



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

**Case reference** : LON/00AJ/LSC/2018/0335

**Property** : 170 Gloucester Court, London W7 1QA  
136 Dorset Court, London W7 1PY  
153 Glamorgan Court, London W7 1PZ

**Applicants** : Humayun Kabir Khan  
Shirin Khan  
Russell Navid Khan  
Faisal Khan

**Representatives** : Humayun Kabir Khan (“Mr Khan”)

**Respondent:** : The London Borough of Ealing

**Representative** : Helen Harris, Solicitor for the Council

**Type of application** : Liability to pay service charges

**Tribunal members** : Judge Angus Andrew  
Stephen Manson BSc FRICS FCI Arb  
Alan Ring

**Date and venue of hearing** : 3 December 2018  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 19 December 2018

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**DECISIONS**

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## **Decisions**

1. The applicants are liable to pay in full the service charges demanded from them on 13 February 2018 in respect of the Copley Close Estate major work scheme reference 4269 (Phase 2).
2. Apart from any costs incurred in Mr Neunie's attendance at the hearing Ealing may not recover the cost of these proceedings either as a service charge or as an administration charge.
3. We decline to order Ealing to reimburse the applicants with the Tribunal fees of £300 paid by them.

## **The application, directions and hearing**

4. By an application dated 6 September 2018 the applicants applied under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of their liability to pay a service charge in respect of the costs incurred in connection with a major works project at the Copley Close Estate. The application form also included applications under section 20C of the 1985 Act and under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). By those additional applications the applicants sought to limit Ealing's ability to recover the costs of these proceedings either through the service charge or as an administration charge under the terms of their leases.
5. The parties were given notice of a case management hearing on 25 September 2018. Ealing did not attend the case management hearing. In their absence Judge Nicol issued directions that required Ealing to respond to the applicants' case by 19 October 2018. The directions included a requirement that Ealing send to the applicants a statement of any proposed witnesses of fact who would attend the hearing. A copy of the directions was sent to Ealing on 25 September 2018. Ealing did not comply with the directions. At the hearing we were told that Ealing had not received either notice of the case management hearing or the directions. We find that surprising given that they were sent to the correct document exchange address.
6. On 2 November 2018 Ealing sent a response to the applicants' statement of case. The response amounted to a simple denial of the applicants' case and it was not accompanied by any witness statements or indeed any documents upon which Ealing relied.
7. On 28 November 2018 Ealing sent an e-mail to the Tribunal to which was attached their response and a limited number of other documents. On the morning of the hearing the Tribunal received a substantial bundle of documents from Ealing that, in breach of Judge Nicol's directions, was not paginated. For the sake of completeness, we would add that Mr Khan had prepared his own bundle of documents and had sent copies to the Tribunal on 9 November 2018.

8. At the hearing Mr Khan represented all the applicants. He is the husband of Shirin Khan and father of Russell Khan and Faisal Khan. Between them they own the three flats that are the subject of these proceedings.
9. Ealing was represented by Joseph Kitenge and Yemi Onabanjo who are both legal officers. They told us that Preston Neunie had been the project manager for the major works project and they were expecting him to attend the hearing to give evidence. When we asked why Mr Neunie had not given a witness statement and why he was late Mr Onabanjo told us that it was only on the previous day that he had managed to identify Mr Neunie as the project manager.
10. At the hearing we described Ealing's case preparation as "a shambles" and we can find no reason to change that description. Mr Onabanjo requested an adjournment to enable Ealing to properly prepare its case. The request was opposed by Mr Khan who said that he had prepared his case as best as he could and after waiting over four years for the final account he wanted the hearing to proceed.
11. After conferring we explained to Mr Khan that if the hearing did proceed we would take oral evidence from Mr Neunie because he was the only person who could explain the major works project in any detail. We warned Mr Khan that he might be disadvantaged by Mr Neunie's oral evidence. We offered him an adjournment so that he would have the opportunity both to consider a detailed witness statement from Mr Neunie and also a number of other documents that would normally be disclosed in a case such as this, including a stock condition report and any priced specification. Mr Khan is a property professional and he rejected our offer repeating that he would prefer the hearing to proceed. Consequently, we heard oral evidence from both Mr Khan and Mr Neunie, who supplemented his oral evidence with a number of photographs on his mobile phone.

