



**PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference

**LON/00AP/LSC/2016/0477 and
LON/00AP/LDC/2017/0030**

Property

**370 Lordship Lane, London N17
7QX**

Applicant

**London Borough of Haringey
(landlord) represented by Mr M.
McDermott of counsel**

Respondents

**Mr B. Roy and Mrs C. Roy (joint
leaseholders) represented by Ms D.
Doliveux of counsel (instructed by
Jacobs Allen Hammond,
(solicitors)**

Type of application

**An application for a determination
of the recoverability of service
charges under section 27A of the
Landlord and Tenant Act 1985 ('the
1985 Act')**

Tribunal members

**Professor James Driscoll (Judge)
and Ms Helen Bowers (Professional
Member)**

Date of the hearing

24 April, 2017

Date of decision

05 June, 2017

DECISIONS

The Decisions summarised

1. The tribunal exercised its discretion under rule 55 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 by reviewing the decision it made on 20 February 2017. Having reviewed that decision after taken into account of representations made on behalf of the parties, the tribunal has now determined that, on the balance of probabilities, the leaseholders received the consultation notices posted to them by the landlord in relation to the major works. In other words, the landlord complied with the consultation requirements in section 20 of the Act and in the regulations made under that provision.
2. Accordingly there was no need to consider making an order dispensing with the consultation requirements under section 20ZA of the Landlord and Tenant Act 1985.
3. However, the leaseholder's challenge to the actual charges made succeeds to the extent that they are reduced from a figure finally charged at £25,430.38 to the figure of £24,703.07.
4. The leaseholders told us at the hearing that they had decided not to pursue their application under section 20B of the Act.
5. As the landlord's representatives told us at the hearing that they will not include their professional charges incurred with these proceedings as a future service charge it was unnecessary to consider making an order limiting recovery of any such costs under our powers in section 20C of the Act.

Introduction

6. In these proceedings the applicant is a local housing authority and the claim relates to premises of which it is the landlord. The respondents are joint leaseholders of 370, Lordship Lane, London, N17 7QX ('the subject premises') which is a flat which was acquired by their predecessors in title under the statutory right to buy. The flat is located in a block of 44 flats of which three are owned leasehold (including the respondents' flat). The remaining flats are let by the applicant we assume under secure tenancies.

7. The dispute relates to the costs of major works carried out by the applicant as part of the 'Decent Homes Standard'. Under the terms of the lease the leaseholders are to pay by way of service charges towards the costs incurred by the applicant. It is common ground that the applicant, in addition to the obligations in the lease, must comply with the statutory consultation requirements made under section 20 of the 1985 Act.
8. In summary, the respondents challenge the recoverability of the charges by contending that they did not receive two consultation notices which the applicant claims were posted to them in 2013. The respondents also challenge the charges (a) on the basis that some of the works were not in fact carried out, (b) that the actual costs are in excess of the figures in the estimates that were given and (c) that as the Applicant failed to give them a notice under section 20B of the 1985 Act they are not liable to pay the charges.
9. A claim for the sum of £35,617.06 has been made of the respondents who have declined to pay it for the reasons set out above.
10. County Court proceedings (under claim number C4QZ15Q5) were instituted on 27 May 2016 seeking recovery of the charges. The respondents took advice from Jacobs Allen Hammond, (a firm of solicitors) who instructed Ms Tricia Hemans of counsel to draft a defence which was filed with the Court and dated 28 June 2016. In response the applicant filed a reply dated 22 September 2016.
11. On 8 December 2016 the County Court at Edmonton transferred the claim to this tribunal for determinations of the challenges to the recoverability of the service charges.

The first hearing

12. Directions were given dated 29 December 2016 and a hearing was arranged for 15 February 2017. In accordance with the Directions the applicant prepared and filed a bundle of documents. The morning of the hearing we were handed a written set of submissions by Ms Hemans.
13. She represented the leaseholders at the hearing whilst Mr McDermott of counsel appeared on behalf of the applicant. Mrs Roy was at the hearing with her daughter Ms Roy (Mr Roy was not well enough to attend the hearing). Mr Michael Bester who is responsible for leaseholder matters for the applicant was also in attendance along with Ms Dewan a legal assistant in the employ of the Applicant.
14. After consulting with the parties and their representatives it was decided that we would deal first with the issue of service of the consultation notices.

