the items challenged in the s.27A Application). The parties have set out their respective cases in writing.

4. By the directions dated 13th May 2022, the Tribunal gave notice to all parties that it intended to deal with these applications on the papers, without a hearing; no party objected, and this determination has been made without a hearing.

5. I have been provided with an electronic bundle of 864 pages containing the s.27A application, the various directions in these and related applications, the parties' statements of case and the documents they rely on in support. Included in that bundle is a previous decision of mine dated 5th August 2020, in relation to this property, where I set out a number of key provisions of the Applicant's lease. They are relevant for some of the issues in this matter.

The Property and the Leases

6. Bridge Hill House is a large listed residence built around 150 years ago with a slate roof and many distinctive ornamental features. The property was converted into seven self-contained residential units in more recent years. It is situated in a quiet cul-de-sac on the outskirts of the village of Bridge, about 3 miles from Canterbury city centre.

7. The material provisions of the Applicant's lease are contained at paragraphs 5 to 10 of my decision of 5th August 2020.

The Challenges

8. As set out above, I have taken the challenges to be those set out in the Scott Schedule, with cross referencing to the Applicant's evidence, to ensure that I have dealt with the salient points.

Insurance (2019: £3,254.04, 2020: £3,766.92)

9. For both years, the Applicant challenges the insurance premium on three grounds. Firstly, it is said that it has not been administered correctly; secondly that it falls foul of the statutory consultation requirements in respect of 'qualifying works' under s.20 of the 1985 Act; and finally, that the costs had not been budgeted.

10. No further detail is given in his statement of case, other than to state that there was no consultation and no competitive quotes were obtained. However, the Applicant has not provided any comparable quotes.

11. This challenge is not made out and the sums are payable in full.

12. Firstly, no detail is given as to why it is said that the insurance has not been administered properly. Secondly, this is for the provision of a service (insurance), not works, and so therefore the statutory consultation procedure does not apply. Finally, regardless as to whether this sum has been budgeted, it has been legitimately incurred and is recoverable under the terms of the lease. In any event, the service charge accounts show that it was budgeted at £2,300 for 2019.

13. As no comparable quotes have been provided to the Tribunal it is not possible to say whether or not these premiums are so high as to be unreasonably incurred.

14. The accounts show that in fact £3,260 was incurred in 2019 and £3,725 for 2020. The renewal schedule shows that the insurance was a period that did not tally with the accounting period: insurance was a year from the end of January, whereas the accounting period under the lease was the year from the end of December. That is likely to explain the slight discrepancy between the sums claimed and the sums in the accounts. Given that the challenge is to the year end accounts and the sums claimed, the sums recoverable are those in the accounts for the year end; i.e. £3,260 and £3,725.

Managing Agents Fees (2019: BW Residential £3,709.79, 2020 Bamptons 2020, £2,760)

15. The managing agents' fees are challenged on the basis that they exceed the consultation threshold for major works or are a qualifying long term agreement. It appears to be accepted by the Applicant that the

agreement with BW Residential was one day short of a year. The agreement with Bamptons, which is contained in the bundle, is also less than one year. Therefore, there is no basis for challenge, firstly, as with the previous challenge this is not 'works' for the purposes of s.20, but rather are services that have been provided. Secondly, as the agreements are for terms of not more than a year, they are not qualifying long term agreements.

16. Again, there is a discrepancy between the sums in the accounts and the sums on the Scott Schedule. The accounts provide for £3,024 for management fees for 2019 and £2,760 for 2020 and those are the sums that are payable.

C Lewsey (2019: £900) / Carefell (2019: £1,890, 2020: £60) Clarks Landscape Services (2019:£2,710.56, 2020 £2,495)

17. These are the costs of gardening and tree cutting.

18. The same challenges are made for each in that they were not consulted on, there was no specification and they were not budgeted. In his statement of case the Applicant complains that the budget used to be set by the shareholders of the landlord company and that the garden has never been in a worse condition. It is also said that £5,050 is too high for the year: but it is not clear where he has got that figure from as it is not in the sums disputed, nor in the accounts.

