



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

**Case Reference** : **CHI/00HN/LSC/2019/0086**

**Properties** : **Flats 2 & 5 Alban Grange, 219  
Charminster Road, Bournemouth,  
BH8 9QQ**

**Applicants** : **Mrs S Hadnutt & Mr M Hadnutt**

**Applicants  
Representative** : **Martin Hadnutt**

**Respondent** : **Gateway Properties Ltd**

**Type of Application** : **Determination of liability to pay and  
reasonableness of service charges  
under Section 27A of the Landlord  
and Tenant Act 1985**

**Tribunal Member** : **Judge Professor David Clarke**

**Dated** : **6 November 2019**

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**DETERMINATION AND STATEMENT OF REASONS**

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## **DETERMINATION**

**The Tribunal determines that only two items in the schedule of proposed works are unreasonable, namely the sum of £215 listed as for painting the metalwork and the sum of £460 for staining the fencing. In all other respects, the Tribunal finds the cost of the proposed works contained in the major works charge of 2019 to be reasonable.**

## **STATEMENT OF REASONS**

### **Background**

1. This Application (“the Application”) is made under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) to determine the reasonableness of a major works charge made in 2019 in respect of two flats numbered 2 and 5 (“the Properties”) and contained in a building known as Alban Grange, 219 Charminster Road, Bournemouth, BH8 9QQ (“Alban Grange”). The Application is made by the registered proprietors of the Properties, Mr Martin Hadnutt and Mrs Susan Hadnutt (“the Applicants”). The Respondent is Gateway Properties Ltd who are the registered proprietors of the freehold of Alban Grange. The Applicants have a 125 year leases of the Properties, for a term from 29 September 2014. The lease of Flat 2 is dated 30 March 2015 (“the Lease”) and a copy was supplied. The Tribunal was informed that the lease of Flat 5 is in identical terms to that of Flat 2.

2. Alban Grange is a purpose built block of 10 one bedroom flats constructed in 2014-15. It is a building on three floors with a single entrance hall and staircase from which all ten flats gain access. The Tribunal did not inspect the property but a photograph shows an attractively designed building built of brick but with rendering from the first floor level and above. There are four flats on the ground floor and (presumably) four on the first floor and two on the second or upper floor within the sloping roof.

3. The dispute between the parties is a relatively narrow one relating only to the reasonableness of the amounts charged under a contract to decorate, clean and undertake relatively minor repairs to both the external parts of Alban Grange and to the internal common parts, namely the entrance hall, staircase and landing areas.

4. The Lease, which is in a modern form, provides for a ground rent of £200 per annum and an insurance rent. The service charge is payable by virtue of the Tenant’s covenants contained in the Lease and each flat is liable to pay one-tenth of the service charge levied. The Applicants are therefore liable, owning two flats, to pay a total of one fifth of any service charge made. The Landlord covenants to provide the ‘Services’; the relevant provisions are contained in clause 4.1.2 of the Lease. These can be briefly summarised:

- (a) Maintain and repair the common parts;
- (b) Treat, wash down, paint and decorate the exterior in 2016 and thereafter in every third year of the term (so, in 2019);
- (c) Treat, wash down, paint and decorate the interior of the common parts in 2019 as require to be dealt with;

- (e) Maintain and repair boundary fences;
- (h) Clean, treat, polish and light the common parts to such standard as the Landlord considers appropriate;
- (i) Clean and maintain exterior lighting as the Landlord deems expedient and at the Landlord's absolute discretion;
- (k) Maintain and keep in good order fixtures and fittings as the Landlord deems desirable or necessary for the upkeep of the development;
- (l) Clean as frequently as the Landlord considers adequate the exterior of all glass screens, windows and window frames on the development.

### **The Disputed Works**

5. On 23 October 2018 the Respondent sent a notice to all the leaseholders in Alban Grange, including the Applicants, giving a notice under section 20 of the 1985 Act of their intention to carry out external and internal decoration works and fabric repairs to the common parts. It invited written observations and nominations of any contractor that the recipient of the notice would like to be included in the tender process. The validity of that notice under section 20 is not disputed; a notice was needed as the cost of the works would exceed £250 per flat. The work proposed was also in accordance with the terms of the service requirements set out in the Lease (see paragraph 4 above) for redecoration work of both the interior and exterior due in 2019.

