FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BJ/LSC/2019/0447**
Property	**:**	**Putney Vale Estate**
Applicant	**:**	**Leaseholders of the Putney Vale Estate**
Representative	**:**	**Gary Akers**
Respondent	**:**	**London Borough of Wandsworth**
Representative	**:**	**Mr Kingston-Splatt**
Type of Application	**:**	**Application for determination as to payability and reasonableness under s 27A Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Jim Shepherd** **Kevin Ridgeway MRICS** **N. Miller**
Date of Decision	**:**	**October 2021**

1. In this case a number of leaseholders led by Gary Akers challenge service charges sought by Wandsworth Council ("The Respondents"). The case had several false starts and was finally heard on the 19th and 20th of July 2021. There was then a delay as both parties put forward further written submissions to the tribunal which have been considered.

2. By his application dated 22 November 2019 Mr Akers sought a determination of his liability to pay and the reasonableness of charges pursuant to section 27A of the Landlord and Tenant Act 1985. In particular Mr Akers challenged the payability and reasonableness of costs incurred by the Respondents in carrying out major works in 2018 - 2019. The works were undertaken to 17 blocks of flats including the flat occupied by Mr Akers on the Putney Vale estate.

3. The challenged costs originally related to estimated charges for the major works. The invoices were issued for these costs on 1 October 2019 and interim accounts for the works in question were finalised upon expiry of the defects liability period. The invoice of estimated charges amounted to between £1729 or £2500 per flat in accordance with the provisions of the leaseholder's lease. By the date of the hearing a number of cost items had been withdrawn by the Respondents.

4. The major works consisted of repairs and refurbishment to the balcony walkways and associated repairs to the buildings. There was no challenge to the consultation requirements which were carried out as follows: a notice of intention was for served on 7 August 2017. A notice of proposals and estimates was served on 14 June 2018. The contract with Hilton the chosen contractor commenced on 1 October 2018. Extensions were granted by the Council and practical completion was achieved on 31 July 2019. The total cost of the works based on the interim account was £649,158.30. The estimated demands in issue in this case were issued on 1 October 2019 together with the requisite accompanying statutory summary.

5. In his application Mr Akers raised a number of questions which he wanted the tribunal to decide including whether there is a liability to pay the full amount invoiced, whether the employer's agent used all reasonable skill and care in the execution of their services, whether the contract had been administered with reasonable skill and care expected of a competent employer's agent, whether the local authority acted to protect its asset and in the best interests of its residents and whether the CDM regulations had been adhered to. Some of these questions were beyond the remit of the tribunal. Nonetheless the tribunal was grateful that Mr

Akers focused his arguments during the hearing to matters which the Tribunal was able to deal with. These can be summarised as follows:

a) It was alleged that scaffolding was erected for longer periods than was necessary.

b) The cost of an asbestos survey was challenged.

c) The cost of brickwork replacement and resurfacing was challenged.

d) The replacement of coping stones on the balconies was defective work.

e) It was said that the cost of waterproofing works were excessive. This argument was widened during the hearing to include an allegation that the Proteus waterproofing that had been installed was illegal and a fire risk.

6. In summary the Respondents replied to these allegations as follows:

a) The scaffolding price was a fixed price which was accepted by the contractor and therefore the fact that it remained in situ for a period of time after works had been carried out did not affect the cost.

b) The cost of the asbestos survey was a reasonable cost and was necessary notwithstanding the fact that no asbestos was detected.

c) In relation to the brickwork some adjustments had been carried out by the Respondents in the amount charged for and the sums sought were reasonable.

d) A decision had been made to replace the coping stones of the buildings because the existing ones did not allow for sufficient drip. The new stones were bedded in the same way as their predecessors and so the removal and re-bed item in respect of that work was omitted from the final schedule.

e) The waterproofing works were necessary and carried out at reasonable cost. There was no requirement to comply with building regulations as they were works of repair.

Written evidence

7. Mr Akers produced a number of types of written evidence including a document headed *statement of truth* in which he raised issues about the asbestos inspection, the cost of brick replacement, the copings the lack of cleaning etc. He submitted further observations and comments having received the Respondents' evidence. He alleged that no skill or care had been exercised in the works and that this was demonstrated by the specification, the contract site diaries etc Mr Akers submitted numerous useful photographs taken in 2019 showing the works taking place on the estate.

8. As well as the submissions by Mr Akers himself a number of leaseholders had written to him to confirm that the scaffolding had stood empty for periods of time during the work and that debris had fallen through the scaffolding and was not cleaned up.

9. For their part the Respondents submitted a statement of case as well as witness statements made by Elizabeth Pierrette and Sandra Morrison. The statement of case contains a helpful summary of the relevant lease terms, although there was no

challenge by the leaseholders as to the application or operation of the lease. The challenge was based on the quality and standard of the work.

