FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/26UH/LSC/2022/0038**
Property	**:**	**18 Yarmouth Road, Stevenage, Hertfordshire SG1 2LW**
Applicant	**:**	**Christopher Ackerman**
Representative	**:**	**In person**
Respondent	**:**	**Stevenage Borough Council**
Representative	**:**	**Miss Sonia Rai of Counsel**
Type of Application	**:**	**Application for the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Dutton** **Miss Krisko BSc (Est Man) FRICS**
Date and venue of Hearing	**:**	**The Magistrates Court, Stevenage on 31st January 2024**
Date of Decision	**:**	**29 February 2024**

DECISION

DECISION

1. The Tribunal determines that the sum of £5,119.63 is payable by the Applicant in respect of the service charges the subject of this application, for the reasons set out below.
2. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so as to prevent landlord costs being recovered as a service charge, considering it just and equitable so to do for the reasons set out below.

BACKGROUND

1. On 30th May 2022 the Applicant Mr Christopher Ackerman, the owner of 18 Yarmouth Road, Stevenage, Hertfordshire (the Property) made application to the Tribunal seeking to challenge the costs of major works in 2020. The Respondent to the application is Stevenage Borough Council (the Council).

2. Directions were issued on 10th October 2022 and the matter eventually came before us for hearing on 31st January 2024.

3. The Applicant appeared in person and the Respondents were represented by Miss Rai of Counsel. She was in turn was instructed by the Legal Services Department of Hertfordshire County Council.

4. Prior to the hearing we received three lever arch bundles, which contained in total some 2,112 pages.

5. Within the bundle we were provided with a letter from Mr Ackerman addressed to the Council but undated together with a further letter from Mr Ackerman, but this time addressed to the Tribunal, which again was undated. These documents appeared in the hearing bundle at pages 39 to 48.

6. In response and within the bundle was a witness statement from Sophie Gardiner who was the Project Manager at the Council, having been employed there since 2017 and therefore had a full knowledge of the arrangements. Her statement to us dated 7th December 2023 sought to explain how the final account had been put together.

7. There then followed in the bundle at page 53 the Respondent's statement of case, which had been noted by us and has been borne in mind in reaching our decision. These documents elicited a further response from Mr Ackerman, which is dated 12th December 2023, which appears to set out the basis of his concerns. Again, we have noted all that was said.

8. In the first the bundle, for reasons that were not wholly clear, there appears to be meetings of the leasehold forum going back to 2006. The next document to which we were referred at the hearing at least, is from S M Surveyors dated 27th October 2023 which gives a report on the works that had been carried out to the Property. We will return to that in due course. Photographs are attached and at page 557 onwards in the bundle is what would appear to be a photographic survey of the block carried out by Mullalley, the contractors who undertook the

work. The final document in the hearing bundle is a letter from G R Mills & Co commenting on the service charge provisions in the lease.

9. We should say at this stage that the lease we have been provided with appeared to relate to different flats than those which were contained in Mr Ackerman's block. This had clearly been picked up at some stage because on 27th July 2020 there was a variation to the lease made between the Council of the one part and Gary Edward Rayner, the Executor of Trevor John Rayner the owner of the flat. It should be noted that Trevor John Rayner was the grandfather of Mr Ackerman. This lease corrected the description to vary and include the flats numbered 2 to 18 Yarmouth Road. What it did not do, however, was correct the apparent anomaly, there is a reference to clause 2(2)(ii) which could not be found anywhere in the lease. This was raised with the Council at the hearing, but they had no information to give.

INSPECTION

10. We inspected the subject Property prior to the hearing on 31st January 2024. The inspection was conducted in the presence of Mr Ackerman and representatives of the Respondent Council's team. The building is a conjoined three-storey, purpose-built block containing eight flats in each block. The building we were concerned with was No 2 to 18 Yarmouth Road. An internal inspection indicated that there had been a lack of finishing to what we believe was the service panels for the electrics to the various floors. The windows in the common parts at each floor level had been replaced, as had the front and rear external doors. There was new flooring throughout both on the landings and on the stairs and there had been decorating to the internal fire doors at each level. The flat roofs over the entrances, which were not large, had been replaced although at the time of our inspection there was moss growing. In addition, it appears that Artex had been removed in some areas to facilitate the replacement of lighting.

