

9 SIS



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

Case Reference : LON/00BB/LSC/2013/0478

Property : 102 ANNE STREET, LONDON E13
8BY

Applicant : LONDON BOROUGH OF NEWHAM

Representative : WILKIN CHAPMAN GRANGE

Respondent : MR MIJANUR RAHMAN
CHOWDHURY

Representative : IN PERSON

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

Tribunal Members : MS L SMITH (LEGAL CHAIR)
MR A LEWICKI, FRICS, MBEng
MRS L WALTER

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 9 December 2013

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the sum of £17,504.02 is payable by the Respondent in respect of the service charges for major works carried out between 11 May and 4 December 2009 and which are the subject of County Court proceedings under claim no 3YJ17417
- (2) Since the tribunal has no jurisdiction over county court costs and fees and interest, this matter should now be referred back to the Bow County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) payable by the Applicant in respect of major works carried out between 11 May to 4 December 2009 (“the Works”) to Flats 78-114 Anne Street, Plaistow, London E13 of which 102 Anne Street (“the Property”) forms part.
2. Proceedings were originally issued in the Northampton County Court under claim no. 3YJ17417. The claim was transferred to the Bow County Court and then in turn transferred to this tribunal, by order of District Judge Richard Clarke on 26 June 2013. The defence of the second Defendant, Mrs F Akhter, was struck out in the County Court and not reinstated. Mrs F Akhter though remains a joint tenant of the Property and therefore liable for the service charges in respect of the Property. The Applicant claimed the sum of £20,172.41 in the County Court proceedings in relation to “the balance of service charges, administration charges and legal costs and disbursements” arising from the Works. Mr Green, the solicitor agent who represented the Applicant’s solicitor at the hearing, confirmed that the claim had been reduced to the sum of £17,504.02, that this related only to service charges for the Works (and did not therefore include any sums by way of administration charges), and that the legal costs and interest would be pursued in the County Court so that no application was made for reimbursement of fees. Mr Chowdhury and Mrs Akhter had admitted the sum of £5,000 in the County Court proceedings and judgment has already been entered for that sum.
3. The relevant legal provisions are set out in Appendix 1 to this decision.

The hearing

4. The Applicant was represented at the hearing by Mr Green (solicitor agent for Wilkin Chapman – the Applicant’s representative), Mr Mills (an independent surveyor who had reviewed the final account for the

Works) and Mr Courtney (service charge team leader with the London Borough of Newham). The Respondent appeared in person.

5. An order for directions was made on 27 August 2013 (an earlier directions hearing having been adjourned due to non-attendance of the parties). The Respondent did not attend that hearing. The Applicant and Respondent were directed to agree a schedule setting out the items in dispute. This was not done. The Respondent was directed to provide copies of any alternative quotes or other documents on which he relied, a statement setting out his case and any signed witness statements by 24 September 2013. The Respondent did not comply with this direction by that date or at all.
6. The Applicant, in addition to agreeing the schedule, was directed to provide copies of all relevant invoices and other documents relied upon, a statement of the Applicant's case and signed witness statements of fact by 15 October 2013. It appears from the dates of the statements produced that this direction was complied with (except as above that no schedule was produced and no invoices were supplied – as to which see below). The Respondent was given the opportunity to reply to the Applicant's case by 22 October (which was not done) and the Applicant was directed to produce a bundle of documents by 5 November which was duly done except that it did not contain some of the documents which had been ordered to be included.
7. Mr Green explained to the Tribunal at the outset of the hearing that the Applicant had been hampered in presentation of its case by the Respondent's failure to engage with the proceedings in either the County Court or the Tribunal so that the Applicant did not know what the Respondent disputed. In this regard, the only indication of the Respondent's defence is to be found in the short defence supplied to the County Court dated 26 January 2013 which reads as follows:-

“1. The undertaken work in the property shouldn't cost that much and most of them is not for me.

2. All the flat's window has been changed. As I changed my window long time ago, that's why it's not been done, but they didn't reduce the bill amount.

3. Council charged me for security door system which is not used by the ground floor flat at all. We requested Council to put CCTV in our block of flats as so many crime happens in this area. But they didn't do it.

4. The total bill should be available for all of us. But we didn't see it.

5. *We pay service charge. But they invoice us for extra service charge for what?*
6. *Council never listen us. We told them so many things when they were working here. They never came back to us with their feedback. If you want we can come to prove it with all my neighbours.*
8. Mr Green also explained that the Applicant had been hampered in presentation of its case by the fact that the contractor who carried out the Works had gone into administration. The relationship between the Applicant and the contract administrator (“IG9”) had also deteriorated to such an extent that IG9 was not providing information and documents to the Applicant which it needed to prove its case. Mr Mills is an independent surveyor, working for IGM (a company unrelated to IG9). He was brought in by the Applicant 18 months ago at the time of invoicing for the Works. He had carried out a review of the final account and had attended the Property (and the block of which it forms part) and carried out a visual inspection to ascertain what works had been carried out (so far as is possible when looking at works done over 4 years ago). In large part, the Applicant’s case was based on the review carried out by Mr Mills. This was not entirely satisfactory as there were no documents produced to evidence what works had actually been carried out and nor was the actual final account as signed off produced. This is dealt with below under the heading “Cost of works”.

