FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/26UE/LSC/2023/0066**
Property	**:**	**52 Boreham Holt, Elstree, WD6 3QQ**
Applicant	**:**	**Michael Epstein**
Representative	**:**	**Litigant in Person**
Respondent	**:**	**Boreham Holt Management Limited**
Representative	**:**	**Elliot Esterson, on behalf of Trent Park Properties**
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 Bernadette MacQueen,** **Sarah Redmond, MRICS**
Venue	**:**	**Cloud Video Platform (Audio only)**
Date of hearing	**:**	**27 March 2025**
Date of decision	**:**	**7 April 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £3,959.13 is payable by the Applicant in respect of the external and internal decorating works for service charges for the year 2023.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 in the Applicant's favour.

(3) The Tribunal does not make an order under paragraph 5A of Schedule 11, Commonhold and Leasehold Reform Act 2002, in the Applicant's favour.

(4) The Tribunal makes the determinations as set out under the various headings in this Decision.

The Application

1. The Applicant sought a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge year 2023.

The Hearing

2. The Applicant appeared in person. The Respondent was represented by Elliot Esterson, of Trent Park Properties, the managing agent of the Respondent. Mohammad Aziz, the block managing agent employed by Trent Park Properties, Angela Lesley Kapusta, leaseholder and Director of Boreham Holt Management Ltd, and Alan Usiskin, leaseholder, attended to give evidence.

3. With the consent of all parties, the hearing was held using the audio only function of the cloud video platform.

4. 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.

5. By directions made on 28 August 2024 and varied on 10 December 2024, the Tribunal directed parties to provide to each other and the Tribunal the issues in dispute and the supporting evidence and documents that they wished to rely on.

6. In accordance with the directions, the Tribunal had before it a bundle of documents consisting of 350 pages which had been prepared by the

Respondent. The Applicant confirmed that he had received a copy of this bundle.

The Background

7. The Applicant is the leasehold owner of the Property 52 Boreham Holt, Elstree, WD6 3QQ (the Property). The Property is a 2 bedroom ground floor flat situated in a purpose built block known as 52 - 66 Boreham Holt. The Respondent is the landlord and Trent Park Properties are the managing agents.

8. The Applicant holds a long lease of the Property, which was registered with HM Land Registry under title number HD42628. The lease was dated 1 March 1965 and was for a term of 99 years and 11 months (less 10 days) from 29 September 1962 and made between Boreham Holt Management Limited (1), Waltham Cross Construction Company Limited (2) and Frank Oswald Marsh (3). It was not disputed that this lease required the landlord to provide services and the tenant was to contribute towards their costs by way of a variable service charge.

Matters Agreed

9. The Applicant's application to the Tribunal dated 29 November 2023 related to the 2023 service charge year for £4,659.67. This was made up as follows:

Service Charge and Reserve Fund for period 29 September 2023 to 24 March 2024	£ 700.54
Cost of internal and external repair and redecoration and new communal carpets	£3,959.13
Total	£4,659.67

10. At the start of the hearing, the Applicant confirmed that he did not want to continue to dispute the service charge demand for the service charge and reserve fund for the period 29 September 2023 to 24 March 2024 totalling £700.54. The Applicant further confirmed that he had not paid this amount as he did not want to undermine his case before the Tribunal. However, the Applicant confirmed that he did not have any dispute with the £700.54 demand and accepted that it was payable.

11. Elliot Esterson, on behalf of the Respondent, confirmed that he would email the Applicant following this hearing to confirm the amount of service charge outstanding and, provided the Applicant sent a cheque in the post once the email was received, he would not include any late payment charges for this 2023 service charge and reserve fund amount. For the avoidance of doubt, the removal of late payment charges was related only to the service charge and reserve fund payment of £700.54 for the period 29 September 2023 to 24 March 2024 as that was the only agreed issue that was before the Tribunal.

The Issue in Dispute

12. One issue remained in dispute, namely the payability of the service charge for the cost of internal and external repair and redecoration work and the installation of new communal carpets for the service charge year 2023. The Applicant's share was £3,959.13 and the demand was made on 15 August 2023.

Applicant's Position

13. The Applicant gave oral evidence to the Tribunal, and also set out his position within a document entitled "Statement by Michael Epstein" (pages 78 to 82 of the bundle). The statement was not in the form of a witness statement; however, the Applicant confirmed that this was the evidence he wished the Tribunal to consider and that he believed that the contents of this statement were true. The Respondent in its reply to the Applicant's statement (page 234 of the bundle) asked the Tribunal to consider the validity of this statement as it did not state the name of the Tribunal, give the case reference number or details of the parties involved, did not contain a statement of truth and was unsigned and undated. However, having heard the Applicant's confirmation at the hearing that this was the Applicant's evidence, the Respondent, through Elliot Esterson, confirmed that the Respondent did not wish to take further issue.

