12228

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/11UF/LSC/2017/0017**
Property	:	**11 Seven Acre House, Queensmead Road, High Wycombe, Bucks HP10 9XD**
Applicant	:	**Mr Spencer Hawkins**
Representative	:	**Mrs Tracey French**
Respondent	:	**Red Kite Community Housing Limited**
Representative	:	**Mr J Radcliffe, Mr J Rose and Mrs L Powell all of Red Kite Community Housing Limited**
Type of Application	:	**Determination of liability to pay and reasonableness of service charges**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs M Wilcox BSc MRICS**
Date and venue of Hearing	:	**Holiday Inn, High Wycombe, Bucks on 23rd May 2017**
Date of Decision	:	**6th June 2017**

DECISION

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DECISION

The Tribunal makes the determination set out under the findings section of this document.

BACKGROUND

1. This is an application by Mr Spencer Hawkins the leaseholder of 11 Seven Acre House, Queensmead Road, High Wycombe, Buckinghamshire (the Flat). In his application Mr Hawkins appears to seek to challenge service charge years 2012 through to September of 2016. In fact, this was not the case. At the hearing, Mrs French, his sister and representative, told us that the matters we were required to determine related to major works carried in the summer of 2015 but billed on 30th September 2016 in the sum of £2,672.94.

2. The Respondents dispute the challenges made by Mr Hawkins. Those related to some elements of the major works but not all. We were told that Mr Hawkins was satisfied with those works carried out to the facia and soffits of the property and the replacement of the guttering and downpipes.

3. The issues in dispute related to the following:

   - The cost of removal of asbestos soffits
   - The standard of painting works to the block and to Mr Hawkins' windows, which he says were painted shut
   - The cost of scaffolding the block
   - Whether the Respondents complied with section 20 of the Landlord and Tenant Act 1985

4. Prior to the hearing we received an extensive bundle of documentation. This included the application and the directions that were made. We also had a copy of the Respondents' statement in reply to the matters set out on the application, the Applicant's reply to that document and further information. We were also provided with witness statements of Mrs Powell and Mr Rose, a copy of the lease and some correspondence passing between the parties. At the hearing itself, the Respondents also produced a document headed 'Consignment note hazardous waste regulations 2005', which was a slightly superior copy to that which was included within the bundle of papers before us.

Inspection

5. Before the hearing commenced we had the opportunity to inspect Mr Hawkins' flat and the block. Seven Acre House is a three-storey purpose-built block, there appearing to be two other blocks in the locality of similar design. The road frontage showed a number of balconies to each flat, there appearing to be eight flats on each floor. The majority of the flats had UPVC windows but we counted three properties, including Mr Hawkins', which appeared to have retained the original Crittall windows. Not only were there balconies to this façade but to the rear there were stairs and walkways with metal balustrades and handrails leading to the various floors. We noted that there was new guttering and downpipes in

place together with new soffits and facias. There was also some repair work to the gable ends where the tiles ended and some similar work appeared to have been undertaken to roof lines adjacent to balconies.

6. We were able to inspect the interior of Mr Hawkins' flat and could see that his windows had been painted shut and that the window to the balcony appeared to be poorly painted and the woodwork beneath the window forming the frame was in poor condition. The general standard of decoration was no better than adequate, although we did note that there were rough finishes and rust spots appearing in some places to the metal work notwithstanding that these works are less than two years old. The finish was also in part somewhat untidy with spilt paint here and there. We were shown Blakes House, a neighbouring block, which indicated the condition of the facias and soffits as they would have been before works were carried out.

HEARING

7. At the hearing, Mr Radcliffe acted as advocate for the Respondents and Mrs French as advocate for her brother. She told us that there was no dispute with regard to the works carried out to the facia, soffits, guttering and downpipes. Of concern to Mr Hawkins was that the removal of the soffits had not been carried out appropriately as it was accepted that there was asbestos present. It appears, however, that samples had not been taken to establish the existence of asbestos until August, following it is said by Mr Hawkins', Mr Stringer a resident contacting the Respondents to inform that he considered asbestos would be present. It was said on behalf of Mr Hawkins that the removal had not been carried out properly. The facias and soffits had merely been thrown to the ground and there was no evidence that any special cost had been associated in this removal and accordingly a charge of £6,120 was challenged.

8. The evidence from the Respondents was that provided by Mr Rose both in his witness statement and at the hearing. In his statement on the question of the asbestos removal, he asserted that it had been removed in accordance with the contractual method statement, the health and safety management plan and was carried out by suitably qualified staff. Indeed, he told us that he had attended site and seen workmen in safety suits and masks carrying out the removal works. He also produced at the hearing a document headed the Hazardous waste regulations 2005 consignment note, which bears the address of the property and indicates that asbestos was removed and disposed of, although it is impossible to say what the quantity was nor can one discern the dates that the works were carried out. Apparently, no better copy is available.