11. Externally, the rear garden to the side of the block was shared with the adjoining block. There were brick paviers around four washing driers and the fencing surrounding this area had been replaced. The fence was approximately 8 yards by 20 yards. It was constructed of concrete posts and kicking boards with wooden panels between. We noticed that some of the panelling above the top of the third-floor common parts window to the rear had not been replaced and the fascias above the Applicant's windows had not been attended to, apparently to reduce the cost of scaffolding. There was low-level fencing surrounding the Property and a new wooden bin store had been built for the block although at the time of our inspection the lock was not working. The original brick bin store was not in use although a new window grid had been installed. There was evidence of cracking to the brickwork to this bin store and beneath a ground floor flat window.

HISTORY

12. The history of this case is as follows. It appears that some form of condition survey was undertaken by the Council where reference is made to 'archetypes', which we understand to be the basis upon which the survey for the particular building was undertaken. Included in the papers at page 732 in the additional

documents is a spreadsheet which, although relating to a different property in Torquay Crescent, we were told was built at around the same time and this gave the various lifespans for the elements of the building which prompted the works to be undertaken. This lifespan schedule resulted in a major refurbishment contract, which was at page 701 of the bundle, which set the works that were to be done both in written format and by reference to the photographic survey, which we have referred to previously. The full major refurbishment contract is at page 49 in the first bundle running to some 46 pages. Tenders appear to have been sent out in respect of the procurement for this major refurbishment contract as shown at page 24 of the bundle. We were then told that the photographic survey was sent to tenants before the section 20 consultation took place.

13. It is important to note that the section 20 consultation took place before Mr Ackerman acquired his interest in the flat from his grandfather. The basis upon which these works were to be undertaken was outlined in the letter to Mr Rayner dated 30th May 2018. The intention was to ensure that the flats within the ownership of the Council were "safe, warm and sustainable" and appear to relate to some 550 blocks. It was confirmed that two contractors, Mullalley and Wates Living Space, were to carry out the five-year programme of essential repairs. The letter goes on to indicate that the works will be mainly to communal areas.

14. In October of 2019 the first notice under the section 20 procedures was sent to Mr Rayner indicating the works that were to be carried out were the anticipated cost to him of £9,526.32. The notice confirmed that the works were to be carried out by Mullalley & Co under a qualifying long-term agreement, which had previously been consulted upon. The letter gave Mr Rayner until 20th November 2019 to respond. It should be noted that Mr Ackerman did not acquire his interest in the flat under September of 2020.

15. A review of the written "statements of case" shows that Mr Ackerman had been seeking to obtain detailed responses to the contracts, which of course had been entered into prior to his involvement. Indeed, there is some suggestion, although not necessarily accepted by Mr Ackerman, that the contract itself had been completed on 30th November 2020 as evidenced by a completion certificate at page 893 of the additional bundle. This confirms that the refurbishment had been completed save for some outstanding issues which were signage, fire stopping above rear door, tarmac fills to front entrance, rear path late instruction ground works which were said to be due for completion by 15th January 2021.

16. Mr Ackerman's first foray into this in the undated letter we refer to above, seeks to raise issues as to whether these works are recoverable under the terms of the lease and requested copies of the financial certificates going back to 2009. There then followed the letter to the Tribunal in which a number of points are raised but of course these are questions that the Tribunal was not in a position to answer. This is repeated in the letter of 22nd October 2023 when he appears to be conducting the litigation in the form of letters to the Tribunal. It is difficult to discern clearly what Mr Ackerman's complaints were as of course he came to the Property after the works had been approved by the Council and in the main completed.

17. The witness statement from Sophie Gardiner explained the basis upon which the contracts had been formed and the costs calculated.

18. The Respondent's statement includes large tracts from the lease and tells us that the Council had identified the need for a substantial programme of refurbishment, we think gleaned from the document we referred to earlier, which dealt with the lifespan of various components. The statement also confirms the documents exhibited to the bundles, which includes not only the Mullalley contracts but also the Wates, which as far as we understood it had no bearing on the subject Property. It referred to the section 20 consultation which appears to have started on 30th March 2017 dealing with the intention to enter into long-term agreements for which public notice is required. There then followed the service charge consultation following notice of intention to enter into long-term agreements with Mullalley & Co and Wates Living Space. This was dated 9th February 2018 and then gave rise to the intention letter we have referred to previously of 20th May 2018.

