

13078



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00BE/LSC/2018/0327**

**Property** : **Flat 17, Primrose House, Peckham  
Hill Street, London SE15 5SS**

**Applicant** : **Roderik Jons and Dorine Tulyama**

**Representative** : **Self**

**Respondent** : **London Borough of Southwark**

**Representative** : **Mr Walker, in-house**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal members** : **Judge Hargreaves  
Michael Mathews FRICS**

**Date and venue of  
hearing** : **10 Alfred Place, London WC1E 7LR  
19<sup>th</sup> November 2018**

**Date of decision** : **19<sup>th</sup> November 2018**

---

**DECISION**

---

The Tribunal directs as follows:-

1. £10,000 is a reasonable sum for the Applicants to pay on account of the estimated cost of major works element of the 2018 service charges (invoice number 5002472977).

but are satisfied with the evidence that its appointment is valid and continues. Some of the planned works which are the subject of the disputed estimated charge might have been carried out, but the situation is unclear: for example, there is a dispute about whether scaffolding has or has not been erected, which one might have thought was capable of some firm evidence either way. The point is that the Respondent had useful witnesses in court but not on the actual works which might have been done since the charge was raised, so it follows that we have no guide to the reasonableness of the estimated charge from what might actually have been implemented. However, we are satisfied with the general charging regime as reasonable on the basis of the documents and evidence considered.

6. In effect the Applicants only had very general and unspecified queries about the proposed works, and no real solid challenges to the “reasonableness” of the scheme overall (apart from the one point discussed below), as to which we were in general satisfied by the Respondent’s evidence and witnesses. We should add that any issue as to whether s20 consultation was properly carried out are resolved in favour of the Respondent. We also conclude that the scheme of works was in general justified and there is no evidence that Keepmoat was “churning” work, there being a system of checks and balances, as well as evidence that at least some repairs were required. We bear in mind that we are dealing with an estimated charge and it may well be that the Applicants have grounds for a further challenge once the details of the works actually done can be provided. Apart from point (C) in their statement of case the Applicants’ challenges are well resisted by the Respondent.
7. We have a good paper trail documenting how the estimated charge was raised, except in respect of the one point (C), which we discuss in further detail below. The most important documents are as follows. At p108 is an estimated annual service charge for the year ending 31<sup>st</sup> March 2019 in the sum of £2453.30. The Applicants confirm that this is not in issue. They challenge the reasonableness of the major works invoice which is at p99 and totals £13,589.15, payable over two years (£8,153.49 and the balance of £5435.66 the following year). At p153 is a breakdown of costs for 12-22 Primrose House which totals just short of £130,000, £59,000 of which is said to be attributable to residential, and around £70,000 of which is said to be attributable to residential and commercial premises. But this is a contractor’s document and we have no idea how those “split” calculations are reached or how they are reflected in p154.
8. At p156 is the Keepmoat feasibility report prepared by Blakeney Leigh Limited. The executive summary is at p167 and more details for Primrose House are at p191-196. The works are costed at £116,590.03 (the same as 1-11 Primrose House), see p261-264. Photos taken for the purpose of a drone survey are at p209-221. They are useful, especially as explained by Mr Ottley.

9. We have therefore a broad outline of the works proposed, and their cost. Further oral and helpful evidence was given on behalf of the Respondent by Marc Surtees (p291), John Ottley (p294) and Daniel Pescod (unnumbered). Mr Surtees is a project manager of at least 20 years' experience, 10 with the Respondent. Although he was not responsible for the feasibility report or the costings (directly), he explained how the works came to be commissioned as part of a cycle of planned preventive maintenance. We accept his evidence that this was reasonable, and in any event, justified by the photographs and the need for the repairs as explained by John Ottley, who works for Keepmoat and though did not personally write the feasibility report, had a hand in providing the notes and information on which it was based, and also confirmed the sense of the planned maintenance approach. We accept his evidence as well, and note in particular his evidence as to how the costings were checked by Calford Sleaden (surveyors). Evidence as to their role was given by their employee Mr Pescod, who gave reliable evidence to deal with the Applicants' queries to our satisfaction. There is no need to expand their evidence in detail as it is helpfully set out in the bundles and cross refers to the documentation we have highlighted.
10. What these witnesses could not do is give evidence as to the residential/commercial split. The Applicants raised the issue as to the liability of the commercial units to contribute to the estimated service charge for major works (Reason (C) in their statement of case at p117). This is their best point. The Respondent then reviewed the apportionment and reduced the estimated charge to £11,157.83: see the Respondent's statement of case at p143 and the document prepared for the hearing at p154. Although no revised invoices have been issued, we see no reason why that should be a problem, and if the Respondent suggests that we deal with the application on the grounds that the right figure to consider is the £11,157.83 – which seems eminently sensible – then it surely follows that revised invoices will be sent to the other Primrose House leaseholders sooner rather than later. We say this because we see nothing in the lease to prevent that happening: the reverse in fact, since the lease requires an estimated charge to be “reasonable” which now, on the Respondent's own case, requires revision downwards by a not insubstantial sum.
11. We turn therefore to the revised calculation. Miss Pescalu (p271) was unable to give oral evidence in support of her statement but nothing in it deals with the revised amount. Miss Bui who came to give evidence in her place could not explain the basis on which the reduction was made either (p280). Miss Foster (p283) was clearly familiar with the documents at p153-4 but was unable to assist the Tribunal with any evidence as to how the reductions for the residential properties as demonstrated on p154, were reached. Her evidence highlighted the evidential difficulty the Respondent faced over this.
12. Clearly someone working for the Respondent reached a decision as to how the commercial units should pay a contribution to the overall costs and in what amount. Unfortunately for everyone at the hearing, that

witness or knowledge was not before the Tribunal. Mr Walker was constrained to admit (pragmatically) that he had a problem in that respect.

13. The consequence is that we have no evidence as to the reasonableness of the estimated sum so far as the amount of the adjustment is concerned. In the circumstances we consider that we are entitled to substitute a figure which we consider to be reasonable and on that basis have arrived at £10,000, a further reduction on that applied by the Respondent. It may of course turn out that the Respondent's adjustment is entirely reasonable when it comes to a final figure, but they cannot justify it on the balance of probabilities on the evidence before the Tribunal at present. The fact that it was entirely overlooked in the first place suggests a serious lapse of concentration on this point, and undermines – without more – the adjustment made.
14. In consequence, though the Applicants' challenge in general has failed, they have succeeded in highlighting and benefiting from an important issue. We are grateful to the Respondent for indicating that it would be happy to accept a s20C order, which we make "by consent" for the avoidance of doubt.

Judge Hargreaves

Michael Mathews FRICS

19<sup>th</sup> November 2018