9. Mr Hawkins told us that he had been home one Saturday morning and had seen workmen throwing the soffits and facias to the floor without protective clothing. Mr Rose rebutted this saying there was no reason for access to be working on a Saturday as it was not obliged under the terms of the agreement. He also went on to tell us that every property that they undertake works on is checked for asbestos which they did on this occasion as evidenced by a report from a laboratory in August.

10. The next matter that was contentious related to the standard of the painting works. There does not appear to be much dispute as to the fact that Mr Hawkins' windows had been painted shut. It is unclear what steps were taken by the contractors to contact Mr Hawkins to arrange for access to his property so that the windows could be painted in the open position, but whatever the case may be they were painted shut. The standard of works to the metal balustrading and handrails was showing signs of wear less than two years after they had been completed. Some of the finishes were rough and there was rust spots showing. The underneath of some of the balconies appeared to be roughly finished and there was certainly evidence of paint spots on unprotected surfaces.

11. The Respondents say that they have offered to come back to correct the works at Mr Hawkins' flat but he has refused them access pending the outcome of these proceedings. We were happy, however, to note that at the conclusion of the hearing it was agreed that Mr Hawkins would contact the Respondents to let them know when he would be available for works to be carried out to free his windows and presumably to make good any damage caused in such works.

12. The major bone of contention is the costs associated with the scaffolding. The total contract price was £62,444.03. Of that some £36,450 was in respect of scaffolding costs, a figure inclusive of VAT. The total sum being claimed from Mr Hawkins was £2,672.94, although the final costs document, for example at page 329 of the bundle, shows a figure of £2,672.93. We were told by the Respondents that in 2013 the Respondents issued a notice of intention to enter into a qualifying long term agreement in respect of cyclical painting and external works. It appears that the Respondents own some 6,500 homes. This consultation, for which it appears public notice was required, was carried out in 2013 and 2014 the full details of which are set out in the Respondents' statement of reply to be found at pages 47 onwards in the bundle.

13. As a result of this consultation process, an agreement was entered into with Axis Europe PLC who had submitted the lowest tender price and been ranked first on combined price and quality score. This agreement was of course intended to deal with cyclical painting and repairing to the whole of the stock held by the Respondents. The contract with Axis required the contractor to submit prices for carrying out a full range of tasks and it was on that basis that this contract proceeded. The Applicant has made assertions that he never received the various notices and we will deal with those separately in due course. The upshot of this is that those items of work are carried out on a measured basis and utilising that process the costs of the scaffolding was assessed at originally £33,750 based on the quantity and rate, which is set out albeit briefly at page 211 of the bundle. In fact, the final cost net of VAT was £30,375.

14. It is the Applicant's case that this cost was excessive and in support of this Mr Hawkins produced some alternative figures. Mr Hawkins accepted that scaffolding costs would be incurred but he disputed whether the gable ends had in fact been scaffolded and sought to suggest that M1 Scaffolding had in fact carried out the works. He had had obtained a quote from them for £9,750 for what he said was the same work. The documents that Mr Hawkins rely on are contained behind SHO9, which was added to after the bundle was submitted. The first appears to be an email from Mrs French to 'Matt' at M1 Scaffolding

seeking a confirmation as to a telephone conversation that they had had. The email says that there is to be a quote for a three storey block of flats total of 130m of scaffold and it will require a double lift to enable facia and soffit access as well as painting of windows. The simple response the following day from Matt merely says "*Tracey, £9,750 should cover everything*". There is also an email exchange with LUK Scaffolding, pretty much along the same lines indicating a charge of £13 per square metre up to 10m height. It is not thought that this company inspected and indeed an email of 13th March says that they would require a site visit. There are also emails with AGC Scaffolding which resulted in a quote of £7,500 plus VAT. It is not clear whether that company inspected. Finally, there are exchanges between Mr Hawkins and High Standard Scaffolding and Herts Scaffolding all of which produced lower quotes but there is no clear indication as to the full extent of the works required nor that there was to be scaffolding to the gable end, nor was it clear that each of the proposed contractors had inspected the subject Property.