19. Although the works were scheduled for completion in October of 2020 with final works in January the following year, it seems that the Council became concerned that the final invoice would not be capable of being issued within 18 months and accordingly gave notice under section 20B(2) of the costs likely to be incurred for the block and that they would be taken into account in determining service charges going forward.

20. It appears that the works commenced on or around 10th January 2020 and the statement goes on the recount the email communications that passed between the parties. No date for this statement is apparent in the bundle before us but it would seem it must have been before the 12th December 2023 as Mr Ackerman wrote a lengthy letter to Mr Delaney at the Legal Department at the County Council in response. In this letter he raises his concerns about the works and drew to our attention the difference between the costings by Mullalley for electrical works at just under £14,000 and those of Wates Electrical at just shy of £23,000. Mr Ackerman is a qualified electrician. We have noted the contents of these various documents, but we do not feel it necessary to repeat them in any degree because the documents are available to both parties.

21. There are, however, a couple of documents we need to address, one being the report from S M Surveyors dated 27th October 2023. This is not in our finding an expert's report as it contains none of the usual wording and in addition the author of the report, a Mr Madden, did not attend the hearing to answer any questions. Permission had not been granted by the tribunal to rely on this document as an expert's report. The survey we were told was to assess the works carried out and identify the issues and snagging that may still exist. Mr Madden visited the Property in October of 2023, some 2 ¾ years after the apparent conclusion of the works. He raises certain matters that he considers may need further attention and his summary and recommendations indicate that there did not appear to be a proper snags/check and the handover works to the block had not been undertaken correctly as there were still a number of outstanding issues that needed to be resolved. He raises issues concerning the asbestos at the Property, a breakdown of the electrical installation costs which he thought needed to be made available, an explanation as to why the fences had been

replaced and also the flat roofs. There was also a suggestion that the upper-level communal windows had been replaced without mention or consultation and that the existing bin store now incapable of being used should not result in charges payable by Mr Ackerman.

22. We have referred to the letter from Mr Mills, Mr Ackerman's solicitors, and have noted what he says. However, this is strictly speaking a privileged document passing between a solicitor and his client and in truth the comments concerning the missing clause do not assist us to any degree. We have noted all that is said.

23. What appears to be a new system that Stevenage Borough Council introduced, resulted in a pre-invoice notification to Mr Ackerman of 15th August 2023 which is not easy to follow but which seems to indicate that the total cost in respect of the block charge is £62,495.28. This breaks down to a charge of £7,121.34 which could be reduced if payment were made within 30 days. This should be contrasted with the original costs set out on the section 20 consultation with Mr Rayner. However, there then followed a final account dated 18th October 2023 where the sum sought has reduced again to £6,048.66 with a prompt payment discount of 5% showing the sum due by 17th November 2023 at £5,746.23. This is not far off a £1,000 less than was shown on the initial estimated costs sent to Mr Ackerman on 15th August 2023.

HEARING

24. At the hearing Mr Ackerman complained that he could not trust the costings and wanted to know what a reasonable charge should be. In any event he was not convinced that the costings complied with the terms of the lease in that no certificate had been produced and that the bills should be certified. He queried whether the works had actually been concluded by reference to the completion certificate we have referred to previously and considered that an independent survey should have been conducted.

25. He was unhappy with the general attitude of the Council and did not trust them. He wanted verification of the works that had been done and the costs. He did, however, accept that the last sum shown on the final account of £6,048.66 was the maximum amount that the Council were entitled to recover in respect of this contract. He did accept that the Council had no financial gain from these works, but they should have checked the costings more accurately. Generally, Mr Ackerman struggled to understand the scope of the works and the costs. He did suggest a way forward would be to settle whatever amount was owing by way of monthly payments over perhaps a 12-year period.

26. Mr Ackerman had asked Mr Endersby, a somewhat distant neighbour to provide a statement and he also attended the hearing. Mr Endersby lives at 103 Scarborough Avenue, which is a completely different property to the subject Property. His statement set out issues concerning various discrepancies to his building and was really no more than a supportive statement showing that he had suffered the same issues concerning the final accounts and the finishing of works as had been suffered by Mr Ackerman. He also complained that the production of the pre-invoice costs was nothing more than an attempt to see what sums would be accepted by tenants so that the invoice could be issued. This was

something that was also suggested as being behind the new system by Mr Ackerman. Mr Endersby gave evidence before lunch adjournment as he had to be elsewhere.