The background

9. The Property is a 3 bedroom maisonette spread over the ground and first floors of a block of flats at 78-114 Anne Street (“the Estate”). The block is a local authority block forming part of a larger estate. Some of the flats in the Estate remained owned by the local authority and are tenanted by it. Some including the Property are owned by private individuals. The Tribunal noted at the outset of the hearing that the lease pertaining to the Property in fact describes the Property as a second and third floor flat which is clearly incorrect and the lease should probably be rectified by agreement.
10. Neither party requested an inspection and the Tribunal did not consider that one was necessary, It would be unlikely to have assisted in any event given that the works which are the subject of this application were carried out over 4 years ago.
11. The Respondent holds a long lease of the Property dated 19 May 2003 (“the Lease”). The Lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the Lease which are relevant to this application are set out in Appendix 2 and are referred to below, where appropriate.

The issues

12. As indicated above, it was difficult for the Applicant or the Tribunal to identify what the issues were due to the Respondent's failure to engage. The Tribunal therefore indicated to the Applicant at the start of the hearing that it would require the Applicant to set out its case in relation to the Works, in terms of liability for payment under the Lease, compliance with the consultation procedures under s20 Landlord and Tenant Act 1985 and amounts due in relation to the Works. The Tribunal has therefore set out its determination on each of those issues, taking account under those headings of what the Respondent stated at the hearing in his defence.
13. In reaching its determinations, the Tribunal has taken into account the evidence from Mr Mills and the Respondent and submissions from both parties and considered all of the documents provided.

The Works

14. The Works were part of the local authority's Decent Homes Programme. The Works were carried out pursuant to a standard form contract. The selected main contractor was Connaught Partnerships Ltd ("Connaught"). As indicated above, Connaught is now in administration. Connaught sub-contracted the Works to various sub-contractors who Mr Mills confirmed were independent of Connaught but were sub-contractors probably known to Connaught from previous contracts and who were selected for their experience in relation to the various disciplines involved.
15. The Works were administered by IG9 who worked on site with project managers working for London Borough of Newham. At that time, the contract would have been managed by Newham Homes which no longer exists as that work has been taken back into the local authority's control (Newham Homes was an Arms-Length Management Organisation). The project managers who had worked on the project were not therefore employed by London Borough of Newham and had since moved on.
16. Mr Mills explained that the Works were to upgrade the fabric of the building and communal parts. The Works are described in the consultation notices as follows:-
"Low Rise Enveloping works involving repairs to or replacement of external and communal components of the block. This includes: asbestos removal, concrete & brickwork repairs; roof repairs or replacement, including fascias, soffits and rainwater goods; balcony repairs private/communal; window replacement and overhaul existing; replacement or repair of flat and communal entrance doors; repair or replacement of bin store doors, roofs and brickwork; communal area decoration; external decorations; other minor building works; renewal of communal lighting and electrical services

and installation of door entry systems (Anne Street). Antenna/Aerial location/relocation”

The reason for carrying out the Works was given as:-

“Required planned maintenance to maintain the fabric of the building and to replace components that have reached the end of their life.”

17. There was an agreed maximum price (“AMP”) for the scope of the Works. The contractor was given a fixed overhead and profit allowance (in this case it appears from Mr Mills’ schedule to have been 8%). The contract for the Works was let by competitive tender via a framework agreement. The packages for the individual contracts were based on surveys carried out by Savills. The AMP was a cap that the contractor could not exceed.
18. The original scope of the Works to the Estate had not included replacement of the main roof. However, following the erection of the scaffolding, it had been decided that the fabric of the roof had deteriorated to such an extent that it was necessary to replace it. A further consultation exercise had therefore been undertaken to deal with those works. The requirement for those additional works was explained in the Notice as being:-
“Since erecting the access scaffold it has become apparent on closer inspection that frost damage to the clay tiles is severe and the underfelt (paper type) has rotted. Repairs to the existing roof which is around fifty years old would not be cost effective. New roof coverings and insulation would meet current Building Regulations and come with a 15 year materials and workmanship guarantee”
19. As indicated above, the Works (which comprises the roof renewal works) were carried out between 11 May and 4 December 2009.

