



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

Case reference : **LON/00AE/LSC/2020/0102**

HMCTS code : **P: PAPERREMOTE**

Property : **6 Elvin Court, Church Lane, London
NW9 8JA**

Applicant : **Ms Hazel Jezani**

Representative : **N/A**

Respondent : **The Mayor and Burgesses of the
London Borough of Brent**

Representative :

Type of application : **For the determination of the liability to
pay service charges under section 27A
of the Landlord and Tenant Act 1985**

Tribunal member : **Judge Tagliavini**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **16 September 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE, A face-to-face hearing was not held because the parties agreed to a paper determination. The documents that the tribunal was referred to are in a bundle of 641 pages as well as additional submissions from the applicant dated 24 February 2021, the contents of which have been considered by the tribunal. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal determines that the sum of £10,844.62 is payable by the applicant in respect of the major works for the service charge year 2020/2021.**
 - (2) The tribunal makes the determinations as set out under the various headings in this Decision.**
 - (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or under paragraph 5 of schedule 11 of the Commonhold and Leasehold Reform Act 2002.**
 - (4) The tribunal determines that the respondent shall not be required to pay the applicant any sum in respect of the reimbursement of the tribunal fees paid by the applicant.**
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The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years for major works Carried out between September 2019 and February 2020.
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The hearing

2. The application was decided on the documentation provided by both parties.

The background

3. The property which is the subject of this application is a self-contained flat located in a block of six purpose-built flats circa 1950's/1960's. By a Notice of Proposed Works dated 01 May 2019, the respondent informed the applicant of its intention to carry out major works concerning works to the roof and exterior of the block, in which the subject premises are situated. In this Notice the cost of works were estimated to be £148,677.78 including preliminaries, contingencies and consultancy fees with the applicant's share calculated as £25,401.13.
4. A large number of photographs of the building pre and post works were provided in the hearing bundle by the respondent.
5. The Applicant holds a long lease of the property dated 10 September 1990 and made between the respondent and Eileen Mavis Rand for a term of 125 years and assigned to the applicant on 4 December 2014. This lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
6. The tribunal was informed that during the period 2 September 2002 to 11 October, the respondent's housing sock (including the applicant's premises) were managed by Brent Housing Partnership Limited ('BHP'). In about August 2014 BHP entered into a qualifying long-term agreement (QLTA) with Wates for an initial period of 5 years (extendable 10 years) for the provision of responsive repairs and planned works.
7. Subsequently, the applicant was notified by a letter date 1 May 2019 of the respondent's intention to carry out major works in accordance with schedule 3 of the Service Charges (Consultation Requirements)(England) Regulations 2003. Works were subsequently carried out and after works inspections carried out to the exterior and roof (photographs and inspection report provided).
8. The applicant's contribution to the final cost of the works was calculated in the sum of £10,844.62. This sum omitted the cost of the replacement of the windows to the premises (as the applicant opted not to have new windows installed), the omission of works concerning the rebuilding of the external walls and the contingency fee not being used.

The issues

9. At the directions hearing held previously, the parties identified the relevant issues for determination as follows:

- (i) The payability and/or reasonableness of service charges for 2020/2021 in respect of major works.
 - (ii) Whether the landlord has complied with the consultation requirements under section 20 of the Landlord and Tenant Act 1985.
 - (iii) Whether the works are within the landlord's obligations under the lease and whether the cost of the works are payable by the leaseholder under the terms of the lease.
 - (iv) Whether the costs of the works are reasonable, in relation to the nature of the works, the contract price and the supervision and the management fee.
 - (v) Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made.
 - (vi) Whether and order for reimbursement of application/hearing fees should be made.
10. Having read the submissions from the parties and considered the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision

11. The tribunal determines that the amount payable in respect of major works is £10,844.62.

Reasons for the tribunal's decision

Terms of the lease

12. The tribunal finds that clauses 4(A), clause 6 and clause 6(4) make provision for the applicant's contribution to these major works, for which the respondent landlord has an obligation to carry out under the terms of the lease.