6. At that stage, the Applicants did not make observations; and they did not take advantage of the opportunity to nominate their own contractor.

7. On 17 December 2018, a specification of works was drawn up by Ann Johnson of Associated Surveying, a company connected with the Respondent and operating from the same building in Southend-on-Sea in Essex. Three tenders were then sought by the Respondent on the basis of the specification prepared. One firm did not respond; two tenders were received, one on 4 March 2019 £12,073 plus VAT from Mitie Property Services based in Fareham, Hampshire; the other, received late and outside the tender period, on 15 May 2019 for £15,105 plus VAT was from P&S Roofing and Property Solutions Ltd based in Portsmouth. On 17 May, the Respondent sent a notice to the Applicants (and other leaseholders) giving notice of their intention to accept the more competitive quote for the work required of £12,073 from Mitie Property Services.

8. It was that notice that led to an immediate e mail from Mr Hadnutt in which he claimed that the costs were unacceptably large. He complained about the way tenders had been sought and contended that the amount requested was unreasonable. There then ensued a correspondence by e mail between Mr Hadnutt and Mr Perry Binyon (on behalf of the Respondent). In short, Mr Hadnutt rehearsed his concerns and complaints, now put to this Tribunal, and sought both explanations of the cost of the work itemised and suggested an alternative local contractor be asked to tender. Through Mr Binyon, the Respondent made it clear that it was not minded either to reduce the specifications or to seek another quotation.

9. The Applicants paid the amount due for the works proposed, £3,212.18, or £1,606.09 per flat, on 16 July 2019, but under protest and without prejudice to this Application. The Application was made on 16 August 2019.

### **The Directions**

10. Directions were issued by Judge JF Brownhill on 23 August 2019. The Applicants had indicated that they would be content with a paper determination and the Directions so ordered a determination on the papers in accordance with Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Respondent was ordered to send a copy of the priced specification of works, which were in the papers before the Tribunal; and also audited service charge accounts, which were not supplied to the Tribunal (or at least they were not in the papers) but that is of no consequence since they were not needed for a determination of this dispute.

11. The Applicants were required, by 24 September, to complete a Scott Schedule, which has been duly done, and also send to the Respondent ‘copies of any alternative quotes or documents on which the tenant intends to rely’. The Applicants did not file any such alternative quotes or, indeed, any other documentary evidence. They also did not supply, as the Directions permitted them to do, any signed witness statement.

12. The Directions then set out the requirements for the Respondent to complete its responses to the Schedule and to send their statement of case, and for the brief supplementary reply by the Applicants, all duly completed.

13. The Applicants prepared the bundle of documents and the Tribunal is grateful for a helpful presentation of the documents submitted.

### **The Applicants’ basic submissions**

14. The Applicants’ arguments are made by Mr Marin Hadnutt and set out in the Application; in a short undated Statement of Case as requested by the Directions; and finally in a longer ‘Supplementary Statement’ dated 22 October 2019 being the Reply permitted by the Directions and sent following receipt of the Respondent’s Statement of Case. The Applicants also make detailed submissions in the Scott Schedule on the listed items of work, to which the Respondent added their position, and the Schedule is considered in detail later in this determination.

15. In his Supplementary Statement, Mr Hadnutt records that he has been a fellow of the Royal Institution of Chartered Surveyors for 38 years practising as a Quantity Surveyor for 38 years and having a significant executive roles in his firm. He therefore claims significant expertise in tendering processes. He also informs the Tribunal that the Applicants own 9 other properties in the Bournemouth area of very similar types to the Properties in Alban Grange. He says: ‘we have therefore been through this process a number of times and have had substantial amounts of decoration and cleaning undertaken within our own properties’. He therefore submits that he has a considerable understanding of the correct market price in the Bournemouth area.