## **Background**

12. The Copley Close estate comprises five similar if not identical blocks of 20 flats including Gloucester Court, Dorset Court and Glamorgan Court. In total therefore the estate comprises 100 flats. The buildings date from the early 1970s.
13. On 5 April 2013 Ealing gave notice of its intention to carry out major works to the Copley Close Estate. The notice describes the works as follows:

*"Renewals of windows and doors, renewal of roof, installation of Juliette Balconies, installation of lightning conductor, removal of asbestos, repair of brickwork and concrete, redecorations of communal areas, installation of rain water goods, repairs and cleanse of communal areas and works to plant and tank rooms."*
14. Ealing proposed to let contracts to three contractors. The first related to the "Windows and Doors". The contract was subject to consultation and competitive tender and was awarded to Bowater Building Products Ltd. The second contract related to the "Roof, Windows, Balconies, Asbestos, et al" and was let to Quinn

London Ltd on the basis of a schedule of rates drawn from a framework agreement. The third contract related to “Cold Water Tanks and Radiators” and was let to T Brown Group Ltd again under a schedule of rates drawn from a framework agreement. Both framework agreements had themselves been subject to consultation and competitive tender.

15. Mr Neunie told us that some of the work undertaken by both Quinn London Ltd and T Brown Group Ltd was subcontracted to specialist contractors. This included the construction of the roof ladders and roof access covers referred to below. This subcontracted work was itself subject to a process of competitive tender. The main contractor obtained three estimates from specialist sub-contractors and these were submitted to Ealing who chose the lowest estimate.
16. For the each of the five blocks of flats the estimated block cost was £1,668,588.05. The leases of all three flats are in similar form and the service charge contributions are calculated by reference to the relative rateable values in the block (presumably at the date when they last appeared in the rating list). The percentage contribution of each of the three flats is slightly different being 1% for 170 Gloucester Court, 0.90% for 136 Dorset Court and 1.04% for 153 Glamorgan Court. Including an estimated 5% management fee the estimated contributions were £17,433.01 (170 Gloucester Court), £15,689.71 (136 Dorset Court) and £18,304.66 (153 Glamorgan Court).
17. The work was completed during late 2013 and early 2014. For reasons that were not satisfactorily explained the final account was not agreed for the better part of four years. Ealing’s bundle includes copies of section 20B notices dated 19 September 2014 that put the total contract cost at £1,995,611.01 per block.
18. On 13 February 2018 Ealing sent the invoices for the major works to the applicants. The invoices were for £18,314.91 (170 Gloucester Court), £16,483.42 (136 Dorset Court) and £19,230.65 (153 Glamorgan Court). The invoices were accompanied by a statement of final costs together with a summary of the final account. The total cost for each block, excluding the 5% management charge, was £1,752,998.82.

### **Issues in dispute**

19. Mr Khan had prepared a helpful table itemising the cost of the works in the final account that he disputed. Although the table related only to 153 Glamorgan Court he made identical challenges to the other 2 block costs. The table also included his assessment of a reasonable cost. The disputed rechargeable block costs in respect of 153 Glamorgan Court were as follows:

Roof ladder - £13,437.50

Roof access cover and internal lining £9,078.38

Pitched roofs, flashing and gutters £125,799.66

Langley roof covering £202,740.50

Polycarbonate glazed roof £31,846.88

Asbestos removal £63,345.45

Scaffolding £133,031.25

Preliminaries £160,722.76

20. In answer to our questions Mr Khan said that he had no issues regarding the consultation process although he could not recall receiving the section 20B notices. In addition, he queried whether the roof works were necessary because the roofs had been replaced in 2002. He told us that he had requested access to inspect the roofs but Ealing had never responded to his requests and this was confirmed by the e-mails contained in his bundle.
21. Finally, Mr Khan asked us to award compensation of £4,000 in respect of damage to the central heating systems in two of the flats. Ealing had disconnected the pipework when installing the Juliette balconies. When they reconnected, the pipework they failed to flush out the system and introduce an inhibitor to prevent internal rusting. Although he did not put in these terms he was in effect pursuing a counter claim against Ealing for the asserted damage to the central heating systems.

### **Reasons for our decisions**

22. This was a substantial project comprising many different elements. The total estate cost of the work, including the management fees, was not far short of £9,000,000. With such a project there will always be elements that could be undertaken more cheaply if contracted separately. In considering the reasonableness of the costs incurred by Ealing one must have regard to both the totality of the contracted work and the total cost incurred.
23. Ultimately all the work was subject to both consultation and price competition. Where the work was completed under a schedule of rates drawn from a framework agreement that agreement had been subject to both consultation and price competition. Indeed, Mr Khan in his opening remarks acknowledged that the work had greatly improved the estate and he thanked Mr Neunie for his contribution.
24. Mr Neunie's evidence was that the cost had been tightly controlled because the work had to be completed within a fixed budget. In that context we note that the cost overrun was less than 5%. For a project of this type and size that is not inherently unreasonable. In short, when the work is considered as a whole we are satisfied and find that the total cost incurred by Ealing was reasonable.
25. That said we now consider Mr Khan's challenges to the individual items.