The Service Charge Provisions in the Lease

20. Certain of the relevant provisions are set out in the Applicant’s statement of case dated 14 October 2013 and were referred to by Mr Green in his submissions. By clause 5(2) the Lessee covenants to pay by way of additional rent for services provided by the Applicant but also charges for expenses incurred by the Applicant *“in the repair maintenance renewal and insurance of the Estate... and of improvements thereto insofar as the expenses and outgoings incurred in respect of such improvements are reasonable”*. The Third Schedule sets out the *“Costs expenses outgoings and matters in respect of which the Lessee is to contribute”*. Paragraph 1 relates to the expense of *“maintaining repairing redecorating renewing amending cleaning repointing painting graining varnishing whitening or colouring the Estate and all parts thereof and of improvements thereto insofar as the expenses and outgoings incurred in respect of such improvements are reasonable.”*
21. Paragraph 6 also refers to *“the cost of decorating the passages landings staircases and other parts of the Estate enjoyed or used by the Lessee*

in common with others and of keeping the other parts of the Estate used by the Lessee in common as aforesaid and not otherwise specifically referred to in this Schedule in good repair and condition". Part of the Respondent's case as explained to the Tribunal during the hearing was that he did not consider he should be responsible for those parts of the Works which related to parts of the Estate which he did not use. This covered in particular the entry door security system which door led to the stairways above the Property. The door to the Property leads directly from the ground floor and is not affected therefore by the security system. The Property does not use that system nor the staircases or walkways above. Mr Chowdhury indicated therefore that he did not consider he should be liable to pay for those matters.

22. The words "*enjoyed or used*" in the Lease are legal terms which are commonly found in many standard form leases and are to be read as being services, rights or obligations which benefit or relate to the Property in common with others and not just those which the Lessee physically uses – whether by necessity or by choice. The Lease clearly sets out the distinction between the Property ("the demised premises"), the Block (which is the individual block in which the Property is situated and which forms part of the Estate) and the Estate (which is the freehold property including the Property, the Block and the surrounding areas). The Applicant's obligation to repair etc under the Lease extends to the Estate as a whole and not just the Property or even just the Block. The Lease provides for the Respondent to contribute to the expenses of the Applicant to meet its obligations under the Lease. The way in which the Respondent's individual portion of the overall expenses is calculated is set out at clause 5(2)(e) of the Lease and is based on a division according to rateable values and not according to what parts of the Estate the Respondent actually uses.
23. Mr Chowdhury also suggested at one point that he should not be responsible to pay either for the roof renewal since this was not directly above the Property. However, from further submissions it appeared that he was really arguing that since the main roof had been replaced, the Applicant should have replaced also the walkways over the Property since he said that the Property experienced dampness in the upstairs bedroom 3 and bathroom which he considered was due to the Applicant's failure to properly repair those walkways. As the Tribunal explained, this was not something which the Tribunal could deal with but if he considered that further works were needed to the Estate, he should take that up with the Applicant directly.
24. It was also part of the Respondent's defence in the County Court that he should not have to pay for window replacement since his windows were not replaced as he had already replaced them. The Tribunal drew Mr Chowdhury's attention to the provision of the Lease which explains the extent of the Property which is his. That includes the glass in the windows but does not include the frames which remain within the local authority's obligation to repair and renew. If the Respondent wished to

carry out works which affected things which were not his to repair or renew (which included the windows as a whole) he needed the permission of the Applicant (clause 5(9)). There is also an express requirement for the Respondent to repay the Applicant for the cost of replacing windows (clause 5(7)). Mr Chowdhury also explained that he had replaced 3 of his windows which is not all of his windows. He said that the others had been replaced, he thought, by the local authority before he bought the Property as they were of the same type as those of his neighbour's. Mr Mills was able to tell the Tribunal from his review that the Works had included replacement of 54 windows which was clearly not all the windows in the Estate so it is not a case either that this shows that those works were not carried out. The Respondent is therefore liable to pay his share of those window replacement costs insofar as those are reasonable. If not all windows were replaced (as appears to be the case), then the cost of replacement will have been less than if all had been replaced and the Respondent's contribution (and those of the other Lessees) will be proportionately less.

25. The Tribunal was therefore satisfied that the Respondent is liable under the Lease to pay his contribution of the cost of the Works insofar as those were properly claimed and are reasonable.