10. Sandra Morrison is the project controller in the Housing and Regeneration department. She challenged the complaints about the scaffolding. She said that the scaffolding was required to remain in place because some blocks required more work than others. Further the scaffolding was under a fixed contract which was accepted by the contractor as a risk item. In relation to the asbestos survey she maintained that it was necessary to spend money on the survey. In response to the challenge to the cost of the brickwork she said that following an inspection the number of bricks re-faced was reduced and the final account adjusted.

11. Ms Morrison further stated that on advice the Council had made a decision to replace all of the coping stones. The new stones were bedded in the same way as the previous ones which entailed a saving. She also indicated that the cost of the waterproofing works was reasonable with the final account cost at £6490.

12. In her witness statement Ms Pierette gave evidence of the s.20 consultation which was not challenged by the leaseholders.

The hearing

13. The hearing took place over two days. Mr Kingston-Splatt of Counsel appeared on behalf of the Respondents and Mr Akers represented the leaseholders. Taking each of the issues dealt with in turn:

Scaffolding

14. Mr Akers challenged the fact that the scaffolding had been in place for an excessive amount of time. He said the scaffolding should only have been up for four weeks because that was the period of time that it was used. This was challenged by the Resondents' witnesses who maintained that the scaffolding had been on a fixed-price and therefore the fact that it was standing for a longer period than was required did not affect the costs to the leaseholders. The contractors had borne the risk of the scaffolding. Mr Akers cross-examined Ms Morrison about the fact that there were no surveys within the bundle. He also alleged that the brief had been ignored as had the provisional sums. This was denied by Ms Morrison who said that the Respondents had been advised that scaffolding was the safest means of carrying out the work and that the suggestion of using a cherry picker had been considered but it was decided that scaffolding was the best solution.

15. In closing, Mr Kingston-Splatt said that the fixed price for the scaffolding meant that although there was an extension of time it did not affect the cost to the leaseholders. He said that the fact that there was another means of carrying out the work by cherry pickers did not mean that it was necessarily unreasonable to use scaffolding. He said if cherry pickers had been used for 17 blocks it would have taken a long time and there was no evidence that it was cheaper. Further the contractor accepted the fixed price of the scaffolding as a risk.

16. Mr Akers maintained that if a detailed survey been carried out the scaffolding hire cost could have been reduced.

Asbestos

17. Mr Akers withdrew his challenge to the cost of the asbestos inspection.

Coping stones

18. The works involved removing the existing coping stones and replacing them. Mr Akers challenged why the coping stones were removed and said that the new coping stones had an inadequate drip which meant that water was tracking back into the brickwork and not discharging correctly. He said that the drip was touching the face below. Further the copings did not match up. On his inspection he said that none of the copings were adequately fitted. Ms Morrison said that it had been decided to replace the coping stones because the drip was not sufficient. She maintained that the drip was sufficient on the new coping stones. Mr Akers said that he'd walked every balcony and had looked at the coping stones and he considered that they were deficient. The photographs did seem to reveal that there was an inadequate drip on some of the coping stones at least.

19. In closing Mr Kingston-Splatt said that although one of the photographs appeared to suggest that the channels were too close to the wall there was no evidence this was a estate wide issue. The clerk of works signed off the work and there had been no complaints of problems of water ingress.

20. Mr Akers said that the copings that had been put back were not like for like and the work that was carried out was not adequate.

Brick replacement

21. Mr Akers challenged the costs of the brick replacement. In his Scott schedule he said that the works were not carried out in accordance with the brief, in breach of contract conditions and did not adhere to construction safety law or HSE guidance. At the hearing he focused his arguments on the actual cost of the brick replacement. He sought to rely on *Spons* estimated cost guides for the costs of replacing bricks. He said the cost at £13 per brick was too much. He carried out his own inspection and counted the bricks replaced. He provided the tribunal with his assessment of what the cost of the bricks should have been.

22. The Respondents had made adjustments to the overall figures in relation to the replacement of bricks and explained that the provisional allowance had been for £11 per brick. The major works had been tendered and the contractors had provided a unit rate for brick replacement . The lowest tender was accepted and therefore the costs were not really challengeable.

23. In closing Mr Kingston-Splatt said that the Tribunal were asked to accept that Mr Akers carried out two inspections but no notes had been provided. In contrast Ms Morrison had inspected with the clerk of works and assessed the condition of the brickwork. The Respondents had accepted the lowest tender through a legal tender process. He also said that *Spons* was only guidance.

24. Mr Akers maintained that he'd carried out a detailed inspection of the bricks and his submissions had been based on *Spons* guidance and he was not picking numbers out of the air.