16. The principle contentions of the Applicants, culled from the documentation, are as follows:

- (a) The specification on which the tenders were based was inappropriate for the relatively small scale of the work required. Moreover, some of the work specified is unnecessary.
- (b) The surveyor's costs would have been lower if a local surveyor had been used to draw up the specification; and, when the surveyor drew up the specification, she did not have access to the rear of the building.
- (c) The supervision arrangements in the specification are inappropriate and more expensive than needed.
- (d) Tenders were only sought from three national firms and only two submitted tenders. The amounts so tendered are above market rates in Bournemouth. All those firms asked to submit tenders were not based in Bournemouth and local appropriately sized contractors would have given lower quotations.
- (e) The Respondent should have been willing to address concerns raised and consider an additional tender from a local contractor.
- (f) The amount held for contingencies is excessive and 50% should be returned to the ten leaseholders.
- (g) Overall, the Respondents had a duty to mitigate the levels of charges made by only undertaking necessary works and using a process that will result in the leaseholders paying a fair market price.

17. Each of these contentions are considered in paragraphs 22-31 below, along with detailed consideration of the Scott Schedule. However, it should be stressed at the outset that the only evidence put forward by the Applicants in support of these submissions are the comments and assertions of Mr Hadnutt.

### **The Respondent's basic submissions**

18. In its Statement of Case, the Respondent makes the following submissions, each of which, on the basis of the documentation supplied to the Tribunal, are not challenged by the Applicants:

- (a) The proposed works are within the services that the Respondent has covenanted to carry out and are in accordance with the terms of the Lease.
- (b) There is no issue between the parties as to payability. The Applicants are only challenging the reasonableness of what has been demanded.
- (c) A notice was issued in accordance with section 20 of the 1985 Act and that notice and the subsequent process was entirely in accordance with what the Act and the Regulations require; in particular, the Applicants were invited to propose a name of a person from whom the Respondent should try to obtain an estimate for carrying out the proposed works but did not do so.

19. The following further submissions were made in response to those of the Applicant, some of which are contained in the e mail correspondence between the parties rather than in the Statement of Case:

- (a) Associated Surveying acts independently of the freeholder and, it is submitted, acts to ensure equal and impartial advice between the interests of leaseholders and freeholder (in the correspondence, the fee structure and duties of

- Associated Surveying were set out for the Applicants). The assertion is that Associated Surveying represents best value when compared to the external market and provides an elevated level of customer care.
- (b) The preliminary costs are justified, covering necessary items such as scaffolding access, site toilets and a supervisor on site.
  - (c) There is no legal requirement to use a local service provider nor, indeed, the cheapest provider. The chosen contractor, Mitie, will operate from its local Fareham branch.
  - (d) The firms asked to tender, in the absence of any nominated by any of the leaseholders, were firms that the Respondent knew and trusted.
  - (e) All the works specified were properly found to be needed. To support this contention, a site inspection was made by Mr Perry Binyon on 30 July 2019 and his report, and photographs, were supplied to the Tribunal.
  - (f) The Respondent relies on the expertise and competence of the Surveyor, and on the tenders submitted, to submit that the costs are in line with general comments in the Scott Schedule in those specific cases where it contends the Applicants have provided no evidence to the contrary.
  - (g) There is no obligation or duty on the Respondent to mitigate cost as such.

### **Assessment of the Submissions of the Parties**

20. The task of this Tribunal, in considering this Application under section 27A of the Act, is to determine the amount that is payable by the Applicant in respect of the two Properties owned by the Applicants within Alban Grange. There is no other dispute between the parties. In doing so, the relevant statutory provision in this case is, under section 19 (1) (a) of the 1985 Act, the concept of reasonableness; namely, that a service charge is payable only to the extent that the charges have been reasonably incurred. In some situations, charges may not be payable for other reasons, for example if the expenditure is not authorised by the Lease. Such other reasons are not present in this case; indeed, the Applicants only contend that the amounts asked of them are excessive, ie that they are unreasonable.