Section 20 Consultation Procedure

26. On 21 September 2006, Newham Homes served Notice of Intention to Enter Into a Qualifying Long Term Agreement. This Notice covered works to the Applicant's wider housing stock. The general nature of the works to be carried out was set out in detail and depending on whether the property was located in a tall block, low-rise block or was on the street. Written observations were sought by 21 October 2006.
27. On 10 October 2007, Newham Homes notified leaseholders of the Applicant's proposal to enter into Qualifying Long Term Agreements. Due to the scale of the works involved, public notice was required under European Procurement Regulations and therefore leaseholders were not entitled to nominate potential contractors. The Notice explained the tendering process undergone by Newham Homes. It continued:-
"Having completed a comprehensive competitive tendering and evaluation exercise, Newham Homes propose to enter into agreements with the following four contractors..."
Connaught was one of the 4 contractors there listed. It was confirmed that there was no connection between the contractors and Newham Homes or the London Borough of Newham. Again, the general nature of the works was explained and leaseholders were told that properties were being surveyed and there would be a further consultation at least 6 weeks before works were due to start. The tender submissions and pricing schedules were made available for inspection and written observations were sought by 9 November 2007.
28. On the same date, Notice was given of the proposal to enter into a Qualifying Long Term agreement for all the local authority's low rise

properties. The Notice included reference to the same 4 contractors, invited written observations and gave a figure for the estimated total expenditure of £60 million.

29. The Respondent and Mrs Akther purchased the Property on 4 June 2008.
30. On 24 December 2008, Newham Homes served a Notice specifically addressed to Mrs Akther and Mr Chowdhury of the intention to carry out the Works. The description of the Works is as set out above at paragraph 16. The Notice invited written observations by 23 January 2009. Leaseholders were invited to inspect the detailed proposals by appointment. The contribution of the Estate to the £60 million was here specified to be £283,079.70 including professional fees. The Respondent's estimated contribution was given as £17,868.82.
31. On 25 August 2009, Newham Homes served a Notice of its intention to carry out the additional works to renew the roof. The Notice was addressed to Mrs Akther and Mr Chowdhury as before. Mr Chowdhury did not dispute in evidence that he had received this notice but in spite of this he made no efforts to find out about the detail of the work nor did he made any written observations which were invited by 24 September 2009. The overall cost of the roof replacement works to the Estate was estimated at £46,286.45 including professional fees of which the Respondent's contribution was estimated at £2,921.74.
32. On 28 April 2010, Newham Homes served Notice under s20 Landlord and Tenant Act 1985. This was not an invoice but notified Ms Akther and Mr Chowdhury that the amount paid to the contractor at that date was £899,349.
33. Finally, on 7 September 2012, Newham Leasehold Services sent Ms Akther and Mr Chowdhury the final invoice with a breakdown of the Works. The invoice was in the sum of £19,822.41.
34. The Applicant's statement of case "strongly maintains" that the Respondent was sent copies of the consultation documents and that all the service charge demands had been sent in full compliance with s20 Landlord and Tenant Act 1985 as amended. By contrast, with the exception of the very short defence submitted to the County Court (paragraph 7 above), the Respondent submitted no evidence as to what he knew or did not know about the Works before those began. At the hearing, he stated that he did not know about the Works by any notice except the roof renewal variation work. It was pointed out to him that with the exception of the December 2009 Notice he would not have received those notices since he did not own the Property at the relevant times. He was adamant that his solicitors and vendor when he bought the Property had not told him of any major works which were proposed. However, this does not prove that the Notices were not

served since the lack of notification might just as easily be the fault of his solicitors or the vendor. Further, when it was pointed out to him that he should have received the December 2009 Notice, he did not assert that it had not been received and he accepted he had received the Notices relating to the roof renewal works which were addressed in exactly the same way. Nothing can be read into his lack of response to those Notices since that behaviour has characterised his attitude to the case as a whole and he did not respond either to the roof renewal works Notices. Mr Chowdhury also said that his neighbour had not known about the Works either but (contrary to the directions) he produced no signed statement to this effect and the Tribunal cannot give any weight to this bald, unsubstantiated, hearsay statement.

35. Copies of all the Notices and demands relied upon by the Applicant as addressed to Ms Akhter/Mr Chowdhury or their predecessors in title were produced to the Tribunal and the Tribunal is satisfied that the proper procedures were followed.

Reasonableness of costs of the Works

36. As noted above at paragraph 2, the cost of the Works as claimed from the Respondent has been reduced to the figure of £17,504.02. That is based on an overall figure for the Estate of £266,147.63. That total is broken down as follows:-

Concrete and brick repairs	£7,816.14
Roof renewal	£40,516
Replace asbestos soffit	NIL
Renew rainwater goods	£2,232
Window renewal	£21,642.74
Porch canopy repairs	£4,500
Communal decs, flooring & ext decs	£15,307.48
Balcony/walkway repairs	£15,072.50
Electrical and door entry	£89,512.52
Other minor building works	£2,285.00
Prelims, scaffold & building controls	£47,548.61
Overheads and profit	£19,714.64

The total of £266,147.63 is then divided by the rateable value of the Estate (4214) and multiplied by the rateable value of the Property (266) to give the Respondent's contribution of £16,800.02 to which is added management fee at 3% (£504) and a capped figure of £100 for IG9's fees and a further capped figure of £100 for Savills fees.