15. In our decision given on 20 February, 2017 we decided that as the applicant failed to prove that it validly served notices under the consultation requirements made under section 20 of the 1985 Act they failed to comply with the statutory requirements in section 20 of the Act with the result that its recovery of service charges is capped at £250.
16. Those representing the applicant told us that they would make an application under section 20ZA of the Act seeking dispensation with the consultation requirements and they would also consider seeking permission to appeal this decision. The respondents' representatives told us that they would resist both applications.
17. As the respondents were, in any event, challenging the charges and also seeking a determination under section 20B of the Act that they were not notified of certain charges as required by that provision, we decided (with the concurrence of the parties) to adjourn the hearing to the 24 April 2017 and we gave detailed additional directions for the second hearing.

The second hearing

18. In response to these directions, the applicant's advisors prepared a bundle of documents which included various statements, copies of notices and an expert report on the works undertaken written on behalf of the leaseholders. We also had a copy of the applicant's application for permission to appeal.
19. At the adjourned hearing the applicant was again represented by Mr McDermot of counsel. He was accompanied by Mr Bester the leasehold manager (who gave evidence during the first hearing) and Mr Nwanaeri the landlord's project manager. Mr Bester again gave evidence. Mr Nwanaeri was not called to give evidence and he had not provided a witness statement.
20. The respondents were on this occasion represented by Ms Doliveux of counsel who was accompanied by Mrs Roy and her daughter. Counsel handed us a copy of her written submissions. The respondents had commissioned a report from a Mr Andrew Mouldale (BSc, FRICS) a chartered building surveyor. His report contains several criticisms of the works. We were told that Mr Mouldale would not be available to give oral evidence at the hearing.
21. We were told that the applicant had revised their figures and as a result the sum of £25,430.38 was now claimed. This is because the applicant's external advisors had discovered mistakes in the original invoices and the allocation of expenditure.
22. We were also told that the respondents no longer wished to pursue their challenge to the charges under section 20B of the Act.

23. It was agreed that the tribunal would first consider the application for permission to appeal. As part of that we would consider whether we should review the decision on service of the notice. It was also agreed that we should consider the submissions on whether if our original decision is sustained whether we should make an order dispensing with the consultation requirements under section 20ZA of the Act.
24. Our powers to deal with applications for permission to appeal to the Upper Tribunal (Lands Chamber) are contained in the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
25. Under rule 55 we can only undertake a review pursuant to rule 53 (that is a review on an application for permission to appeal) if we are satisfied that a ground of appeal is likely to be successful.
26. Turning to rule 53, which deals with our consideration of an application for permission to appeal, our first task is to consider, by taking into account our overriding objective in rule 3 whether to review the decision in accordance with rule 55. Rule 3 requires us to deal with cases fairly and justly.
27. Under rule 55 the tribunal may only review of a decision when it is considering an application for permission to appeal and it is satisfied that that a ground for appeal is likely to be successful.
28. Mr McDermott pointed to the grounds seeking permission to appeal and in particular the reference to the tribunal's decision stating that if it had to decide the issue without considering whether the section 20 notices had been served in accordance with the lease, that it would have been minded to find that the notices were actually served.
29. Ms Doliveux responded by submitting that it had been agreed at the last hearing that the tribunal should consider whether service was proved in accordance with the provisions in the lease and the references to the statutory materials.
30. After hearing these submissions on how we should deal with a review we then heard submissions from counsel as to whether an order should be made under section 20ZA of the Act.
31. Counsel for the applicant addressed us on his written submissions dated 7 March 2017. He referred us to the well-known decision of the Supreme Court in the case of *Daejan Investments v Benson (and others)* [2013] UKSC 14 in which the Court set out its conclusions of the proper approach of the tribunal in considering what to do where there has been a breach of the statutory consultation requirements.
32. He contended that following this ruling the task of the tribunal if it is minded to make a dispensation order to make it subject to conditions. Conditions can be imposed, for example, to compensate a leaseholder

for any prejudice suffered. In this case, he argued, no prejudice was suffered: the applicant had obtained estimates for the proposed expenditure by putting the proposed contract out to tender. As a result tenders were received from seven companies.