14. The Tribunal was therefore satisfied that the Applicant intended the Tribunal to consider the documents at pages 78 to 82 of the bundle as his written evidence. The Tribunal also noted that the Applicant had attended the hearing and was able to answer questions about the documents that he had provided. In reaching this decision, the Tribunal considered the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and in particular rule 3(2)(c) which requires the Tribunal to ensure, so far as practicable, that the parties are able to participate fully in the proceedings.

15. The Applicant set out his position as to why he said that the £3,959.13 demand for the 2023 works was not payable. In particular, the Applicant submitted that the Respondent had not followed the section 20 consultation process correctly for the following reasons:

(i) The stage one section 20 Landlord and Tenant Act 1985 (the 1985 Act) documents were not received by the Applicant.

(ii) The Notices provided under section 20 of the 1985 Act had not been addressed to the Applicant correctly.

(iii) The quotes obtained were not comparable, and further, the Applicant raised concerns about the due diligence used in considering the contractors' ability to complete the work. Additionally, the Applicant stated that the quotes were not valid as they had expired before the consultation process had begun.

(iv) The Applicant was concerned with an overall lack of adherence to RICS and TPI standards.

16. By email dated 9 June 2023 (page 163 of the bundle), the Applicant had emailed both Mohammed Aziz and Elliot Esterson of Trent Park Properties, in their capacity as managing agents, to confirm that he had not received the stage one, section 20 notice. In this email he stated that the reason he had not received the notice "was entirely down to the postal system". In this email the Applicant set out his concern that there were not sufficient funds within the reserve fund to pay for the work and, as a solution to this, suggested that the work could be separated so that the external work was completed before the internal work in order that the cost could be spread out. Further, the Applicant stated that in his view the contractors chosen by the Respondent to quote for the work were facilitators and he therefore asked if these contractors subcontracted work, whether they had public liability insurance, and whether they had carried out work for Trent Park Properties before.

17. The Applicant confirmed that, whilst it was his opinion that the quality of the decorating work completed was poor, he had no issue with the reasonableness of the work and the amount charged. The only issue that he was raising was the payability.

18. The Applicant set out two additional points which were outside the scope of the Tribunal's jurisdiction. For completeness, these additional points, which were set out in the Applicant's statement and described as "flaws with the Companies Act", can be summarised as follows:

i. the Respondent had only one director appointed rather than two, and a re-election of directors had not taken place.

ii. a meeting convened by the Respondent at the request of tenants to discuss the work was held via zoom. The

Applicant submitted that this was not in compliance with the Articles of the management company, and also meant the Applicant was not able to attend the meeting.

The Tribunal's jurisdiction extends to the payability of the service charge under section 27A of the 1985 Act. In any event, the Respondent provided an explanation of the reason why only one director was appointed and the reasons why the meeting convened by the Respondent took place via zoom.

The Respondent's Position

19. The Respondent submitted that it had correctly completed the consultation process as required by section 20 of the 1985 Act. Mohammed Aziz, in his capacity as block managing agent employed by Trent Park Properties, confirmed that the stage one notice of intention to complete external and internal repairs and redecoration was dated 3 May 2023 and had been sent to all leaseholders by first class post on 4 May 2023. A copy of this was at page 61 of the bundle. Further, Mohammed Aziz told the Tribunal that on 5 June 2023 he issued to all leaseholders the stage two section 20 notice and statement of estimates by first class post. This notice detailed the quotations received in relation to the works and invited written observations. A copy of this was at page 63 of the bundle.

20. Mohammed Aziz confirmed that the Applicant did not suggest a contractor who should be contacted to quote for the work. The Applicant's observations related to the Appicant's suggestion that the internal and external work should be staggered to spread the cost. Mohammed Aziz confirmed to the Tribunal that he wrote to the Applicant by letter dated 14 August 2023 (page 171 of the bundle) following the resident's meeting held on 2 August 2023. In this letter Mohammed Aziz confirmed that the Applicant's concerns were raised at this meeting and discussed, but that it was confirmed that the internal and external works would be completed at the same time. Further, the letter confirmed that the work would commence during the week of 11 September 2023.

21. By letter dated 1 September 2023 (page 177 of the bundle), Elliot Esterson emailed the Applicant and noted that the Applicant did not object to the work being completed but that his objection was that the work should not be completed as one project. Elliot Esterson reiterated that the decision had been made to undertake the work as one project.

