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

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| **Case Reference** | : | **MAN/16UC/LSC/2013/0077** |
| **Property** | : | **21-27, Quantock Green, Barrow-in-Furness LA14 5BP** |
| **Applicants** | : | **Mesdames Helme, Guy, Naylor and Bell and Mr Phythian (represented by Mrs J O'Hare)** |
| **Respondent** | : | **Barrow-in-Furness Borough Council (represented by Mr Pritchett of Counsel, assisted by Mr Garnett)** |
| **Type of Application** | : | **Reasonableness of service charges** |
| **Tribunal Members** | : | **Mr J R Rimmer**<br>**Mr J Faulkner**<br>**Dr J Howell** |
| **Date of Decision** | : | **8th October 2013** |

**DECISION**

## Order

**The budgeted costs in the 2012-13 estimate of service charge costs for the re-roofing of 21-27 Quantock Green, Barrow-in-Furness are reasonable costs being reasonably incurred by the Respondent.**

## A. Application and background

1. The Applicants are the occupiers of a block of four self-contained flats at Quantock Green, Barrow-in-Furness, situated on what is known as the "Griffin Estate " and the Respondent is the Borough Council which has responsibility for the maintenance of the block under the provisions of the long leases for the respective flats. The Applicants either purchasers of their respective flats under the "Right to Buy" scheme, or are the successors in title to such purchasers. The block is understood to be unique in the Council's housing stock as being the only one where all properties are let on long leases and containing no flats let to assured tenants. The copy lease provided to the Tribunal is that for number 23 and are understood to be identical to that for the other flats in its principal terms. It is granted at a premium and a rent of £10.00 a year for 125 years from 18th May 1994.

2. The two related issues arising in these proceedings for the consideration of the Tribunal are the reasonableness of the decision by the Respondent to replace the communal roof to the block and the reasonableness of the cost of so doing.

3. The lease contains provisions relating to the service charges at several points in the leases:
   - Clause 1 contains what is known to lawyers as the reddendum to the lease; that being the part of the lease where the parties agree what the leaseholder pays to the landlord as "rent" and in this case refers to payment of what is due under the Third Schedule.
   - That Schedule sets out what the Service Charge is and how it is to be calculated.
   - Included at paragraph 1(1) of the Schedule is the cost of the landlord's obligation to maintain and repair the structure of the building.
   - Clause 2(1) of the lease contains the covenant by the leaseholder to pay the service charge as calculated and included in the "rent".

4. The Applicants provided a Statement of Case which set out their position as follows:
   - The Applicants are each being charged for the cost of one quarter of the total estimated cost of replacing the roof: £20,492.00.

- This is only an estimate and they have been given no actual cost figure.
- The consultation process was not conducted properly, with the amount decided before the process had started. It was conducted in an unreasonable and upsetting manner.
- They were unhappy at having to pay the full amount and not a contribution
- They had not been made aware of the obligation to contribute to major items of repair or renewal at the time of purchasing their respective flats.
- The decision to replace the roof at the present time was unreasonable.
- Although there had been problems with roofs on the estate there had been no significant problem with this building.
- They thought that their payment of the service charge each year contributed to such items as the roof replacement.

5. Thereafter the Respondent provided its own Statement of Case responding to the issues raised by the Applicants:
    - Setting out the issues that it had experienced generally in relation to the roofs of the various buildings on the Griffin Estate.
    - Explaining its decision that the need for roof replacement had been identified to remedy the growing problems.
    - How the consultation process had been carried out and that in the Respondent's view it complied with the requirements of Section 20 Landlord and Tenant Act 1985.
    - How it had attempted to involve the 2 contractors suggested by some of the Applicants in the process.
    - How it had sought to explain the process to the Applicants, how the cost had been arrived at and how it fell within the service charge provisions of the lease.

    The Respondent also provided considerable details relating to the services generally and the costings of the roofing works in particular as provided for by directions given by a Procedural chairman in this matter.