33. Ms Doliveux argued that the leaseholders were entitled to have their costs paid as a condition of making a dispensation order under section 20ZA of the Act. She told us that costs of £10,680 were incurred. These costs consisted of £3,500 solicitors' fees; £4,000 for fees of counsel and a fee of £1,400 for their expert's fees making a total of £10,680 inclusive of VAT. Ms Doliveux also submitted that any future costs incurred by the applicant dealing with the defects identified in the report of the respondents' expert should not be recoverable as a future service charge.
34. Turning to our powers to review our previous decision we have considered the representations made on behalf of the parties. In summary, having reviewed the decision made following the first hearing on held on 15 February, 2017, we have decided that the challenge to that decision must succeed for the following reasons.
35. First, in that decision and with the concurrence of the parties we concentrated on the method of delivering the consultation notices, the lease provisions governing the service of notices and relevant statutory provisions. A different approach is to determine on the basis of the evidence whether as a matter of fact the respondents received these two notices. We consider that this is primarily a question of fact.
36. At the first hearing Mr Bester, who is the leasehold services manager for the applicant gave oral evidence based on a written statement he had signed. He answered questions posed by counsel for the respondents and by the tribunal members.
37. He explained in detail the internal procedures and why the applicant does not use recorded delivery but ordinary first class post. In this case there have been several letters posted to the respondents but they only complain that they did not receive two such communications.
38. Further, Mr Bester's evidence is that all letter sent, excluding the two (with copy consultation notices), appear to have been received by the respondents (which they acknowledge) and the two they say were not received were not returned by the Post Office as undelivered.
39. As we noted in our previous decision we were impressed with his evidence which he presented clearly.
40. So far as the respondents are concerned, neither of them gave oral evidence (Mr Roy was unable to attend either of the hearings because of illness). However, they both signed statements each of which stated that they had read their daughter's written statement with

which they both agreed. This is her statement dated 19 January 2017 on which she gave oral evidence at the previous hearing.

41. In our previous decision we concluded that we did not find her evidence wholly satisfactory and we explained why we reached that conclusion. No disrespect is intended to Ms Roy who is to be commended for her efforts in assisting her parents with their affairs.
42. We must also refer again to her suggestion that the inclusion of 'White Hart Lane' in the address to the letters could have confused the postal service. As Mr Bester suggested those (and other letters which were received by the respondents) would have been delivered by using the postal codes which were correctly included. As he pointed out in his evidence the respondents have responded to other communications which contained 'White Hart Lane' in the postal address.
43. Every day experience shows that it is not uncommon for occupiers to overlook some items of correspondence and the like.
44. With these points in mind and on the basis of the clear evidence on the posting of the notices, the fact it is agreed that at the very least most of the letters sent were received, that neither of the letters the respondents claim were not received were returned as undelivered leads us to the following conclusion. On the balance of probabilities we determine that the respondents actually received both of the consultation notices required by the Act and the relevant regulations. It follows that the applicant complied with the statutory provisions.
45. We turn now to the challenges to the charges made under section 19 of the Act on the key issue of 'reasonableness'. In effect this important provision allows a leaseholder to challenge charges, which might otherwise be properly recoverable under the lease if they were 'reasonably incurred' and the works are of a 'reasonable standard'.
46. According to the respondents some of the works were either not carried out or where they were, they were of a poor quality.
47. The respondents rely on their expert's report. The applicant does not accept the criticisms in Mr Mouldsdales report and Mr Bester did his best to try to refute the criticisms but as a housing manager he was not in a position to do so. Mr Nwanaeri, the project manager, might have been able to help, but he had not provided a witness statement and although he was present at the second hearing he was not in a position to assist the tribunal. We have already noted the reduction in the charges from £35,617.06 to a figure of £25,430.38. Despite Mr Bester's attempts to explain that external advisors may have failed to deal with this properly the tribunal finds it astonishing that such a mistake should have been made. It amounts to a reduction of some 30% and we note that this mistake in the figures claimed was not corrected until almost a year after the applicant commenced proceedings.