19. Under his lease, the Applicant pays 1/7th of the total cost of expenditure. The figures set out above are an amalgamation of the invoices from those

firms for each year for individual items of work. None of the individual invoices was for so large an amount as to put the cost payable by the Applicant in excess of the qualifying works limit of £250. Therefore, the consultation requirements of s.20 of the 1985 Act were not triggered. There was also no overriding agreement with the contractors which would engage consultation.

20. In terms of the allegations relating to the condition of the grounds, apart from a bare assertion that they were in poor condition, the Applicant provided no detail or evidence in support; neither any description nor photographic evidence. I do not consider that he has made any ground out for reducing the sums claimed on the basis that the works were not of a reasonable standard. A failure to budget does not prevent the Respondent from recovering actual costs incurred that fall within the service charge regime.

21. Again there was some discrepancy between the sums on the Scott Schedule and those in the accounts and I allow the costs actually incurred as set out in the accounts, being for 2019, grounds maintenance of £2,380 and for 2020, grounds maintenance of £3,261 and Tree works of £990.

CK Roofing (2019: £3,370.80)

22. It is said that as this was for works to Flat 5 it was therefore not a service chargeable item. In his statement of case the Applicant also claims that given the sums involved, statutory consultation should have been undertaken.

23. The Respondent has provided the four invoices that make up this sum. They support the Respondent's contention that these were each individual works, below the consultation threshold. In fact, each invoice related to clearing pipework and guttering external to the building at different times. They therefore were not within any particular demise but were part of the structure of the building as a whole and therefore were service chargeable items.

24. These sums are therefore payable.

Haines Watts/Fortus, accounts (2019: £960, 2020: £1,320)

25. This is the cost of accountancy. The Applicant states that this is an overcharge. He points to the fact that the previous managing agent Mr Wales had complicated matters and had run the service charge incorrectly. He considers that £350 per annum would be more appropriate.

26. The invoices each refer to preparing the service charge accounts for that year and a factual findings report. The accounts indicate that £1,480 was actually incurred in accountancy fees for 2019 and £895 for 2020.

27. For 2020, the invoices indicate that £540 was charged for an interim invoice and then, under their new name Fortus, they charged a further £650 (plus £130) for preparing the service charge accounts and factual findings report.

28. In response the Respondent denies that sufficient evidence has been presented to substantiate this point. However, they do not deny the

point made about Mr Wales having complicated matters or that the sums claimed were excessive for checking the records of under 30 items in a service charge account.

29. In my view, these sums do appear excessive for what should be the straightforward provision of service charge accounts. There is a likelihood that the cost has been exacerbated by the approach taken to the service charges in this building. It is also disconcerting that there are discrepancies between the amounts claimed in the accounts and the invoices provided. Accordingly, the sums recoverable for each year will be reduced to £650 plus VAT.

KAD (2019: £360) Price Lilford (2019: £960, 2020 £2,139)

30. Price Lilford are building surveyors who attended on various occasions to inspect various faults with the building and to draw up a planned maintenance programme. KAD provided plans for that maintenance plan. The Applicant challenges KAD's costs on the basis that they were incurred for Price Lilford and are therefore not service charge items. As for Price Lilford he asserts they required s.20 consultation and were not service charge items in any event.

31. The lease provides for the establishment of a sinking fund. Accordingly, the establishment of a maintenance plan is permissible and sensible and the costs of the same are recoverable as a service charge. Further, given that this is a service, and is not subject to a long- term agreement, there is no need for any statutory consultation to be adhere to. Therefore, these sums are payable in full.

South East Taylor Damp (2019, £8,634)

32. This is the subject of the s.20ZA application. The Applicant as well as the other leaseholders are respondents to this application. The Applicant has provided a statement in response as has Judith Summerhill of Flat 1. I have taken into account their statements and evidence.

33. A notice of intention was served on all the leaseholders on 23rd October 2018, save that the Applicant claims he did not receive the same. There is evidence that the other leaseholders did receive the notice, including an email from one of the other leaseholders, which was copied to the Applicant which made reference to the notice of intention. He did not raise any issue of non-service at that time. The works were described in general terms as relating to damp and defective external rendering, internal plaster and sub-floor timbers.

