FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00/00BC/LSC/2024/0175**
Property	:	**135 and 135A, 137 and 137A Ravensbourne Gardens, Ilford, Essex IG50XG**
Applicant	:	**Vanessa Safo (137) Joanne Rozze (137A) Jean Armstrong (135) Kate Wilson(135A)**
Representatives	:	**Mr David Rozze Mr Jonathan Jones**
Respondent	:	**The London Borough of Redbridge**
Representative	:	**Mr Ryan Anderson**
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, Mrs Louise Crane MCIEH**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**21 November 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sums set out in paragraphs 18,21 and 24 below are payable by the Applicants as service charges for the year 2023-2024.

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the Respondent's costs of the Tribunal proceedings may be passed to the lessees through any service charge or demanded as an administration charge.

(3) The tribunal determines that the Respondent shall pay the Applicants' costs of £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (LTA 1985) as to the amount of service charges payable to the Respondent in respect of major works carried out in the service charge year 2023 to 2024.

The hearing

2. The Applicants were represented by Mr Jones, who is the First Applicant's partner, and Mr Rozze who is the father of the Second Applicant. None of the Applicants attended the hearing. The Respondent was represented by Mr Armstrong of counsel. The Tribunal thanks all the representatives for the helpful and constructive approach they all took in presenting their respective cases.

3. Immediately prior to the hearing the Applicants handed in a number of documents, namely work estimates, which had been disclosed to the Respondent in accordance with the directions of the Tribunal, but which had been omitted in error from the bundle. Mr Armstrong had not seen these documents prior to the hearing. The start of the hearing was delayed while Mr Armstrong considered the documents. Having had the time to consider the documents he did not object to their admission into evidence.

4. As the Applicants did not attend we had no oral evidence from them. However Mr Jones resides in no.137 with the First Applicant and was in a position to present the case for all 4 of the Applicants with the assistance of Mr Rozze. In addition we heard oral evidence from Mr Sital Sehmi, a home ownership officer employed by the Respondent, and Mr Stuart Smith, an interim repairs and minor works manager employed by the Respondent. In addition we considered an expert survey report

obtained by the Applicants prepared by a Mr David Rome dated 12 March 2024. Permission was granted to the Applicants to rely on this report on 17 September 2024.

The background

5. Numbers 135 and 137 Ravensbourne Gardens are a pair of conjoined semi-detached houses which have been converted into 4 flats. Neither party requested an inspection, and the tribunal did not consider that one was necessary.

6. The Applicants each hold a long lease of one of the flats which form the subject matter of the proceedings. The Respondent is the freeholder. Pursuant to their leases which are all in like terms the Respondent is required in particular to maintain the building, and the Applicants are required to contribute towards the costs by way of a variable service charge.

7. In or about September 2021 the First Applicant, who holds the leasehold in 137 being the top flat in that building, noted rainwater ingress into her property from the ceiling/roof area. It transpired that the wooden soffits and facias of the roof of No.137 and 137A had degraded badly and were permitting rainwater to enter the fabric of the building. The works were not in fact carried out by the Respondent's contractor, Mears, until spring of 2024. The Respondent sent out demands to each Applicant on 14 June 2024. The total cost of the works was £14,469.59, or £3,739.30 per leaseholder. The Applicants seek to challenge a number of items included in the demands as set out below.

The leases

8. By Clause 4(b) of the leases for 135 and 135a and 137 the lessee covenanted to pay in common with the owners of the adjoining flats a reasonable proportion of the Respondent's costs and expenses of, amongst other matters, repairing the roof of the building. Clause 3(f) of the lease for 137A is in essentially the same terms. It is not disputed that the cost of maintaining the roof of 135/135A and 137/137A Ravensbourne Gardens fell to be paid by all 4 leaseholders in equal shares under the terms of their respective leases.

The issues

9. At the start of the hearing the Tribunal and the parties identified the relevant issues for determination as follows:

   (i) The reasonableness of the cost of the scaffolding (total sum claimed £7,756.63

(ii) The payability and reasonableness of the fee for an aborted visit by Mears to the premises in February 2024. The total sum claimed was £1080.