21. The assessment of what is and is not reasonable is primarily a matter of an assessment of the evidence presented to the Tribunal: *Daejan Investments Ltd v Benson* [2011] EWCA Civ 38, per Sedley LJ. In such cases, there is no need to ask where any burden of proof might lie. But where, as in this case, the amount of evidence presented is limited, especially by the Applicant, the Tribunal may have to resort to assessing, even in a civil case where issues are decided on the balance of probabilities, where to begin: *Schilling v Canary Riverside* [2005] EWLands LRX/26/2005, per HHJ Rich. In a case where money is demanded under a service charge, as here, the right place to begin is to ask if the Respondent has shown that the charges have been legitimately charged under the Lease. In the opinion of the Tribunal, they have done so. The Lease not only permits but requires redecoration of both the external and internal common part areas of Alban Grange. All the work proposed are within the services which the Respondent covenants to provide. The Respondent has complied fully with the requirements of section 20 of the Act, has used a qualified surveyor to draw up a specification and sought tenders from firms of repute. It has selected the lower of the tenders received.

22. In such circumstances, it then falls to the Applicants to provide the evidence that the costs proposed are unreasonable. However, what is presented to the Tribunal by the Applicants are submissions and assertions by Mr Martin Hadnutt without any, or very little, evidence to support those assertions. Some or all of them may be correct; but at without at least some evidence to back them up, the Tribunal cannot assess them on their merits, notwithstanding Mr Hadnutt's professional expertise.

23. The Applicants have had plenty of opportunity to provide that evidence, especially taking account of Mr Hadnutt's professional background and the experience the Applicants have in owning other rental properties in the Bournemouth area. If they had taken the opportunity to nominate a contractor when invited to do so, then it might have been clearer at the outset as to whether their contentions were correct that a local contractor would be cheaper. They say that they assumed local contractors would be asked to tender. But even after missing that opportunity, they could have sought concrete evidence that there were cheaper alternatives and put that evidence to the Respondent after receiving details of the tenders received. If the Respondent had then ignored that evidence, it may be that a tribunal might have concluded that the Respondent had been acting unreasonably. Without presenting any such evidence to the Respondent, the Tribunal determines that the Respondent did not act unreasonably in proceeding only with considering the tenders that it had received. Later again, after making this application, the Applicants had the opportunity, set out clearly in the Directions, to file alternative quotations or other documentation. Given Mr Hadnutt's professional experience, he might have provided evidence from his professional knowledge. He had the option of submitting a witness statement. None of these opportunities were taken. The Tribunal therefore makes the following decisions on the submissions of the Applicants.

24. *The Specification:* This was drawn up by a qualified surveyor and the works identified as required have in many cases been validated by the inspection report in July 2019 and the photographs provided. The Tribunal is satisfied that all the matters listed in the Scott Schedule have been properly identified as works that need attention, except the requirement to paint metalwork including external meter boxes. The Respondent having conceded this point, the Tribunal determines that the sum of £215 for this work is not chargeable.

25. *Preliminaries and External Supervisions:* The Respondents have provided details of works that are included in the preliminaries – scaffolding, on site toilets, and a supervisor on site, and justify the use of the surveyor from Southend as providing a fluid service at market rates. The Applicants claim otherwise, saying there is unnecessary layers of contracting. The Tribunal accepts that the failure of the surveyor to inspect the rear of the property was unfortunate but there is otherwise no sufficient evidence to show that savings in costs could properly be made. It may well be that the level of supervision is excessive but evidence has not been provided to that effect.

26. *The Tenders Sought:* The Tribunal accepts the contention of the Respondent that there is no legal obligation to seek tenders from local firms. What is reasonable will depend on many factors and it may be reasonable in some circumstances to seek local

contractors. Local contractors may offer a good service – and might have done so in this case. But the Applicants had the opportunity to nominate a local contractor and did not do so. They could have asked themselves for a quotation, or at least an assessment generally, from a local contractor, but again did not do so. The Respondents selected firms that they had dealt with before and trusted and there is insufficient evidence that the two tenders received do not reflect market prices. In this context, it is interesting to observe that the Applicants were quite content with the prices quoted by Mitie for redecoration internally – a total of £2,726. They probably would have questioned the total for internal redecoration from PS Property Solutions - £4,650. But on quite a number of smaller items in the Scott Schedule, PS Solutions were cheaper, often closer to what the Applicants said was reasonable. This does suggest that the Applicants' belief that PS Solutions' tender was not reflecting market values might not be wholly correct.