37. Those figures are to be compared to the estimates at the time of the s20 consultation exercise as follows:-

Concrete and brick repairs	£9,997.80
Roof renewal	NIL (later variation)

Replace asbestos soffit	£26,507.50
Renew rainwater goods	£2,794.50
Window renewal	£21,642.74
Porch canopy repairs	£8,870
Communal decs, flooring & ext decs	£15,307.48
Balcony/walkway repairs	£16,572.50
Electrical and door entry	£89,512.52
Other minor building works	£2,285.00
Prelims, scaffold & building controls	£54,298.61
Overheads and profit	£19,823.09

38. The final figures are also to be compared with the actual figures in the final account which were the basis of Mr Mills' analysis. Those are as follows:-

Concrete and brick repairs	£7,816.14
Roof renewal	£40,516
Replace asbestos soffit	NIL
Renew rainwater goods	£2,232
Window renewal	£21,882.74
Porch canopy repairs	£11,741.40
Communal decs, flooring & ext decs	£15,339.48
Balcony/walkway repairs	£15,072.50
Electrical and door entry	£89,513.32
Other minor building works	£2,295.00
Prelims, scaffold & building controls	£47,548.61
Overheads and profit	£20,316.58

39. They are then to be compared with the figures in the initial breakdown given by the Applicant when invoicing for the Works. Those are as follows:-

Concrete and brick repairs	£8,827.64
Roof renewal	£42,701.63
Replace asbestos soffit	£26,507.50
Renew rainwater goods	£2,794.50
Window renewal	£21,642.74
Porch canopy repairs	£4,500
Communal decs, flooring & ext decs	£15,307.48
Balcony/walkway repairs	£16,572.50
Electrical and door entry	£89,512.52
Other minor building works	£2,285.00
Prelims, scaffold & building controls	£47,548.61
Overheads and profit	£22,256.01

40. As explained at paragraph 8 above, Mr Mills who gave evidence about the cost of the Works was not someone involved in the carrying out of the Works. He had been brought in about 18 months ago to review the invoicing of the final account. He explained in evidence that although he was able to see some of the Works carried out to the Estate on site, it was not possible to see every item of work carried out due to the passage of the time and also that some of the work would have been covered up by other work. He had therefore worked on the basis that the final account agreed by IG9 with Connaught and signed off following a proper process set out the Works as actually carried out. However, when looking at the invoicing of the Works, there were discrepancies between the figures in the final account and the amounts claimed. He had therefore adjusted the figures to only those which he could substantiate from the final account when reaching the overall figures. He suspected that the differences were attributable to some items in the final account being included under a different heading in the final breakdown as invoiced (for example he thought it likely that the soffits etc which had no figure against them in the final account had been subsumed in that account under the heading for roof renewal and then separated out for the purposes of the invoice). However, since he could not substantiate that from the final account and had no access to the workings of IG9 or those who had prepared the breakdown for the invoice, he had simply included the lower of the figures for the final account or the breakdown provided earlier. That had led to the following adjustments:-

External works

The original contract figure was £9,997.80. The actual figure was £7,816.14. This was originally charged as £8,827.64. The reviewed figure was therefore included as £7,816.14. It was explained in a document in the Applicant's bundle that the account included for the removal of all vegetation, cleaning and repairing of brickwork and concrete to all external elevations. The final account was adjusted as a result of a re-measure of the actual quantities.

Pitched roof replacement

The AMP for the roof renewal variation was £40,516 and that was the figure in the final account. It appears from the document in the Applicant's bundle that the figure originally invoiced of £42,701.63 was due to further works being proposed which were included in the amount claimed in error since those were not later required. As a result, the final figure is the AMP of £40,516.

Replace asbestos soffit

The soffits and fascias were removed as a result of the roof being replaced. The cost was estimated as £26,507.50 and included at that figure in the invoice. However, although Mr Mills was able to establish that the fascias and soffits were replaced, he was unable to find any record of the material being tested and proven to be asbestos and in any

event suspected this item was included in the roof replacement figure. Since the figure was not in the final account under this heading, the cost was not included in the reviewed account.

Repairs to rainwater goods

Mr Mills' inspection on site ascertained that the gutters and rainwater goods which were planned to be replaced and were replaced had not been replaced completely in cast iron as originally planned (the bottom section was uPVC). The figure in the final account was therefore lower than the estimate and included in the reviewed invoice at that lower figure.

Mr Chowdhury did raise a complaint about the standard of the Works in this regard. He said that because of the canopy the contractor could not complete the pipe next to the canopy. As a result water had leaked into the wall and he had to call out the Council to repair it. He accepted that the problem had been remedied and he had not been asked to pay for it. He had however had to do some decorative work for which he had not been compensated and he had suffered some loss. Again, he produced no evidence of the cost of the additional work or any photographs of the damage caused. The earlier defect was remedied at the Applicant's own cost. The Tribunal does not therefore consider that any reduction is due for this item.