Centaur waterproofing

25. Mr Akers alleged that the waterproofing that had been used on the balconies during the works was unsafe and was a fire risk. This was raised for the first time at the hearing. He also said that the cost of the waterproofing was too high. He'd put forward a contractor at a meeting in July who was not invited to tender. He said that there was a problem of ponding on the balconies such that they were like skating rinks in the winter. He said the area had not been properly prepared. The Respondents said that the waterproofing met building regulations and it was wrong for Mr Akers to suggest that it was unlawful. Again, they said that the waterproofing works were contained within an overall tender which was competitive and reasonable in price. They said that there was nothing in the product called Proteus which caused concern.

26. In closing Mr Kingston-Splatt said that the allegation that the waterproofing was a fire risk went nowhere. He said there was no real evidence to challenge the cost of the waterproofing.

27. Mr Akers maintained that the cost of the waterproofing was too high.

Determination

28. Taking each item in the order in which they were dealt with at the hearing:

Scaffolding

29. It is plain to the tribunal that Mr Aker's arguments in relation to the scaffolding were diminished once it was known that it had been a fixed sum in the contract. The fact that the scaffolding was in place for a longer period of time than was necessary whilst annoying for leaseholders did not affect the price that they had to pay for the works. **The scaffolding costs are allowed in full.**

Asbestos survey

30. **This sum is allowable in full as it was not challenged by Mr Akers at the hearing**.

Coping stones

31. The evidence in relation to the coping stones was limited. It is not clear whether the coping stones that had been installed were defective throughout the estate. The photographs produced by Mr Akers appeared to show that there wasn't a sufficient drip for the coping stones to work properly. However as indicated it may be that this was isolated issue. The fact remains that the Clerk of Works and the contractor had signed off the work. The Respondents would be well advised to investigate the potential problem and determine whether it is in existence throughout the estate. **The Tribunal did not have any sufficient evidence to ascertain whether it was a general defect and therefore on a balance of probabilities the costs are allowed in full.**

Brickwork

32. It was compellingly clear as emphasised by the Respondents and their Counsel that the cost of the brickwork was part of an overall tender which was successful. The contractor who tendered for the work allowed a certain sum for the brickwork. Mr Akers relied on *Spons*. This is guidance and has limited value because it is not dealing with market prices. The contractors offered a price which included an amount for the brickwork and the tender was accepted. The Tribunal is not willing to interfere with the tender price and considers that overall the price was reasonable including the cost of the brickwork. There was a dispute about the number of bricks that had been repaired or replaced. The Tribunal is not in a position as there simply was insufficient evidence to resolve this dispute. The Tribunal is however satisfied that the clerk of works carried out an inspection and was satisfied with the work that had taken place. **The costs are allowed in full.**

Centaur Waterproofing

33. Mr Akers made a serious allegation about the waterproofing works saying that they were illegal and a fire risk. Both parties made written submissions after the tribunal hearing in relation to this allegation which had been raised only during the hearing itself. Mr Akers said that the waterproofing did not comply with the relevant

building regulations. The Respondents in detailed submissions denied this. The regulations were The Building (Amendment) regulations 2018 (SI 2018/1230) which came into force following the Grenfell fire in order to ensure fire safety in blocks of flats. The Respondents said that these regulations did not apply to the subject works .

34. The Tribunal accepts the Respondents' submissions on this. The works involved were works of repair and were not *Building Works* as defined by the 2010 regulations and would not therefore be covered by the 2018 amendment regs. The works did not comprise the erection or extension of the buildings. In addition, the Tribunal accepts the Respondents' argument that the buildings were not sufficiently high to be caught by 2018 regulations in any event. Further the works were started prior to the commencement of the 2018 regulations.

35. The Tribunal were concerned that Mr Akers was willing to make the serious allegations he did without any proper basis in particular the Tribunal do not accept that the Respondents' officers deliberately sought to mislead the Tribunal in any way. Quite the contrary the Tribunal found the Respondents' officers to be extremely helpful in providing information about the works that took place. The Tribunal did not consider a further submission made by Mr Akers on 27th August 2021 because there has to be some finality to the process and he did not have permission to make further submissions.

36. For the reasons given the cost of the waterproofing works are allowed save that there should be a reduction of 20% of to reflect the fact that there is a problem of ponding identified by Mr Akers which will need to be resolved.

Section 20 C of the Landlord and Tenant Act 1985

37. The tribunal does exercise its discretion pursuant to section 20 C and order that the Respondents are prevented from recovering the costs of the proceedings from the leaseholders' service charges. The Tribunal accepts that Mr Akers made efforts to reach settlement with the local authority but his efforts were not reciprocated. In addition, the tribunal was assisted greatly by Mr Akers' arguments notwithstanding the fact that he was largely unsuccessful.

38. The Tribunal gives thanks also to Mr Kingston-Splatt for his clear written and oral argument.

Judge Shepherd

October 2021

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.