### Roof ladder

26. The block cost of this item was £13,437.50. Mr Khan said that he could purchase a high-end commercial roof ladder for £849.60 and that with labour the total cost should not exceed £1,750.
27. Having heard Mr Neunie's evidence and looked at his photographs it is apparent that the roofs to the five blocks are complex structures comprising three components: a polycarbonate glazed sloping roof that provides light to the common stairwells, a sloping tiled roof and finally a flat roof that "zig-zags" between the other two structures. The roof ladders were purpose built "up and over" ladders with safety hand-rails to provide a safe means of traversing the polycarbonate glazed roofs. The ladders were not the simple structures that Mr Khan had anticipated and we are satisfied that the cost was reasonable.

### Roof access cover and internal lining

28. The block cost of the roof access covers was £9,078.38. The point is similar to the previous ones. Mr Khan anticipated that the access covers were simple roof hatches that could have been supplied at considerably lower costs. They were however more complicated than that. Mr Neunie's evidence was that lead flashings had been stolen from the roofs (although the cost had not been recharged to the lessees) and the thieves had gained entry through the old roof hatches. To prevent a recurrence secure stainless-steel access covers had been constructed with hydraulic arms to hold them open when access to the roof was required. As previously observed the constructions of both the roof ladders and the access covers had been put out to competitive tender and we are satisfied that the cost was reasonable.

### Pitched roofs, flashing and gutters; Langley roof covering and Polycarbonate glazed roofs

29. The block costs for each of these three items was £125,799.66, £202,740.50 and £31,846.88 respectively. Mr Khan's main concern was that his requests to inspect the roofs both before and after the work had been completed were ignored. In answer to our questions he said that he "*didn't really know what was done up there*".
30. Mr Neunie's evidence was that all the lead flashings had been replaced (although the cost of that work not been passed on to lessees), the internally run rainwater down pipes had been replaced by external pipes, damaged tiles on the sloping roof had been replaced, new safety rails had been installed around the roof area and the polycarbonate glazed roofs had been replaced. In addition, the Langley roof covering had been laid over the flat roofs both to increase their thermal resistance and to comply with current Building Regulations. In short only one of the three roof components had been replaced: the rest of the work consisted of repairs and renewals.

31. Having heard this explanation Mr Khan accepted that the work was considerably more involved than he had appreciated. He still considered the cost to be too high although he was unable to say by how much.
32. Again, we note that all the work had been subject to consultation and price competition. Equally we accept Mr Neunie's evidence that only essential work was completed not least because of budgetary constraints. Having regard to the scope of the work we are satisfied that the cost was reasonably incurred.

#### Asbestos removal

33. The block cost of the asbestos removal was £63,345.45. Mr Khan's main concern was that he was unaware of any asbestos in any of the blocks. Mr Neunie's evidence was that below each window was an asbestos panel of a type commonly found in blocks of flats built in the 1960s and 1970s. His evidence was supported by a photograph at page A82 of Mr Khan's bundle. Mr Khan said that each flat had about five windows and Mr Neunie's evidence was that all the panels had to be replaced. In addition, the linings in the ventilation ducts were asbestos and they too were replaced as part of the project.
34. Having heard this evidence Mr Khan's accepted that he had perhaps underestimated the scale of the work but he nevertheless still considered that the cost was too high although he was again unable to say what might have been a reasonable cost.
35. Again, we note that all the work had been subject to consultation and price competition. Having regard to the scope of the work we are satisfied that the cost was reasonably incurred.

#### Scaffolding

36. The block cost was £133,031.25. Again, Mr Khan considered that this cost was too high and said that it should have been no more than £400 per flat rather than the £1,389.88 charged. Mr Neunie's evidence was that the scaffolding was more complicated than usually required because of the differing heights of the roof components and in particular the polycarbonate glazed sloping roofs. The roof structures had involved substantial additional scaffolding that would not normally be required with a more conventional block of flats. Mr Neunie also explained that the scaffolding costs were drawn from the schedule of rates in one of the framework agreements that, as pointed out above, had been subject to both consultation and price competition.
37. Having heard this explanation Mr Khan accepted that he had underestimated the cost of the scaffolding but he still considered that the actual cost was still too high although again he could not say by how much. He concluded by saying that he would leave the matter to us.

