FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/000KA/LSC/2020/0047**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE A: BTMMREMOTE**
Property	**:**	**Flat 7, York House, 17 – 19 Park Street West, Luton, Beds LU1 3BE**
Applicants	**:**	**Jibowu Olubokun and Eunice Olubokun**
Representative	**:**	**In person**
Respondent	**:**	**G R Management Property Limited**
Representative	**:**	**Mr P F Gunby MRICS of B Bailey & C Ltd**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Dutton** **Miss M Krisko BSc (Econ) FRICS**
Venue	**:**	**Video/telephone hearing on 13 May 2021**
Date of decision	**:**	**18 May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio/video hearing which has been consented to by the parties. The form of remote hearing was both by video and telephone. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle of 284 pages, the contents of which we have noted. The order made is described below.

Decisions of the tribunal

(1) The tribunal determines that the sum of £10,146.09 is payable by the Applicants in respect of the major works as set out in an application for payment dated 24 April 2020 for payment on 29 September 2020.

(2) The tribunal makes the determinations as set out under the various headings in this Decision.

(3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 (the Act).

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to their liability to pay the sum of £10,146.09 in respect of major work to the property at York House, 17 – 19 Park Street West, Luton LU1 3BE (the Property) in which they are the leaseholders of flat 7 (the Flat)

The hearing

2. The Applicants appeared in person and the Respondent was represented by Mr Peter Gunby, a chartered surveyor and director in B Bailey & Co. Limited. We had hoped to conduct the hearing by video but unfortunately neither party was able to gain access to the video system and accordingly we continued with both giving their evidence and submissions by telephone.

3. At the start of the hearing we were able to establish the identity of the Respondent, it being in some doubt. We were told that the shareholding in the Respondent had been transferred to 8 leaseholders, not including the Applicants and was now under their control. The new directors had retained the services of Mr Gunby and his firm who had been directly involved in the specification, tendering and consultation under s20 of the Act for major works at the Property.

4. The major works involved, amongst other matters, internal and external decoration, electrical upgrade, some fire prevention works, works to the rear extension (the Extension) and perhaps most importantly extensive works to the basement to eradicate spreading dry rot.

5. These works were set out in a specification at page 102 in the bundle, which was, we were told, annexed to the Initial Notice sent under the consultation process by letter dated 12 August 2019. With that Initial Notice we were told copies of the Fire Risk Assessment was included. Stage two of the process was undertaken on 3 March 2020 when details of the dry rot were supplied in the form of a report from Dampcoursing Limited, with estimated costs. The final stage in which the details of the sums claimed were provided was by email dated 24 April 2020, which included the demand dated the same day, due for payment on 29 September 2020.

The background

6. The Flat, which is the subject of this application is a one bedroomed property in the converted/extended the Property, containing 14 flats.

7. As a result of the pandemic, we did not inspect the Property. However, we were supplied with some photographs, of poor quality admittedly, but with the plans to the lease, which had been coloured we were able to determine the extent of the Property.

8. The Applicants hold a long lease of the Flat which 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 and will be referred to below, where appropriate.

The issues

9. At the start of the hearing the relevant issues for determination were set out on a form of Scott Schedule at pages 84 – 86 of the bundle. This constituted the Applicants' statement of case, there being no other statement from them. The issues raised were:

   (i) The lessees contribution under the lease; which the Applicants say is too high when compared with the other leaseholders percentage contributions

   (ii) The professional fees of B Bailey & Co Ltd (BB)

   (iii) The consultation fees of BB

   (iv) The contingency fund said to be too high at a total of £22,000

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The Percentage contributions

11. The lease, dated 6 May 2010 for a term of 99 years from 29 January 2020, provides at paragraph 1 of the Third Schedule the definition of the 'tenant's proportion'. This says that "*in relation to the services in the Fourth Schedule is a fair and reasonable proportion determined by the Landlord of the Service Costs",* which are defined in this paragraph.

12. We were told by Mr Olubokun that he and his wife were unhappy with the percentage share, 7.168459%, attributed to the Flat, which was a one bedroomed property. At page 254 of the bundle was a list of the gross internal floor areas (GIA) of each flat in the Property and it recorded that for the Flat this was 40 m². By reference to the overall square meterage of the Property (558) the share attributable to the Flat was 7.168459%.

13. Mr Gunby told us that the floor area had been obtained from the original developer and cross checked against Energy Performance Certificates (EPC) for 12 of the 14 flats, copies of which we had in the bundle behind Tab E.

14. In addition to the percentage point the Applicants asked why they were being asked to contribute to, in particular the Extension. We ascertained by reviewing the lease and the plans annexed thereto and discussions with the parties that the Extension was in place when the leases were granted in 2010 and formed what is described as the Building. It seems that the Applicants did not inspect the totality of the Estate, just the flat they wished to buy. Further, it would appear that they only had a mortgage valuation survey conducted on their behalf.

15. The lease plan clearly shows the Extension in situ and close examination of the site plan on page 61 of the bundle appears to contain a reference to the size of flat 7 as being circa 38.3 sq m, close to 40 sq m used for the apportionment. It is clear therefore and we find that the Lease provides for the Applicants to contribute to the costs of repairing, maintaining renewing and cleaning the Building, which includes the Extension, as set out in clause 2 of the Fourth Schedule and indeed the other matters set out in that schedule.