(iii) Whether the sum claimed from the Applicants as an asset management fee (total sum £1070.82) was reasonable in amount

(iv) The reasonableness of the home ownership fee (£121.90)

(v) The extent to which the Tribunal could and should take into consideration the Respondent's breach of its repairing obligations when assessing the reasonableness of the service charges

10. The Applicants are very dissatisfied with the manner in which the Respondent carried out the repair works to the roof. Firstly it took the Respondent over 2.5 years to carry out the work from the date they were notified of the water ingress into No. 137. During that time the Applicants assert that building costs increased significantly, and the condition of the roof deteriorated to the point that the First Applicant's property suffered a number of episodes of water ingress which were so bad that she and Mr Jones had to move out of their home for a number of months. Secondly they consider that the cost of the works was far too high and was the subject of a number of substantial revisions and corrections before the final bill was sent out, to the point that they have no faith that the final bill represents the actual cost of the works. They have obtained estimates from 2 other contractors to carry out the same works which are considerably lower than the cost sought by the Respondent particularly in relation to the cost of scaffolding. Thirdly they consider that the works could and should have been carried out in 2019 when similar works were carried out to the soffits and facias of no 135/135A Ravensbourne Gardens. They point out that the cost of the works to Nos 135 and 135A in 2019 was £2,816.87, significantly lower than the cost of the works carried out in 2024. They assert that the Respondent did not properly engage with the consultation process which it was obliged to undertake and did undertake pursuant to section 20 of the LTA 1985

11. For its part the Respondent does not deny that there was a protracted delay in completing the works. It says part of the delay was due to negotiations between itself and Mears in the latter part of 2023 regarding the correct cost of the scaffolding and part of the delay was due to a refusal by the Applicants to permit Mears to carry out the works in February 2024. It correctly submits that as the works were carried out under a qualifying long term agreement (QLTA) within the meaning of section 20(1) of the LTA 1985 the statutory consultation process which it had to follow did not require it to either obtain quotes from other contractors or to give the leaseholders an opportunity to suggest alternative contractors.

12. We were told by Mr Sehmi that the reason for the costs of the works to 135/135A in 2019 being so much lower was the fact that the Respondent had failed to comply with its consultation obligations in respect of those works, meaning that most of the cost had been capped at £250 per leaseholder. He also told us that the Respondent had not been notified of any need to repair the soffits of 137/137a in 2019. The contractor who repaired the soffits of 135/135A in 2019 would not have told the Respondent of any issues with the roof of 137/137A even if they had been present, as firstly that would be regarded as 'costs building' and in any event the contractor would not have been aware that the Respondent was also the freehold owner of 137/137A.

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

Scaffolding Costs

14. We find that there was no breach of the consultation requirements. The Respondent complied with the reduced statutory consultation process required of it when undertaking relevant works under a QLTA within the meaning of s20(1) LTA 1985.

15. In order to carry out the works to the roof of 137/137A Mears engaged a subcontractor to erect a full scaffold around the front side and rear elevations of the building to roof height. This was in place for 7 days. Mr Smith has attached a chronology to his statement setting out the negotiations that took place between the Respondent and Mears in particular with regard to the scaffolding. He explained that because the works were carried out to a leasehold building Mears were entitled under the terms of the QLTA to charge an additional sum for scaffolding. He explained that the cost of the scaffolding was based on its size and was calculated according to the National Schedule of Rates which is published annually by NSR Management and which is widely used by the public sector. He also explained that the Respondent had asked external quantity surveyors to consider the initial quote from Mears and in particular had asked them to advise on the correct cost of scaffolding. The Respondent's negotiations with Mears reduced the estimated total cost of the works from an initial quote of £17,876 to £12,804.

