FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AQ/LSC/2021/0400**
Property	**:**	**134 Whitechurch Avenue, Edgeware, Middlesex, HA8 6JN**
Applicant	**:**	**Ms Maryam Abdullah**
Representative	**:**	**n/a**
Respondent	**:**	**The London Borough of Harrow**
Representative	**:**	**HB Public Law**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge N O'Brien, Tribunal Member John Naylor FRICS, FIRPM**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	**:**	**21 May 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £10,480.39 is payable by the applicant in respect of service charges relating to Major Works – Enveloping 2016-2017.

(2) The tribunal does not make any orders under s.20C of the Landlord and Tenant Act 1985 or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The tribunal does not make an order for the reimbursement of the application and hearing fees.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable in respect of the service charge year 2020/2021. The specific charges which the applicant seeks to challenge relate to the cost of major works carried out on the property, and the block and estate in which it is situated between 2017 and 2019. This charge appears on the service charge demand for the year 2020/2021 as 'Major Works – Enveloping 2016-2017' and relates to works carried out in the financial year 2017-2018.

The hearing

2. The applicant appeared in person and the respondent was represented by counsel, Mr Pettit. In addition to oral evidence from the applicant, we also heard evidence from Ms Folashade Bakare and read her statement. We also read a statement prepared by a Mr Crodden. Ms Bakare and Mr Crodden are both employees of the respondent. In addition the parties have supplied the tribunal with an agreed 468-page bundle for use at the hearing.

The background

3. The applicant holds a long lease of 134 Whitechurch Avenue Edgeware HA8 6JN (The property) which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The applicant purchased the leasehold interest in the property in October 2016. The specific provisions of the lease will be referred to below, where appropriate.

4. The property is a 2-bedroomed first floor flat in a purpose-built mixed tenure block on a larger estate owned by the respondent. By an application sent to the tribunal on 20 August 2021 the applicant sought a determination as to the payability and reasonableness of service charges sought in the sum of £10,480.39 by the respondent. These sums were sought in respect of the applicant's liability to contribute towards major works which were carried out in 2017- 2019. The applicant challenges the charge on the following basis;

    (i) the apportionment was unfair;
    (ii) the sum sought were unreasonable in the light of the value of her property; and
    (iii) the applicant was not informed of the major works until she received a demand for payment on or about 24 June 2020.

5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

6. The case was initially listed for a final hearing on 19 April 2022 however both parties sought an adjournment because they were not ready for the hearing. The matter was relisted for a further hearing on 11 December 2023 however both the applicant and the respondent contacted the tribunal to say that neither could attend on that date. It was relisted for a final hearing on 8 April 2024 but unfortunately the applicant was unable to attend in person as by that stage she was living abroad. It was relisted and heard on 21 May 2024.

The issues

7. The applicant did not challenge the reasonableness of any part of the major works as such, nor the reasonableness of the cost of any part of those works. She does not suggest that the cost of the works, or any part of them, was not recoverable pursuant to the the terms of her lease as a service charge. At the start of the hearing the tribunal identified the relevant issues for determination as follows:

   (i) whether the respondent served the relevant statutory notices on the applicant within the relevant time provided by the 1985 Act and the Service Charges (Consultation Requirements)(England)2003 and s.20B of the 1985 Act; and

   (ii) Whether the sum demanded was correctly calculated under the terms of the applicant's lease.

8. Having heard evidence and submissions from the parties and considered all the documents provided, the tribunal has made determinations on the various issues as follows.

Issue 1- Was the applicant notified of the works in accordance with the 1985 Act and the 2003 Regulations?

9. The applicant maintains that she was not notified of her liability in respect of the major works until June 2020 when she received a demand for payment dated 8 June 2020. This letter is exhibited at page 171 of the hearing bundle. She denies receipt of any statutory consultation notice served pursuant to s.20 of the 1985 Act or any notice that costs had been incurred pursuant to s.20B of the 1985 Act.

10. Had the respondent failed to comply with the statutory consultation requirements the amount that it could recover from each leaseholder in respect of the works could in principle be limited to £250 (s.20 of the 1985 Act). Had the respondent failed to either notify the applicant that the costs had been incurred, or demand payment, within 18 months of them being

incurred, it would in principle be prevented from recovering the costs of those works (s.20B of the 1985 Act).