27. After the luncheon adjournment when we had asked Mr Ackerman to consider further documentation, he returned indicating that he wished to make an offer, which was not accepted by the Council.

28. Miss Gardiner gave her evidence based on the witness statements that she had provided. She confirmed that the contractors were only paid when certificates were produced on a monthly valuation and assessed by an external quantity surveyor. In fact, she told us the costs were throughout referred to an external quantity surveyor to check.

29. As to the pre-invoice pack, she told us this was created internally to ensure there was no double charging and sent out to the leaseholders for them to review and to confirm all was in order. Mr Ackerman had no questions for her.

30. Miss Rai for the Council then gave a brief summation that the Council had gone through the process properly, that the costs were reasonable and that the works were reasonable. There were alternative costings given by Mr Ackerman and she referred us to the cases of Waller v Hounslow, Forcelux v Sweetman, Southall Court Residents v Tiwari. She also referred to the case of A2 Housing Group v Spencer-Taylor. Miss Rai had very helpfully provided a skeleton argument, which formed the basis of her submissions. We have noted the skeleton argument, which helpfully gives dates for various steps that were undertaken. The skeleton argument and her submission were that the case should be dismissed and that the section 20C order should not be made. At the conclusion Mr Ackerman repeated the section 20C application but did not seek reimbursement of the fees that he had paid.

FINDINGS

31. This has not been an easy case. We were not helped by the local authority's inability to edit their bundle of documents and to instead produce papers running to over 1,500 documents as well as of course the hearing bundle itself, which in part duplicated some of the papers before us. In addition, the apparent confusion caused by the local authority's change of sums being owed starting with the original assessment of costs in October of 2019 at £9,526.32 for the subject Property and is what shown annexed to the breakdown of share of costs with a letter dated 15th August 2023 showing final block cost adjustments to £62,495.28. It is noted that on the first breakdown the percentage charge payable by Mr Ackerman is said to be 10.8% and on this later one it is shown at 10.75%. Matters become further confused because on the final account the costs then said to have been incurred are £53,081.72. The final account shows the charge payable by Mr Ackerman to be £6,048.66 and Miss Gardiner confirmed this to be the correct final figure. It would seem that on the final account the contribution for payment by Mr Ackerman has been set at 10.75%. This confusion with the figures does not help Mr Ackerman in seeking to determine what he considers to be the appropriate figure to pay.

32. However, against that we must say that we think Mr Ackerman's desire for the production of documentation, which in our finding would have little or no relevance to the issues that we were asked to determine, has not assisted the local authority. It appears that the first letter that he wrote which is undated but appears at page 39 in the hearing bundle, requested but was not limited to, 12 items set out thereon. The last four appear to relate solely to the electrical works. However, he asks to see documentation which lead to the section 20 consultation which was sent to his grandfather. Accordingly, it is a bit late in the day in the day to start questioning the basis upon which the contracts were entered into, and the works agreed. In addition, included within the bundle, were minutes of meetings going back to 2006, which appear to have little relevance to the matters that we were required to determine, namely works carried out in 2020. Indeed, our attention was not drawn to any of the Stevenage Homes freeholder forum minutes in the course of the hearing.

33. We did have the report from Mr Madden which, as we have indicated, we cannot accept as an experts report as no permission was given, it does not bear the usual wording that one would expect from an expert, and he did not attend the hearing to give any oral evidence or be subject to cross examination. We agreed to allow the letter to come before us notwithstanding that it appeared somewhat late in the day (dated 27th October 2023). We have noted his observations. As we understand it, some asbestos was removed to enable new light fittings to be installed but otherwise the textured coatings to the ceilings do not appear to have been interfered with. The question of the electrics is merely of comment, and we have noted what has been said about the flat roofs, the fencing and the bin store, the latter point being, we find of relevance. It is not clear that he had the opportunity of carefully considering the survey that was produced by the Council that started these works. What he does say in his summary and recommendation is that there did not appear to be a proper snag/check and that the handover of the works to the block would indicate that there were still outstanding issues to be resolved. We do know from the completion certificate that certain works were to be undertaken at the beginning of 2021.