Windows

The replacement of windows under the original contract was estimated at £21,642.74. The final account highlighted that the actual cost was £21,882.74 due to a higher cost of glass for the window in the stairwell. The lower figure from the tender was included in the original invoice and was therefore used for the reviewed invoice figure.

Mr Mills further explained that 54 windows were planned for replacement and had been replaced. He said that the cost per window varied from £153-£500 per window. Mr Chowdhury focussed in particular on this element of the Works as he said that he had replaced 3 windows in the Property for £700. He did not produce an invoice or any photographs of the work done nor did he say who had done the work or to what standard the glazing was (except that it was double glazing). His simple point was that if 3 windows cost £700 to replace, the cost of replacing 54 windows on a comparable basis should be much lower. In view though of the lack of evidence about the cost or standard of the works done to the Property to replace the 3 windows and the evidence of Mr Mills that in fact some of the windows replaced would not have cost any more than Mr Chowdhury had paid (so that much depended on which windows had been replaced), the Tribunal does not accept that this item should be reduced as Mr Chowdhury suggested.

Porch canopy repairs and front entrance doors

The original estimate for the work to the porch canopy was £8780. This though was shown in the final account as £4500. Mr Mills' review of the account showed that works were undertaken to overhaul and

repair the front entrance doors but the cost does not appear in the invoice even though it was in the final account. The lower figure of £4500 as originally invoiced rather than the £11741.40 as in the final account was therefore included in the reviewed invoice.

Balcony and walkway repairs

The AMP for this item was £16,572.50 and this is what was included in the final invoice. Mr Mills from his review identified that the cost of scaffold for access to the chimney was erroneously included within this figure and has therefore been omitted as it is within the scaffold costs. The reviewed figure is therefore £15,072.50.

Communal decorations, flooring and external decorations

The sum invoiced was £15,307.48. Mr Mills' review identified that the cost from the final account should have been £15,339.48 but the amount originally invoiced has been included in the reviewed amount.

Electrical systems

This was an item which troubled the Tribunal due to the significant amount involved (£89,512.12). There did also appear to be some items which were internal to the flats and which would not therefore fall to be recovered within the service charge. Mr Mills explained that the scope of the works to the electrical systems had been significant. As a result of a full survey (which Mr Mills did admit he had not seen), it had been decided that the incoming mains and distribution system had reached the end of its life. Regulations had changed. There was therefore a complete rewiring to the system coming into the building which would go to the outside of each dwelling. There would have been some minor works to connect to the inside of each dwelling but all that could be seen now if Mr Mills had inspected (which he had not) would be some white trunking covering the wires. Mr Chowdhury did at first say that no such work had been done in the Property. However, on further questioning, he then appeared to say that there might be some white trunking which might not have been there before. He thought that his wife and son who were at home during the day when the Works were carried out would have told him if the electricity had been turned off to do these works but again there was a lack of evidence and he admitted that he would not have been at the Property during the day. The amount claimed under this heading is the same as the amount estimated in the original Notices to which no objection appears to have been taken and which was based on a competitive tender. The actual total in the final account was £89,513.32 (80p higher) and the lower amount has in any event been invoiced.

Minor building works

The original estimate and the amount invoiced was £2,285 but in fact the final account figure was £2,295. Only the lower figure has been included in the reviewed invoice.

Preliminaries, scaffold and building controls

This was also an area of focus for the Tribunal given the figure claimed which did seem to be high. Mr Mills gave evidence that the final account figure for the whole project was £934,000 of which £101,000 was for preliminaries. This was approximately 11%. In his professional experience these would usually be about 12-15% and he did not therefore consider the level to be unreasonable. He accepted that building controls would probably have been done by the Applicant's own inspectors. He also admitted that he had not asked to see the certificates for the work carried out.

Management fees

Mr Mills gave evidence that these were 3% for the cost of the Applicant's in house management of the Works. Project management had been done in house and would also include some cost of the consultation process. He considered this charge low when compared with other boroughs some of whom charge 10%.

In relation to the consultants' fees, these had been capped at £100 each per property. Mr Mills agreed that if IG9 had charged their full fees, he would consider that to be unreasonable but he considered the level as capped to be reasonable. He gave evidence that IG9's fees would have been £762 and Savills' fees £339 if apportioned according to rateable value for the Property.