22. In terms of the Applicant's assertion that the section 20 notices were incorrectly addressed, Elliot Esterson told the Tribunal that on 2 November 2019 the Applicant notified the managing agent that "until advised to the contrary can you send all further communications including any service charge demands c/o M. Epstein…." A copy of this

email was at page 122 of the bundle. Elliot Esterson confirmed that it was not until 3 January 2024 that the Applicant formally notified the managing agent that the lease for the Property had been transferred to the Applicant.

23. The Respondent confirmed that the major works were completed on 6 December 2023 and that on 15 August 2023 a letter and invoice had been sent by first class post for payment of the works.

The Tribunal's Decision

24. The Tribunal accepts the evidence of the Respondent that the section 20 consultation process was followed, and the service charge demand properly made. The Tribunal does not accept the submission made by the Applicant that the section 20 notices were served incorrectly because the notices sent to the Applicant were addressed to the Applicant's late mother. Instead, the Tribunal accepts the evidence of Elliot Esterson that the Applicant requested notices to be sent c/o M. Epstein….and that this instruction was followed by the Respondent. The Tribunal accepts that it was not until 3 January 2024 (after the consultation process had concluded) that the Applicant gave notice to the managing agent that the relevant lease had transferred to the Applicant.

25. As to the consultation process, the Tribunal accepts the evidence of Mohammed Aziz that the stage one notice of intention was sent to the Applicant by first class post on 4 May 2023, and that the stage two notice and statement of estimates was sent on 5 June 2023 to the Applicant, also by first class post. Whilst the Applicant told the Tribunal that he did not receive the stage one notice of intention sent on 4 May 2023, his email of 9 June 2023 made it clear that he was aware of the consultation process and entered into communication about the work with the Respondent. The Tribunal therefore finds that the Applicant was not prejudiced and was able to participate in the consultation process.

26. The Tribunal accepts the evidence of the Respondent that the Applicant did not suggest a company from which he wished a quote to be obtained. Whilst the Applicant raised questions about the contractors in his email of 9 June 2023, these questions only asked whether the contractors would subcontract, whether they had public liability insurance and whether they had carried out work before. The Tribunal is satisfied that the Respondent properly obtained quotes for the work that was required.

27. As to the assertion that the quotes had expired when the consultation took place, the Tribunal accepts the evidence of the Respondent that the contractors had agreed to hold the price as they were aware that the section 20 consultation process took time. The Tribunal therefore finds that the Respondent obtained quotes, consulted on those quotes and commissioned the work to be completed.

28. Whilst the Tribunal accepts that the Applicant suggested staggering the work to spread the cost as the reserve fund did not cover the full cost of the work, the Tribunal finds that it was ultimately the Respondent's decision as to how the work was completed.

29. Turning to the reasonableness of the work, it was not disputed by the Applicant that the work completed was necessary and the cost of the work was reasonable. The Tribunal accepts the evidence of the Respondent that the last major works that included internal and external repair and redecoration had taken place in 2011, and the last time a new carpet was installed in the common parts was in 2012.

30. The Tribunal therefore finds that the sum of £3,959.13 is payable by the Applicant in respect of the external and internal decorating works for service charges for the year 2023.

Application under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform act 2002

31. In the application form the Applicant applied for an order under section 20C of the 1985 Act, namely an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants.

32. Having heard the submissions from the parties and 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 in favour of the Applicant under section 20C of the 1985 Act. The Applicant was unsuccessful in the Application made, and in the circumstances the Applicant's application for an order under section 20C of the 1985 Act is dismissed.

33. The Applicant did not make an application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") in his application form. The initial directions made on 28 August 2024 stated that the Applicant did not seek an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 "but may wish to take advice on this".

34. The Applicant confirmed at the hearing that he had not taken advice on this aspect and asked the Tribunal to consider making an order under paragraph 5A. The Respondent submitted to the Tribunal that such an order should not be made.

35. Having heard the submissions from the parties and 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 in favour of the Applicant under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The Applicant was unsuccessful in the application made and in the circumstances the Applicant's application for an order is dismissed.

36. The amount that the Respondent may require the Applicant to pay is not before the Tribunal at this time. However, the Tribunal notes that any cost must be reasonable. As an observation only, the Tribunal notes that the Respondent produced a full bundle which contained duplication. In particular, the Respondent contacted all of the leaseholders in the block and obtained witness statements from all but one of them. These statements were in a broadly similar format and did not assist the Tribunal given that Mohammed Aziz was able to give evidence as to the steps he had taken to serve the consultation notice.

Name: Judge Bernadette Macqueen **Date**: 7 April 2025

<u>**Rights of appeal**</u>

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).