Consultation

13. The tribunal finds that the consultation procedures required by the 1985 Act were complied with by the respondent in accordance with the Schedule 2 of the Service Charges (Consultation Requirements)(England) Regulations 2003 in respect of works carried out under a QLTA (qualifying long-term agreement).

14. The tribunal is satisfied that the works carried out by the respondent after the appropriate consultation and to comply with its obligations under the lease. The tribunal finds that the works carried out by the respondent in reliance on the various surveys and reports obtained from 2017, were both necessary and reasonable. The tribunal finds that appropriate adjustments have been made to the applicant's contribution to reflect works not carried out as well as the 25% reduction in respect of cost of the roof works and scaffolding costs.

Scaffolding costs

15. The tribunal does not accept the applicant's assertions that she should only be liable for the cost of the scaffolding in respect of the roof repairs as windows were replaced in all the other five flats, for which scaffolding was required. The tribunal accepts that scaffolding in the same configuration, was required for all works to the roof and windows., fabric repairs and external redecoration and that the period for which scaffolding was required was neither unreasonably increased in time or cost. Although, the applicant has asserted that the cost of the scaffolding is 'extortionate' the applicant has not provided the tribunal with any evidence as to the amount that should be paid for scaffolding in respect of the roof works only but claims that the costs is, in any event 'extortionate.' The tribunal accepts the respondent's submissions in respect of the scaffolding and the provision for a 25% reduction to these costs, which is to be paid by the respondent. Therefore, the tribunal finds that these costs are both reasonable and payable.

Roof works

16. The tribunal accepts that considering the findings made after inspection of the roof of the building, that it was reasonable for the respondent to carry out all exterior works at the same time. As an expert tribunal, it is aware that the cost of scaffolding required for exterior works is usually considerable. Therefore, the need to avoid having to commission a second set of scaffolding within a five-year period to carry out works to the roof, was a reasonable act and within the terms of the lease.
17. The tribunal accepts the respondent's submissions that not all the required would have been covered by the (voided) warranty as works arising from 'wear and tear' were required. The tribunal finds that the reduction of the costs of these works to the applicant to be reduced by 25% (which is payable by the respondent landlord) to reflect the voiding of the warranty is reasonable and payable by the applicant. The Tribunal finds that roof works were reasonably required.

Fabric repairs

18. The tribunal finds these works concerned works of repair to the exterior brickwork of the building. The tribunal also accepts the respondent's evidence as to these costs and determines that the costs are reasonable and payable by the applicant.

Prelims and consultancy fees

19. The tribunal finds these costs are a necessary part of the major works contract and have been reasonably incurred.

Other/OHP/BHM

20. The tribunal finds that the 'other' refers to an asbestos survey that was carried out on behalf of the respondent and work to decommissioning and recommissioning of gas flues. The tribunal finds these works to be reasonable and payable.
21. The tribunal finds that 'OHP' refers to overheads priced for the contractor's calculated costs of running their project. The tribunal finds that these costs are reasonable and payable.
22. The tribunal determines that 'BHM' refers to the management fees for which 2.6% has been charged in respect of matters managing the consultation procedure as dealings with the consultant, contractor, and leaseholders. The tribunal finds this cost reasonable and payable by the applicant.

Consultancy fees

23. The tribunal finds that the consultation procedures required by section 20 of the 1985 Act were complied with by the respondent in accordance with the Schedule 2 of the Service Charges (Consultation Requirements)(England) Regulations 2003.

Application under s.20C/paragraph 5 and refund of fees

24. In the application form the applicant applied for an order under section 20C of the 1985 Act. Considering the determinations above, the tribunal finds that it is just and equitable in the circumstances, for no order to be made under section 20C of the 1985 Act or paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Conclusion

25. The tribunal finds that the respondent has provided the tribunal with extensive supporting evidence in respect of the major works, the reasons for them, and the standard of the works. Although the applicant

provided detailed submissions, the tribunal preferred the evidence of the respondent to that of the applicant as it found the tenant's assertions unsupported by independent evidence.

Name: Judge Tagliavini

Date: 16 September 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this 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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).