16. The Applicants have obtained alternative quotes from 2 local building contractors, CM Roofing and Berks Home Improvements to carry out the repairs to the soffits and facias of 137/137a. The quote from CM roofing is for £500 for scaffolding and the quote from Berks Home Improvements included a cost for scaffolding of £750. They are lacking in any detail as to what kind of scaffolding is included. Mr Smith observed that he could not tell from those quotes whether or not the proposed scaffolding would include proper access and safety features or whether it might consist of a movable scaffolding tower which in his view

would not be appropriate for works of this nature being carried out at the roof level of a two-storey building.

17. It is for the Applicants to prove that the sum claimed is not reasonable. Unfortunately Mr Rome's report does not specify the likely cost of any required scaffolding. The comparable quotations they have obtained do not contain sufficient detail as regards the scaffolding to be of assistance. Furthermore the proposed charge for scaffolding contained in both alternative quotes seems to us to be extremely low and far less than one would expect to pay for full scaffolding erected against 3 full elevations of a 2-storey house. We have considered the fact that the Respondent did query the initial quote supplied by Mears, in particular with regard to the scaffolding, and referred it to their external quantity surveyors. We note that the cost was calculated by reference to the national schedule of rates. We are not satisfied that the sums claimed for scaffolding were unreasonable.

The tribunal's decision

18. The tribunal determines that the total amount payable in respect of scaffolding is £7756.38, or £1939.10 per leaseholder.

Aborted visit by Mears £1080

19. On 22 January 2024 the Respondent wrote to each leaseholder advising them that the roof works would be carried out on 29 January 2024. The following day the First Applicant emailed the Respondent to inform them that she had arranged to have the building inspected for the purposes of these proceedings on 20 February 2024, and requesting that the works commencement date be postponed. This email was followed up with a number of others. The Respondent did not respond substantively to this correspondence and on 29 January a number of Mears operatives attended the property. They were refused access by Ms Safo who understandably wanted her surveyor to see the property before the works were carried out.

20. In his evidence to the tribunal Mr Sehmi explained that the Respondent had not acquiesced to the Applicant's request to delay commencement until after their surveyor had inspected the property due to the urgency of the works. It seems to us that, given the unexplained and substantial delay which had already occurred for which no good reason has been given by the Respondent, it was not reasonable for the Respondent to refuse this request. Consequently this charge was not reasonably incurred and is thus not payable by the Applicants.

The tribunal's decision

21. The tribunal determines that the amount payable in respect of the aborted visit fee is Nil. .

Management Fees/Home Ownership Fees

22. The Applicants accept that the fees are payable under the lease and do not seek to argue that they are unreasonable in amount. Their point is that the Respondent failed for some 2.5 years to carry out their repairing obligations under the terms of the leases. During the period of delay the condition of the roof deteriorated and particularly affected the First Applicant and Mr Jones. In that time they maintain that between 2021 and 2024 building costs rose substantially. In addition the various estimates and notices sent out by the Respondent in relation to the works varied wildly. The costs set out in the initial s20B notices and the initial demands send by the Respondent contained errors and had to be substantially revised.

23. Mr Armstrong accepted that the Respondent was in breach of its obligation to repair. He accepted that the Tribunal has the power to permit a set off against service charges due in an obvious case of breach (*see Continental Properties v White LRX/60/2005*)

24. We consider that this is such a case. All four leaseholders have had to live with a leaking roof for far longer than they should have. We note that while the building consists of two semi-detached houses, the roof over both is essentially one single structure. We consider that the First Applicant should not have to pay any of this charge as it was her property that was most seriously affected. We reduce the sum payable by the remaining Applicants to £150, or 50% of the total payable by each leaseholder.

Application under s.20C and refund of fees

25. At the end of the hearing, the Applicants made an application for a refund of the fees that he had paid in respect of the application and the hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

26. In the application form and at the hearing, the Applicants applied for an order under section 20C of LTA Act and Paragraph 5 A of the CLRA 2002. The Respondent indicated that in principal it did not intend to seek to recovery those costs. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines, and although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the

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

circumstances for an order to be made under section 20C of the 1985 Act and paragraph 5A of the CLRA 2002 so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge or as an administration charge.

Name: Niamh O'Brien **Date:** 21 November 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.

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).