38. For each and all of the reasons given above we are satisfied that the cost was reasonably incurred.

#### Preliminaries

39. The rechargeable block cost of the preliminaries was £160,722.76, which equated to about 9% of the total cost. Mr Khan considered that the cost was excessive and he suggested that no more than 5% of the total cost should be allowed for preliminaries.

40. However, it was again apparent that Mr Khan did not appreciate the full extent of the items covered under this head. Mr Neunie explained that it included employee welfare, site toilets, health and safety provision, head office costs, site office costs, quantity surveyor's costs, site manager's costs, the costs of two resident liaison officers and waste removal costs. His evidence, which we accept on the basis of our own experience, was that whilst 5% might be reasonable for the renovation of a simple street property preliminaries for complex work such as this can "*go as high as 18%*". Mr Neunie again pointed out that the preliminaries had been taken from a schedule of rates in one of the framework agreements.

41. Again, and for each and all of the reasons given above we are satisfied that the preliminary cost were reasonably incurred.

#### Section 20B notices

42. Mr Khan's evidence was that he could not recall receiving the section 20B notices and he could not find them amongst his papers. Copies were included in Ealing's late bundle and Mr Khan agreed that they were correctly addressed. The notices were sent a little over 4 years ago and it is perhaps unsurprising that Mr Khan could not now recall receiving them. We are satisfied and find that it is more likely than not that the notices were sent and received by the applicants. Consequently, we reject this challenge that was at best half-hearted.

#### The necessity of completing the roof work

43. The roof was replaced in 2002 and Mr Khan questioned the necessity of completing such extensive work after a period of only 12 years. Mr Khan's objection stemmed largely from a belief that the whole roof structure had been replaced. As described above that was not the case. Only one element of the roof had been replaced: the polycarbonate glazed sloping roofs. Mr Neunie's evidence was that the work was necessary and we can find no reason to doubt that evidence.

#### Compensation claim

44. The works were completed in 2013 and early 2014. Mr Khan's claim is based on a British Gas inspection of one of the central heating systems on 14 November 2014.



The engineers commented: "*First visit failed for now. Quoted to upgrade system. Power + flush then can come onto contract*".

45. Apart from any other consideration Mr Khan's produced no evidence to substantiate his claim of £4,000 that was simply plucked out of the air. There was no evidence to support his assertion that the lack of an inhibitor for a period of what could only have been a few months caused any permanent damage to the radiators or the boilers. With respect to Mr Khan his claim is simply not made out and we reject it.

#### Costs and Fees

46. Mr Onabanjo said that although Ealing does not seek cost recovery from resident lessees it does seek recovery from lessees who do not live in their flats. For that reason and despite his acknowledgement that Ealing's case preparation had been inadequate he was unable to say that Ealing would not seek to recover its costs either through the service charge or as an administration charge.

47. Although section 20C confers a wide discretion it is unusual to limit the recovery of a landlord's cost where, as in this case, it has been wholly successful in the proceedings. In *The Tenants of Langford Court v Doren Ltd* [LRX/37/2000] HH Judge Rich QC suggested that section 20C could be used as a short cut to avoid a later application under section 19 of the 1985 Act. In making that observation he noted that the Tribunal that heard the original dispute is in better position to assess the reasonableness of the landlord's costs. We see no reason why such an approach should not also be adopted when considering a paragraph 5A application.

48. As noted above Ealing's case preparation was "*a shambles*". From the perspective of a competent litigation solicitor the work undertaken was of such poor quality that it had no value and did not justify payment of a fee. Furthermore, if either full disclosure had been given to Mr Khan in accordance with the directions or if he had been allowed to inspect the roofs it is likely that at least at some of his challenges would have been withdrawn.

49. Therefore, and with one exemption we are satisfied that it is appropriate to make an order preventing Ealing from recovering its costs incurred in these proceedings either as a service charge or an administration charge: the exception being any costs incurred in Mr Neunie's attendance before the Tribunal. We make no criticism of Mr Neunie who attended the hearing as soon as he was told about it and who was both courteous and helpful throughout.

50. Finally, we turn to the Tribunal fees. The applicants having been wholly unsuccessful we can see no reason to order their reimbursement by Ealing and we decline to do so.

**Name: Angus Andrew**

**Date: 19 December 2018**

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).