41. Mr Mills came across as a credible and experienced witness. He acknowledged that if the Works had been done now then the costs would not be as high. He pointed out that the Works were carried out before the current recession and at a time when the market was overinflated by the fact that all local authorities were obliged to carry out works under the Decent Homes programme within a limited time period and all using a limited pool of contractors. In light of this, and having reviewed the detail of the final account, he did not consider the figures claimed to be unreasonable.
42. The Tribunal has not found this an easy case to determine due to the lack of any detailed evidence of the amounts claimed. This is in part due to the size of the contract. The Tribunal accepts that the Applicant could not have been expected to produce each and every invoice produced by the contractors and sub-contractors particularly where, as here, the Applicant did not know which specific items were challenged (and neither the Applicant nor the Tribunal were any the wiser in that regard by the end of the hearing). The Tribunal was informed of the difficulties experienced by the Applicant in producing documents which are in the hands of the contract administrator IG9 with whom relations appear to have deteriorated to such an extent that no cooperation can now be expected and others are in the hands of the main Contractor

Connaught who has since gone into administration. Newham Homes who were the overall project managers for the Works at the time were taken back in house by the local authority and those project managers involved with the Works have moved on.

43. Nonetheless it is noted that the Applicant has employed and paid for services provided by IG9 and Newham Homes and would expect the Applicant to have received all necessary paperwork prior to payment. The Tribunal would have been assisted by seeing a copy of the final account as signed off and the tender documents. However, unusually in this case, an independent surveyor has carried out a review of the tenders, final account and following a site visit has produced schedules to show the differences between the various figures and has explained those differences. Further, the contract for the Works was subject to a competitive tendering exercise (with which the Tribunal has accepted the Applicant fully complied) and Mr Mills gave evidence that the sign off of the final account appeared to have been properly carried out. Mr Mills also pointed out that such differences as there were between the various figures had been resolved to the benefit of the leaseholders in every instance and this was not because the Works had not been carried out but due to an inability to substantiate the figures. Mr Mills also pointed out that the tender for the overall project had been £978,604 whereas the final account had been £934,081.53 so there did not appear to have been any overcharging. Furthermore, although he was critical of IG9's record keeping (where he had any access to it), he advised that the contract had been subject to very few variations which was generally a sign that the contract had been quite well run.
44. For all of the above reasons, the Tribunal determines that the cost of the Works is reasonable and that the amount payable by the Respondent in respect of the service charges for the Works is £17,504.02.

Application under s.20C and refund of fees

45. The Applicant did not make an application for a refund of the fees that it had paid in respect of the application/ hearing¹. Mr Green explained that the Applicant was content to have legal costs determined by the County Court.
46. No application was made by the Respondent for an order under section 20C of the 1985 Act. In any event, in light of the above decision, the Tribunal would not have made the order.

The next steps

47. The Tribunal has no jurisdiction over county court costs or interest. This matter should now be returned to the Bow County Court.

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Name: Ms L Smith

Date: 9 December 2013

Appendix 1

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,

- (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the

- proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Appendix 2

Relevant Clauses of the Lease

(1) Unless the context otherwise requires the following expressions bear the meaning assigned to them as follows:-

“the demised premises” ALL THAT the SECOND AND THIRD floor flat known as Number 102 ANNE STREET PLAISTOW LONDON E13 8BY in the London Borough of Newham and shown edged red on the plan annexed hereto and numbered 2 which demise shall include the surface covering of the walls the glass in the windows ceilings and floors of the said premises (and one half part of the structure between the floors of the said premises and the ceilings of the premises below it) (and one half part of the structure between the ceilings of the said premises and the floors of the premises above it)

“the Estate” The freehold property shown edged blue on the plan annexed hereto and numbered 1

“the Block” The block of flats in which the demised premises is situate forming part of the Estate

“the Common Parts” The Estate excluding the Block and any other block of flats forming part of the Estate.

Clause 5

THE Lessee hereby covenants with the Corporation that the Lessee and all persons deriving title under the Lessee will throughout the said term hereby granted:

- (1) Pay the said rents at the times and in manner aforesaid without any deduction
- (2) Pay to the Corporation without any deduction by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the Corporation in the repair maintenance renewal and insurance of the Estate and the provision of services therein and of improvements thereto insofar as the expenses and outgoings incurred in respect of such improvements are reasonable and the other heads of expenditure as the same are set out in the Third Schedule hereto such further and additional rent (hereinafter called “the service charge”) being subject to the following term and provisions:
 - (a) the amount of the service charge shall be ascertained and certified by a certificate (hereinafter called “the Certificate”) signed by the Corporation’s Director of Finance or such other person authorized by him annually and so soon after the end of the Corporation’s financial year as may be practicable and shall relate to such year in manner hereinafter mentioned;

(b) The expression “the Corporation’s financial year” shall mean the period from the 1st April to the 31st March in each year or such other annual period as the Corporation may in its discretion from time to time determine as being that in which the account of the Corporation either generally or relating to the Estate shall be made up;

(c) A copy of the Certificate for each such financial year shall be supplied by the Corporation to the Lessee on written request and without charge to the Lessee;

(d) The Certificate shall contain a summary of the Corporation’s said expenses and outgoings incurred by the Corporation during the Corporation’s financial year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge and the Certificate (or a copy thereof duly certified by the person by whom the same was given) shall be conclusive evidence for the purposes hereof of the matters which it purports to certify;