48. As to the expert report and while it is understandable that those advising the applicant object to the report being admitted in evidence without Mr Mouldsdale being present at the hearing to defend it we have decided that we should consider the complaints but we cannot without the opportunity of asking questions of Mr Mouldsdale, give it a great deal of weight.
49. It would obviously have been better if Mr Mouldsdale was available to give oral evidence and if we had an expert report from the applicant. Nevertheless we must do the best we can to deal with this aspect of the dispute fairly and justly. We now consider the elements of his criticisms, the response to these criticisms by the applicant with our conclusions. We also note that when he carried out his inspection in February 2017 that was almost three years after the completion of the works.
50. First, in respect of the roof works, the final account was £81,981.74 and this is revised to £61,612.13. The respondents' proportion of this element is £6,798.21.
51. According to Mr Mouldsdale the main roof not replaced but repairs to the tiling and replacement of lead flashings were undertaken. But on inspection says that he found poorly finished lead flashing and slipped tiles on the roof; and fascia/soffits were replaced. He offered no comment on the work to the dormer windows other than there is now evidence of condensation beneath the dormers suggesting that there was inadequate thermal insulation. His report also stated that the old roof-light to the subject flat was not replaced although other roof-lights have been replaced. The uPVC rainwater goods to dormers on rear elevation had been replaced, but it was suggested there was poor workmanship as evidenced by leaks and the downpipes have not been replaced. The gutters to main roof had not been replaced as cast iron gutters and downpipes remained and these had not been cleared as there was evidence of plant growth; the box gutters had not been cleaned as it was shown to be blocked with debris by photographs in his report.
52. In response at the hearing the applicant stated that the main roof work related to localised repairs and this did not include any thermal insulation works; the replacement work was to the dormer windows; there had been a defect period of 18 months, but no complaints were received from the respondents in this period; the roof-light was not an original feature and Mr Bester could not comment about the replacement of other roof lights; the chimney stacks were repaired, re-pointed and re-flaunched; and it was suggested that the condensation was due to increased moisture in the property and advised as to how that could be combated.
53. The tribunal conclusions (relying also on our professional knowledge and experience) is that the slipped tiles may have occurred since work

was carried out, however the poor detailing of the lead flashing as referenced by the photographs in report is not likely to have occurred since works and it is therefore potentially a sign of poor workmanship. No issue was taken with the quality of the work in relation to the fascia and soffits.

54. The tribunal is unable to comment on the dormer windows, which may not have been observed in February 2017 inspection. In respect of the replacement of the old roof-light, this potentially was not part of the contract, this is supported by the fact that the main roof in which roof-light is situated was not replaced.
55. As to the leak to the gutters of dormer windows, these should not have failed after three years. The photographs of the original gutters show plant growth that is significant and is unlikely to have arisen within three years of the works being carried out. It is difficult to do a detailed assessment of the impact of these faults as there has been a reduction in the overall figure and there is no real breakdown of the sums available to the tribunal. In the opinion of the tribunal it seems that some of the work was not carried out to a reasonable standard namely some of the lead flashing and the clearance repairs to the existing gutters and replacement of some gutters. The defects noted on inspection should not have accrued over the 2/3 year period since the work was completed. There is no evidence as to what an appropriate reduction should be and the applicant had re-allocated costs but not provided a detailed breakdown, but on the basis of what was claimed and the reasonableness of the standard of work, the tribunal makes a deduction of 10%. So the sum of £6,798.21 should be reduced to £6,118.39.
56. We turn to the works to the windows where the final account was £134,840.36 and this is revised to £90,848.28. The respondents' proportion of this element is £10,024.09. Mr Mouldsdales suggested that the costs of replacing the windows would be £7,600 plus VAT (£9,120). No criticism was made regarding the quality of the work. According to the applicant these costs have been revised.
57. As no criticism is made of the quality of the work, the question is whether the cost is reasonable. As Mr Mouldsdales suggests a similar figure to the sum allocated by the applicant and as such we determine that that the sum claimed is reasonable.
58. As to the costs of the scaffolding, the final account was £81,981.74 and this is revised to £58,702.09. The respondents' proportion of this element is £6,477.21. On this element of the costs, the evidence from Mr Mouldsdales is quite limited as he states that he has no evidence as to whether there was netting/alarms etc. His only comment is that £7,000 per flat seems excessive, but no alternative figure is provided. The applicant simply states that the costs have been revised.

59. The actual figure is £6,477.21 may be on the high side but there is no actual evidence to suggest that it was unreasonable. Neither Mr Mouldale nor this tribunal were provided with the details of the scaffolding contract; it was part of a competitive tender and on that basis then no reduction is made to the sum claimed. We determine that the sum of £6,477.21 for this element is reasonable.
60. To summarise we determine that the reasonable costs of the works is the sum of £24,703.07.
61. Finally, we were asked to consider making an order under section 20C of the Act limiting the recovery of any professional costs incurred by the applicant in these proceedings. However, as Mr McDermott told the tribunal that the applicant will not seek to recover its costs as a future service charges there was no need for us to hear submissions on the section 20C point.

James Driscoll and Helen Bowers

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 Tribunal 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 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.
4. 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.