27. *Are any costs excessive?* In the Scott Schedule, a considerable number of items are listed as accepted as required work but a lower cost is suggested by the Applicants. In some cases, there is some evidence that particular items of work might be done cheaper - since PS Solutions gave a lower figure in a number of cases. Thus, for cleaning the gutters, Mitie said £390, PS Solutions £200, and the Applicants would accept £100. But is not for this Tribunal to reduce the figure to £200 on that basis alone. The Respondent had to accept one tenderer or the other – it could not accept the parts of each that were lower in price. It is therefore necessary for the Applicants to provide evidence either that a contractor would be substantially cheaper for the work as a whole, or that the particular work being planned is at a clearly unreasonable price. That they have failed to do. So although one might have some sympathy with some of the Applicants' contentions, perhaps for the cost of cleaning the lights at £120 for example, the Applicants accept that cleaning of the light has to be done and that was the tendered price in the lower tender received.

28. Moreover, to be fair to the Respondents, they have not just relied in every case on the tenders submitted. They have pointed out the reasons that may be behind the amount of some of the disputed costs. Many of these factors were set out for the Applicants in the exchange of email correspondence. Thus Mr Binyon pointed out, for example, that deep cleaning of the PVC windows is recommended to keep them in peak condition; that painting of the colour render externally is preferred to washing because residents complain jet washing does not come up as new and allows dirt to be distributed to other areas; that cleaning of upper windows is costly because safe access is required to ensure health and safety. The Applicants have not contested these explanations.

29. *Are any costs unnecessary?* In a limited number of cases, the Applicants contend that items of work are unnecessary. Three of the four items considered unnecessary are making good defective sealant, and small provisional amounts for repointing and for defective render. The applicants complain, with some justification, that they have not seen any survey detailing those items (if it exists) while the Respondents rest on the expertise of the surveyor who included these items in the specification. The sum in question totals under £500 for the three items and most of that sum allocated is provisional. On balance, the Tribunal concludes that there is insufficient evidence that these sums should not have been included.



30. *Fencing and External Woodwork*: The fourth item where necessity is disputed relates to staining the fencing. The Applicants point out that the fences are unstained at present and there is not much point in doing one side of a fence. The Respondent indicated that 'if residents feel that staining is not required then we can omit this item'. While there is no evidence about what the other leaseholders feel, it is clear that the Respondent does not consider that this work is definitely needed. In those circumstances, the Tribunal determines that staining the fence is not reasonable and would delete the sum charged for that purpose of £460. However, if the sum allocated included painting the side gate (it is not clear on that point) then the parties may wish to agree to the painting of the side gate.

31. *Contingency sums*: The sums allocated for contingencies (£600 for any repairs found at a high level and £1,000 general contingency) do not appear to the Tribunal to be unreasonable. The total is about 11% of the overall cost including VAT. If unused, the sums must be credited back to the leaseholders under the terms of the Lease.

### **Determination**

32. The Tribunal therefore determines that only two items in the schedule of works are unreasonable, namely the sum of £215 listed as for painting the metalwork and the sum of £460 for staining the fencing. In all other respects, the Tribunal finds the cost of the proposed works to be reasonable.

### **Section 20C application**

33. The Application included a further application under section 20C of the 1985 Act. The Tribunal does not consider that the Lease enables the costs of the Respondent in these proceedings to be included in the service charge; but if the Lease does so permit, the Tribunal declines to make an order to exclude those costs from the service charge as the Respondent has, to a very significant extent, not behaved unreasonably; or, at the very least, the Applicants have not produced the evidence to demonstrate that conclusion.

### **Paragraph 5A, Schedule 11, CLRA 2002, application**

34. Though the Applicant made an application under this section by ticking the box, it does not appear to be relevant to this Application and no submissions were made to indicate otherwise.

### **Right of Appeal**

35. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

36. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

37. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then

decide whether to extend time or not to allow the application for permission to appeal to proceed.

38. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result that the party who is making the application for permission to appeal is seeking.

Judge Professor David Clarke  
6 November 2019