The tribunal's decision

16. We find that the percentage attributable for the Flat is reasonable and complies with the term of the Lease.

Reasons for the tribunal's decision

17. The Applicants could not provide any evidence to contradict the measurements put to us by Mr Gunby, who acted as expert, his report dated 15 February 2021 at pages 89 - 97 of the bundle, containing the usual independent expert certification. We accept his evidence on the measurements given to him by the developer, which are consistent with the measurements in the EPC for each flat, where provided. The use of the GIA is, in our finding, a reasonable way of apportioning the costs between leaseholders at the Property.

The Professional and consultation fee of BB

18. We will deal with these as one item. The professional fees are set out at page 74 of the bundle, being the Schedule of Estimates. These show professional fees of £11,457.57, plus VAT.

19. We were told by Mr Gunby that of these costs the sum of £10,557.57 was based on a fee equating to 10% of the costs of the works. For this fee he would be overseeing the works, processing interim payments completing a health and safety file and arranging for all guarantees to be obtained. He would also prepare a PDF document with all the necessary information for the leaseholders. In addition, as overseeing surveyor he was responsible for ensuring the works were properly completed and that all insurance issues were dealt with. He also considered that a 10% fee was the industry norm. The additional fees of £450 for drawing up the specification and the Construction, design and management of the works (CDM) reflected the time spent, including travel.

20. As to the Consultation the fees were self-explanatory. There were 14 notices to send out, with accompanying documentation and he felt £20 per flat was a reasonable charge.

21. Mr Olubokun said he did not remember getting the first Notice but did recall, he thought, that he received the others. He confirmed that he had not raised specific objections but had been in contact with BB and had spoken to Mr Gunby, who had suggested that he liaise with other leaseholders, but that did not happen. He told us that if the cost to him and his wife was only £5,000 they would not have commenced these proceedings.

The tribunal's decision

22. The tribunal determines that the amount payable in respect of the fees for preparing the works and overseeing the works of £10,577.57 with the additional costs for the specification and CDM of £450 for each, is a reasonable sum. It is a pretty standard for a charge of 10% for the overseeing works and the charges of £450 for drawing up the specification, which were told took at least two hours plus travel and the CDM provision is, we find, reasonable.

Reasons for the tribunal's decision

23. Mr Gunby outlined his responsibilities as the overseeing surveyor and the extra work he would be required to undertake to fulfil that role. We accept, based on our knowledge and experience, that a charge of 10% of the contract price is standard. The other charges for the specification and the Construction design and management (CDM) of the project are acceptable and essential.

24. In truth they were not seriously challenged by the Applicants, their concern being aimed at the overall cost to them.

Contingency

25. The Applicants' comment on this element was that it was on the high side.

26. In response Mr Gunby confirmed that the usual contingency would be 10% of the cost, in this case an allowance of £10,000 was made. However, the presence of substantial dry rot meant that, in his view, an additional contingency would be required, and he considered that £12,000 was reasonable. He said that in his many years of experience he had never seen such extensive dry rot. The estimate given by Dampcoursing Limited is from 2018. Since that time the dry rot has spread. We were provided with some photographs showing the extent of the dry rot in the basement. He told us that it had spread to other parts of the building apart from the basement and that there was a pressing need to eradicate this problem, and to treat the areas at least one metre beyond its noticeable limit.

27. He was of the view that the contingency would be sufficient to cover any extra work which had arising since the quote in 2018

The tribunal's decision

28. We accept all that was said by Mr Gunby. The contingency is just that and if it is not required will be credited back to the leaseholders. The extent of the problem with the dry rot is, at present, not fully known and will likely have spread beyond that which Dampcoursing provided for in their estimate. It makes sense to be cautious and allow for sufficient sums to treat this problem in one hit and not have to stop to reconsult if the costs go beyond the amounts allowed under s20 of the Act.

Reasons for the tribunal's decision

29. A contingency is normal in a contract of this size and nature. What makes this different is the extensive dry rot problem and how far that may have

spread. We were told that cabling in the basement would need to be removed from the walls and treated and that the work to eradicate the rot would be extensive. The estimate is now quite old and no doubt will need to be reviewed in the light of the continued spread of the rot.

30. In those circumstances we accept that the contingency sums are reasonable.

Application under s.20C

31. In the application form and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act. The Applicants complaint was that the costs are generally high, given that their property is a one bedroomed flat bought for investment purposes. Mr Olubokun told us that his wife was retired and that the Flat was part of their pension pot. He asked us to review in the light of the pandemic and the impact that had had. Whilst we have sympathy with the Applicants and indeed Mr Gunby said that for owner occupiers that was a repayment programme, the Lease is the contract between the parties. The terms of the Lease are clear. Further it does not seem to be argued by the Applicants that the work is not required or that the overall costs were too high.

32. Only four specific items were challenged, which we have dealt with. Under "Other Comments" the evidence we received was that the three consultation stages were followed, and evidence of posting was included in the bundle. The only stage that the Applicants queried was the Initial Consultation, but we accept Mr Gunby's evidence of postage and that a substantial envelope would have been sent to the Applicants containing the documents behind page 100m in the bundle. It was during the consultation process that any challenge could have been raised.

33. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it will not make an order under s20C.

Andrew Dutton

Name: Judge Dutton **Date:** 18 May 2021

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).