(e) the annual amount of the service charge payable by the Lessee as aforesaid shall be calculated as follows:-

(i) In respect of the Block by dividing the aggregate of the said expenses and outgoings incurred by the Corporation on the Block in the year to which the Certificate relates by the rateable value (but excluding any non residential premises within the Block) of the Block and then multiplying the resultant amount by the rateable value (in force at the same date) of the demised premises and

(ii) In respect of the Common Parts by dividing the aggregate of the said expenses and outgoings by the Corporation on the Common Parts in the year to which the Certificate relates by the rateable value (excluding any non residential premises within the Estate) of the Estate and then multiplying the resultant amount by the rateable value (in force at the same date) of the demised premises

PROVIDED that the Corporation may calculate the amount of service charge payable in respect of the demised premises in such reasonable alternative manner as they shall select in the case of rateable values for the Estate or the demised premises not being available PROVIDED further however that expenses attributable solely to the demised premises shall be payable by the Lessee and shall be shown separately in the Certificate;

(f) The expression “the expenses and outgoings incurred by the Corporation” as hereinbefore used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which have been actually disbursed incurred or made by the Corporation during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described whenever disbursed incurred or made and whether prior to the commencement of the said term or otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Corporation may in their

discretion allocate to the year in question as being fair and reasonable in the circumstances;

(g) The Lessee shall if required by the Corporation pay to the Corporation on the first April in every year such sum in advance and on account of the service charge as the Corporation shall specify at their discretion to be a fair and reasonable interim payment;

(h) As soon as practicable after the signature of the Certificate the Corporation shall furnish to the Lessee an account of the service charge payable by the Lessee for the year in question due credit being given therein for all interim payments made by the Lessee in respect of the said year and upon the furnishing of such account showing such adjustment as may be appropriate there shall be paid by the Lessee to the Corporation the amount of the service charge as aforesaid or any balance found payable or there shall be allowed by the Corporation to the Lessee any amount which may have been overpaid by the Lessee by way of interim payment as the case may require;...

(5) Repair and keep the interior of the demised premises and all landlords fixtures and fittings therein interior plaster work tiling and other conduits within the demised premises which exclusively serve the demised premises and whether or not below the surface of floors walls and ceilings and the exterior door and all appurtenances in upon and belonging to or enjoyed with the demised premises properly cleaned and in good and tenantable repair and condition excluding only any damage caused by any risk covered by any insurance effected pursuant to Clause 6(2) hereof unless the insurance money under any such policy shall by reason of any act or default of the Lessee become wholly or partially irrecoverable

(7) Replace or repay to the Corporation the cost of replacing windows or glass cracked or broken in the demised premises during the term hereby granted

(9) Not at any time during the said term without the consent of the Corporation to make or permit or suffer to be made any alteration in the demised premises nor to cut maim or injure or permit or suffer to be cut maimed or injured any of the walls or timbers thereof

Clause 7

THE CORPORATION HEREBY FURTHER CONVENANTS WITH THE LESSEE as follows:

(1) Subject to the payment by the Lessee of the rents and the service charge to maintain repair redecorate renew amend clean repoint paint grain varnish whiten and colour and make fair and reasonable improvements to:

(a) the structure of the Estate and every part thereof and in particular without prejudice to the generality thereof the roofs foundations external and internal walls (but not the interior faces of such parts of external or internal walls as bound the demised premises) and timbers (including the timber joists

and beams of the floors and ceilings thereof) window frames chimney stacks gutters and rainwater and soil pipes thereof

(b) the sewers drains channels watercourses gas and water pipes electric cables and wires and supply lines in under and upon the Estate...

(d) ...and the passages landing and staircases and other parts of the estate enjoyed or used by the Lessee in common with others; and

(e) the boundary walls and fences of and in the curtilage of the Estate

THE THIRD SCHEDULE

(Costs expenses outgoings and matters in respect of which the Lessee is to contribute)

1. Subject to the provisions of Part III of the Sixth Schedule to the Housing Act 1985 the expense of maintaining repairing redecorating renewing amending cleaning repointing painting graining varnishing whitening or colouring the Estate and all parts thereof and of improvements thereto insofar as the expenses and outgoings incurred in respect of such improvements are reasonable and all the appurtenances apparatus and other things thereto belonging and more particularly described in clause 7(1) hereof

.....

6. The cost of decorating and lighting the passages landings staircases and other parts of the Estate enjoyed or used by the Lessee in common with others and of keeping the other parts of the Estate used by the Lessee in common as aforesaid and not otherwise specifically referred to in this Schedule in good repair and condition.....

7. The upkeep of the gardens forecourts roadways pathways and rides used in connection with the Estate

8. The cost incurred by the Corporation in management of the Estate