15. For the Respondents Mr Rose told us that the scaffolding works had been carried out by Pole2Pole and produced at page 401 what appeared to be a handing over certificate relating to the rear of the Property. The Applicant tried to make much of this suggesting that this did not indicate the totality of the scaffolding and that M1 had been involved. Mr Rose, however, was adamant that M1 had not been employed by Axis on this contract and pointed out that the document produced was a handing over certificate from Pole2Pole. Mr Rose also stated unequivocally that scaffolding had been erected at the gable end. Although cherry pickers were used by the Respondents on some contracts, it was not the case on this one. Mr Rose told us that the scaffolding costs were not challenged by Red Kite. The cost was consistent with schedules of all items of work agreed with Axis, which included within those figures the administration costs for the contractors.

16. The next matter we heard evidence upon was the question of the notices under the consultation process. We were already alluded to the fact that this was a qualifying long term agreement. Mr Hawkins' evidence was that he maintained no notices of the contract or the works had ever been received and said that other residents at Seven Acre House had also had the same difficulties. In support of this were letters from a Mrs Providence at Flat 9 and another resident of 14 Seven Acre House whose signature is indistinct but believed to be Miss Thompson. Both letters had apparently been typed by Mrs French and in the case of Mrs Providence had been taken to her for signature as she was unwell. There was also some confusion about letters from Red Kite being sent to other residents which appeared to relate to tenanted properties, which although excited the Applicant did not appear to have any relevance in this case. They were, it would seem, sent in error. It would seem that Mrs French had in fact prepared a number of letters which she had presented to residents; these related both to the service of notices and asbestos removal. None of the people signing the letters came to the hearing to speak to their contents.

17. We heard from Mrs Powell, who had also provided a witness statement. Her witness statement set out in some detail the steps taken to serve the notices by hand with exhibits said to support such service. She had personally served some of the notices on Mr Hawkins and she could think of no reason why he would not have received them. She told us she was first aware of Mr Hawkins' concerns

about the windows in January of this year and that contact had been made by Mr Rose and Axis to gain access to review and to carry out reparation works but Mr Hawkins had refused to do so. It was agreed, however, during the course of this matter that Mr Hawkins would give the Respondents dates upon which he would be available.

18. At the conclusion of the evidence, Mr Radcliffe confirmed that some elements of the costs were not subject to VAT as they were capital replacement works. He told us that the contractors, Axis, had submitted a basket of rates and that the costs of the contract had been reasonably incurred and were in line with those rates. The Respondents wanted to attend Mr Hawkins' property to carry out the works and hoped that that would be undertaken shortly. Insofar as the asbestos issue was concerned, he told us that the contract provided for the replacement of facias and soffits. Replacement would of course, therefore, include the removal of any asbestos that might be present. He told us that the Respondents had chosen the best tender to create the qualifying long term agreement, that these works had been carried out in accordance with that agreement which had not been challenged by any resident and were, therefore, due and owing.

19. Mrs French in response on the asbestos, said there was no indication how the figure of £6,120 had been reached and no evidence to justify it. She asked why there was no reserve fund which could ameliorate the costs to the residents. In response, we were told that the leaseholders indicated they did not wish to create such reserve fund. She told us that the scaffolding costs were excessive, some three times more than the quotes she had obtained and that two contractors had come out to visit. She accepted there may be perhaps a further £2,000 in respect of the gable ends but the costs were too high and it was unreasonable to expect her brother to pay these on a regular basis if there was going to be cyclical redecoration on a six-yearly cycle. We were told that the average service charge was presently around £400 per annum.

THE LAW

20. The law applicable to this case is set out below.

FINDINGS

21. There are a number of conflicting pieces of evidence in this case both relating to the question of the service of notices, the extent of the scaffolding and the works undertaken to remove what was accepted as being asbestos present in the soffits.

22. Let us deal firstly with the question of the service of notices. Mr Hawkins in his evidence to us could only at best say that he 'did not think' he had received the notices. In contrast to this, we had the witness statement from Mrs Powell in which she said she personally served one lot of notices on Mr Hawkins and that others were served in person by representatives of the Council who completed sheets indicating that such service had taken place. We have to weigh up the evidence before us. It seems to us that the better evidence comes from the Respondents and we accept that service of these notices did take place. It is possible that Mr Hawkins may have confused reference to £250 being the limit at which consultation is required as indicating what his liability might be. This may

have clouded his interest in any notices that may have been served upon him. Be that as it may, we are satisfied on the evidence before us that Mr Hawkins was provided with notices at the appropriate stages through the consultation process.