34. The other external correspondence is from G R Mills & Co Solicitors who clarified the position with regard to the errors in the lease describing the Property which was dealt with by the deed of variation but were not able to assist with regard to the missing clause 2(2)(ii). As we indicated, the Council could not assist either, which is a surprise as it appears this was the standard form of lease used in right to buy transactions and it is worrying that a clause appears to have been omitted presumably from a number of leases.

35. The photographic survey does not indicate that all the works that Mr Madden puts forward were in fact priced for. There are substantial fluctuations between the figures originally told to Mr Rayner in October of 2019, those which are shown on the pre-invoice in August of 2023 and the final account in October of 2023. The final account shows that there had been adjustments of £16,536.83 and certainly therefore the Council has reviewed the various costs. We note for example that the supply and installation of the louvered window to the bin store has a 50% reduction. For our part we are not quite clear why there should be any charge to the residents for a window to be installed in a room that they cannot use.

36. For Mr Ackerman to really challenge the costs it would have been necessary for him to have employed the services of a chartered building surveyor or such like to have gone through the various works that were undertaken and to provide, perhaps with the assistance of a quantity surveyor, a view as to what those costs might otherwise have been. That would be quite a task and we can understand that Mr Ackerman may not wish to have pursued that line. Certainly, the cost would have been quite excessive. However, his attack is somewhat misguided, and, in those circumstances, we find it difficult to reduce to any degree the actual costings shown on the final account from Mullalleys. We would, however, remove the charge of £214.39 for the louvered window to the bin store and also the £777.86 to supply and install a door. It cannot be of benefit to the tenants to have a new window and door to as room that they can no longer use. The cracking at this bin store is also a worry and has not been addressed in this list of works. However, apart from these two items it seems to us that the others, which may be the subject of suggestion that the costs are excessive, is not something that on the evidence before us that we can in reality interfere with. Accordingly, our finding is that the final costs of £53,081.72 should be reduced by the share of the louvered window and the costs of the door, bringing the total down to £52,089.47.

37. The Council adds a 6% management charge to this which we do not think is appropriate given the problems that there have been in finally setting that these costs which have taken until October of 2023 to be finalised. We do not understand why there was this major delay. Accordingly in our findings the net amount of which Mr Ackerman pays 10.75% should appear on the final invoice in the sum of £5,599.61. Given the delays in producing the documentation it seems a bit rich to expect Mr Ackerman to have settled this by 17th November. We would therefore allow a 5% discount for prompt payment bringing this total liability to down to £5,119.63 assuming such payment is made before the end of April 2024. If Mr Ackerman wishes to discuss payment by instalments he will need to speak with the local authority on that point.

38. As we believe we have indicated we have some sympathy for the difficulties which Mr Ackerman encountered. However, as Counsel said in her skeleton argument and in her closing, it was not easy to determine exactly what Mr Ackerman's complaint may be. Certainly, letters had been responded to by the local authority, perhaps not always as quickly as one might have hoped but in some detail and we do accept that the Council has followed the consultation requirements and has satisfied us that the relevant costs are reasonable and are payable subject as we have found above. The burden of challenging the various expenses does rest at least initially with the complaining leaseholder and in these circumstances, we find that Mr Ackerman has not been specific in those items that he wishes to challenge but instead has thrown a general blanket over the whole contract and its costs when these to an extent pre-dated his ownership of the Property.

39. As to the certification, we find that the lease on this point is intended to relate to the annual service charges not one-off major works. It may be that the missing terms covered this, but who is to know. Doing the best we can we find that the

Council did all it should to produce the accounts and indeed Mr Ackerman accepted that the final figure was the most the Council could recover.

40. We do feel that there has been sufficient success for Mr Ackerman to make an order that there be a restriction under section 20C of the Act. The Council's inability, until well after proceedings were commenced, to produce a final account has been taken into account by us on this issue. We consider it just and equitable in the circumstances to so make that finding.

Judge: Andrew Dutton

A A Dutton

Date: 29 February 2024

ANNEX – RIGHTS OF APPEAL

1. 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 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 to 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 (ie 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.