11. The respondent maintains that it served all the requisite statutory notices on the applicant, both at the property address and at the address for correspondence notified to it by the applicant. In her statement dated 21 June 2022 Ms Bakare, who is employed by the respondent as a Home Ownership Officer, states that a notice of intention dated 22 January 2016 was sent to the applicant pursuant to Schedule 4 Part 2 to the Service Charges (Consultation Requirements)(England)Regulations 2003. A copy is exhibited at page 141 of the hearing bundle. In addition to sending a copy of that notice to the property, a copy was also sent to the applicant at 161 Station Road London NW4 4NH. This was the correspondence address which the respondent had on file for the applicant at the relevant time. In the course of her evidence the applicant accepted that this was the correct correspondence address for her at that time. In her statement Ms Bakare stated that a notice of proposal dated 20 February 2017 (page 148 of the bundle) was sent to the applicant pursuant to the 2003 Regulations both at the property address and at 161 Station Road. Ms Abdullah again accepted that 161 Station Road was her correspondence address at that time. The applicant subsequently sent a request to sublet to the respondent on 15 May 2018 which gave a new correspondence address of 30 Templar House, Shoot Up Hill London NW2 3TD. Ms Bakare confirmed that notice pursuant to s20B of the 1985 Act was sent both to the new correspondence address on 30 November 2018, and to the property. A copy of that notice, which states that the works were carried out in the financial year 2017-2018, is at page 162 of the bundle.

12. In answer to questions put to her by the tribunal Ms Bakare stated that it was the practice of the respondent to send out notices such as these by regular first-class post to both the leasehold premises and to any additional correspondence address that the respondent has on file for the leaseholder. She confirmed that she had checked the relevant file for the property and there was nothing to indicate that any of the above 3 notices were returned undelivered to the respondent.

13. The applicant denies ever receiving any correspondence from the respondent regarding the major works until June 2020. She explained that the property was sublet and was essentially being managed on her behalf by her brother-in-law. She spent a considerable amount of time travelling abroad during the material period.

14. The respondent does not rely on the provision in the lease which provides that notices are deemed served if sent by recorded delivery to the demised premises (Clause 5(v)). Instead it relies on s.7 of the Interpretation Act 1978 which provides:

> *Where any Act authorises or requires any document to be sent by post then service is deemed to be effected by properly addressing, prepaying and delivering the letter containing the document and is deemed, unless*

the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

15. All three notices were notices that were served pursuant to the 1985 Act. Consequently the respondent is entitled to rely on s.7 of the Interpretation Act 1978. The applicant has not proved that service was not effected and consequently she was deemed to be properly served with the statutory notices sent pursuant to both the 2003 Regulations and s.20B of the 1985 Act.

Issue 2- Was the applicant's proportion of the total costs correctly calculated?

16. Paragraph 1(a) of Part 1 of the Fourth Schedule to the lease requires the tenant to pay:

'a due proportion of all costs charges and expenses incurred payable or paid by the Council in carrying out or in pursuance or furtherance of in intended pursuance or furtherance of the obligations or rights of the council under the lease.'

17. Paragraph 1(d) of Part 1 of the Fourth Schedule defines the term 'due proportion' as being;

'*Such proportion as the head of exchequer services may determine as appropriate for the demised premises for that year. Different proportions may be determined for different elements of the cost charges and expense for the same financial year.'*

18. In the Scott schedule completed by the parties in accordance with the directions dated19 April 2022 the applicant suggests that the apportionment of 8.33% per flat was unfair given that there are 23 flats in the block. The applicant further maintains that the apportionment was unfair given the value of her flat when she purchased it in 2015.

19. The respondent in its statement of case explains that in fact that there are only 12 evenly numbered flats in this block and not 23 as the applicant suggests. In her witness state Ms Folashhada explains at paragraph 10 that all the properties in the block are on council tax band C and therefore the cost of the works was split equally between the 12 flats, save for the cost of the replacement windows, where the charge was based on the actual cost per flat.

20. In *Aviva Investors Ground Rent Ltd v Williams and others [2023] UKSE 6* the Supreme Court held that the tribunal's powers to regulate a landlord's discretionary powers of apportionment between different leaseholders are

limited to considering whether the apportionment is carried out in accordance with the terms of the lease and was otherwise rational. In the tribunal's view there is nothing unreasonable or irrational either in apportioning the relevant charge equally between flats with the same council tax banding in the building, or in recharging back to each flat the actual cost of the replacement of the windows. The applicant did not explain why the value of the property might be relevant to the question of due apportionment. We do not consider that the value of the property is relevant to the question of due apportionment between individual leaseholders.

Decision

21. The tribunal therefore finds that the sum of £10,480.39 sought as a service charge in the year 2020/2021 in respect of the works referred to by the respondent as 'Major Works Enveloping 2016-2017' is recoverable from the applicant.

Application under s.20C and refund of fees

22. In her application form the Applicant sought a refund of the fees that she has paid in respect of the application and hearing[1]. Taking into account the determinations above, the tribunal does not order the respondent to refund any fees paid by the applicant.

23. In the application form, the applicant also applied for orders under both section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act to limit the respondent's contractual right to recover from her its legal costs of these proceedings, if any. Taking into account the determinations above, the tribunal determines that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act or paragraph 5A of Schedule 11 to the 2002 Act.

Name: Niamh O'Brien **Date:** 12 June 2024

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.

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

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).