23. We then turn to the specifics and we will deal firstly with the asbestos removal. There appears to be no argument that asbestos was present. The concern is the manner of removal and the costs associated therewith. We have Mr Rose who says he attended site and saw workmen properly 'suited and booted' for the purposes of removing the asbestos. We have a consignment note, albeit it in part indistinct, but which shows some asbestos was removed from the site and dealt with in accordance with the Environment Agency's requirements. The Applicant's case is simply that there was no proper removal. He relies on letters from residents, which have been prepared by Mrs French and signed by the residents named. However, none of those residents came to the hearing and we had no ability to question them on the content of the letter prepared for them to sign. It appears that Mr Hawkins is a self-employed plasterer and is working a good deal of the time from 8.00 in the morning to 5.00 in the evening. He referred to evidence of some removal of soffits and facias on a Saturday morning. Mr Rose said it was not necessary for contractors to be working that day. It is possible, we suppose, that they may have been just throwing facias to the ground leaving the soffits to be dealt with separately. We cannot really speculate to any great degree on that point. What we do have, however, is Mr Rose's evidence that he attended site and saw workmen properly suited to deal with asbestos and a consignment note showing the removal of same. We have no figures from Mr Hawkins to challenge the cost of the asbestos removal other than a bold assertion that no costs should be paid as such removal never took place. It is unfortunate that the Respondents can only provide such a poor copy for us to endeavour to discern what was actually done. The address of the property is clear, the fact that asbestos was removed is also clear, but we cannot really tell the date nor the quantity. However, there is no evidence in front of us from the Applicant which would enable us to find that a lesser sum is due and owing. On the basis of the lack of evidence from the Applicant we must, therefore, conclude on the evidence before us that the figure of £6,120 is appropriate for the removal of the acknowledged asbestos and its disposal.

24. We then turn to the painting. There is no doubt from our inspection that this was carried out in a somewhat slapdash manner. There is evidence of paint spots on various surfaces and the finish is not good. We do not know why Mr Hawkins' windows were painted shut. It is not clear that he was ever asked by the contractors to leave them open whilst they carried out the work. The fact is, however, that they are now proposing to return to make good. We should also say that there is a deal of decorating required to the metal work as well as the windows and the balconies. The total cost is £8,847.90 which when divided by the 24 flats gives a figure of £368 or thereabouts. This is really quite low and perhaps reflects the standard of work. Given that the Respondents are arranging with Mr Hawkins to return to make good, we conclude that whilst the external decorations are not of the highest quality, indeed Mr Radcliffe referred to them as being 'commercially acceptable', we do not propose to reduce the amount claimed in that regard.

25. The next and perhaps most contentious element is the cost of scaffolding. We were told that this was carried out on a metred rate agreed in the contract entered into with Axis and it was merely a question of measuring the amount of scaffolding which gave the figure that is before us.

26. For the Applicant, he sought to obtain alternative quotes for a number of contractors, two of which it appears did attend site. However, we are concerned as to the independence of these alternative quotes. We have seen no clear written instruction given to the companies who provided quotations/estimates; all we have are short emails. Those that did not inspect we find could not provide a reliable quotation and those that did will not have seen the specifications and indeed may not have included quotes for the gable ends. On that point, we prefer the evidence of Mr Rose that the ends were scaffolded, particularly as there appeared to be high level works adjacent to the tile edges. We should perhaps say that we cannot understand why in the modern world somebody did not take photographs to show the extent of the scaffolding or its limits. It would have been easy enough for either party to have taken a photograph to show whether the gable end was scaffolded or was not, but that was not done. As it is Mr Hawkins who is asserting that the scaffolding was more limited than is said to be the case by the Respondents, it seems to us on this instance it is for him to prove the position. The existence of the gable end scaffolding does not it seems to us justify the difference between the quotes obtained by Mr Hawkins and the figures claimed by the Respondents. However, we do accept the Respondents' suggestion that it is inappropriate to cherry pick certain items from a contract.

27. The overall cost to Mr Hawkins is £2,672.94. For that there has been the replacement of gutters and downpipes, facias and soffits, asbestos removal, external decorations, some repairs and scaffolding. Standing back from this, it does not seem to us that that final cost is unreasonable. There is no complaint as to much of the works and the fact that the scaffolding may appear high compared to quotes obtained by Mr Hawkins we find does not mean that we must interfere with that cost level. We have our concerns as to the accuracy and knowledge of those contractors who provided quotes to Mr Hawkins. We do not know, for example, whether there is any previous trading relationship between Mr Hawkins and those contractors which might have influenced the figures that they provided. Be that as it may, albeit with some concern as to the overall cost of scaffolding, we find when looked at in the contract as a whole, it is an amount that we do not propose to disturb.

28. We conclude, therefore, that the amount being sought from Mr Hawkins is due and payable. We hope that the parties can come to terms upon how payment can be made. Hopefully Mr Hawkins was aware that there was going to be some item of expenditure for which he would have to make payment and has put some money aside. We would hope that the parties could reach a suitable agreement on the repayment programme.

Andrew Dutton

Judge: A A Dutton

Date: 6th June 2017

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

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.