34. A statement of estimates was sent on 24th June 2019. That provided one estimate for £8,634 from South East Timber & Damp Limited.

35. The Respondent has itself identified deficiencies with regard to the statement of estimates, including:

    a. a failure to 'specify fully other relevant estimates received.';

    b. Specifying a date of 28 August 2019, rather than 28th July 2019 as the end of the consultation period;

    c. The works being carried out (and presumably therefore the contract for works being placed) prior to 28 August 2019;

d. It was not addressed to the individual leaseholders;

e. A failure to provide details of and a response to the observations made to the notice of intention

36. The issue on dispensation is whether or not the failure to carry out the required consultation has (or may have) led to the leaseholders being prejudiced. Either in the scope of the works carried out or the price paid for them. The objections to dispensation focus on the failures to comply and the reasons for the same, rather than on the relevant issue, being whether those failures have in a material and tangible sense prejudiced the leaseholders in any way.

37. The Applicant has set out his objection to dispensation in a statement of case dated 10th June 2022, after reciting a history of the management of building, his first objection is based on the fact that before issuing any notice of intention, the landlord should have consulted its shareholders as to what steps to take. Whilst this may have occurred in the past, the landlord company is run on a day to day basis by its directors without the need to refer to shareholders on such issues. Accordingly, this challenge does not provide any basis for refusing dispensation and does not invalidate the notice of intention.

38. He also asserts that in general Mr Wales did not 'usually find good contractors who did a decent job and they were always expensive.' However, no alternative quotation or other evidence has been provided to shake my confidence that the sum contracted for was correct or that

by reason of the deficiencies in the consultation process, the Applicant had suffered some tangible prejudice that could be compensated.

39. Ms Summerhill makes similar complaints about the failure to adhere to the process but does not put forward any evidence that had that consultation been properly followed the works would have been different or cost less.

40. In light of the failure to establish prejudice in terms of the outcome of works that were required, I am prepared to grant dispensation from:

    a. The requirement so serve the Applicant with a notice of intention;

    b. The requirement, if there is one, to individually address the notice of estimates to the leaseholders; and

    c. To set out in the statement of estimates:

        i. A period of time by which to receive observations;

        ii. The response to observations received to the notice of intention; and

        iii. The estimates from the other contractors.

41. This sum is therefore payable in full.

White Chappell Property Maintenance (2019: £1,413.41)

42. This was the cost of two items of repair and maintenance to the Property.

43. This is said to have required consultation and is said not to be a service charge item as it was part of 'major works.' However, these works are under the s.20 threshold and the fact that they were 'major works' does not prevent them being service chargeable items.

44. Therefore, this amount is allowed in full.

East Kent Maintenance (2020: £3,110)

45. It is said the instruction of these works requires statutory consultation to be recoverable.

46. The invoices show that the total cost was amalgamated from a number of invoices in this year, none of which was in excess of the major works limited.

47. Accordingly, this challenge fails, and the amount is payable in full.

General

48. Whilst the Applicant raises a number of other issues with management, they are not directly related to costs that are being sought from him or in some cases he recognises that they are not within the accounts and therefore are not issues that fall for determination by this Tribunal.

Conclusion

49. Save for the modest reduction in cost for accountants, and an adjustment in order to reflect the actual costs set out in the accounts, none of the challenges are successful and dispensation is given in respect of the timber works as set out above.

Statutory Extracts

Sections 20, 20ZA Landlord and Tenant Act 1985

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.

20ZA Consultation requirements: supplementary

(1) Where an application is made to the appropriate 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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Service Charges (Consultation Requirements) (England) Regulations 2003/1987

6. Application of section 20 to qualifying works

For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.

Schedule 4 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

1.—

(1) The landlord shall give notice in writing of his intention to carry out qualifying works–

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall–

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify–

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

4.—

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate–

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate–

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)–

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out–

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord–

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by–

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)–

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify–

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Appeals

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 .

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.

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.

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.