6. In so far as was necessary to have as clear perspective as possible of the nature of the building, the work to be undertaken and the relationship with other buildings
    undergoing similar work on the Griffin Estate the Tribunal inspected 21-27, Quantock Green on the morning of 8th October 2013 and had the benefit of scaffolding currently in place to inspect the roof at close quarters.

7. Thereafter the Tribunal reconvened in Barrow-in-Furness Magistrates' Court to hear further from the parties and their representatives upon those issues that had been identified and outlined above. The Tribunal received from Mr Pritchett a skeleton argument outlining the issues he would cover and to which the Applicants indicated they had no objection after giving it due consideration. He also provided a document akin to a "flowchart" outlining the Section 20 consultation process and how the actions of the respondent related to it.

8. The Applicants sought to explore a number of grievances and seek some explanation from the Respondent as to how they came to owe the monies now being claimed and it probably most useful to explore them in turn, together with the Responses of the Respondent.

9. <u>The leaseholder's obligation to pay for such repairs</u>
It is clear to the Tribunal that the leaseholders had not understood, or alternatively had not had explained to them, in sufficient detail at the time of their respective purchases, the precise obligations of the parties to the leases as regards on the one hand the carrying out of relevant works and on the other hand the responsibility to pay for those works. Regrettably, in the experience of the Tribunal, this appears to be a common problem which does not become apparent or relevant until a cost arises of a significant nature and/or that cost is perceived to be outside the scope of what are considered to be "services" that form part of a "service charge". During the course of discussion these concerns the Tribunal developed an awareness that the Applicants now appreciated the significance of the obligations into which they had entered and how legitimate costs would be recoverable by the Respondent.

10. <u>The adequacy of the consultation process</u>
The Respondent considered at length the process that it had undertaken, explained at various stages by Mr Garnett, and forcefully propounded by Mr Pritchett as in compliance with Section 20. The Applicants considered that the process had been undertaken heavy-handedly and with a forgone conclusion, which would exclude the two contractors suggested. The Applicants were particularly aggrieved by the insensitivity shown in the correspondence from the Respondent to the Applicant and the shock that this caused. Mr Pritchett, while acknowledging the dryness of that correspondence, indicated that the principal object of the Respondent was to ensure compliance with section 20 and not lose sight of that object in less pointed paperwork. The Respondent also sought to advise the Tribunal that there had been no pre-determination of the outcome of the consultation process and the suggested and the original suggested estimate of the cost was based upon the Respondent's own assessment of likely cost and only by coincidence very near to the cost in the winning tender.

11. The Applicants were also concerned that although one contractor suggested had shown an interest in bidding for the roofing contract the Respondent had not been able to locate sufficient details to ensure his inclusion. It was suggested by one Applicant that he was however known to the Respondent's own Building Control department. The other contractor suggested from among the Applicants had been given initial consideration but was not viewed as being sufficiently creditworthy after appropriate checks had been made.

12. <u>The reasonableness of carrying out the work</u>
The Applicants expressed a number of concerns which might be adequately summed up as follows:
    - The work was carried out on the basis of an assessment by the Respondent following a number of roofing issues arising in its own tenanted blocks and not this particular building.
    - There had been minimal problems with this particular roof.
    - There was no independent assessment of the need for a programme to encompass re-roofing the whole estate although such an assessment had been costed by the Respondent,
    - It was too early in the realistic life of the roof for replacement to be made.

13. The Respondent acknowledged that the roof to 21-27, Quantock Green had fewer problems than others on the estate but felt satisfied from the reports of its repairing contractors and the observations of its own technical officers that the roofing tiles and felting were suffering water ingress and consequent deterioration in other buildings. All roofs were of the same construction and the problem would become worse and more widespread with consequent increases in day to day repair costs. Given the age of the roofs (constructed in the very late 1960s and early 70s so now 40 or more years old) it was sensible to consider a programme encompassing the whole estate with associated economies of scale. In the circumstances as it saw them, and reasonably relying on the professional judgement of its own staff it was more appropriate to avoid an independent inspection of each block and put the saved cost towards the re-roofing costs.

14. It was also the case that there would at some point in the near future be a likely need to re-roof in any event and these costs should not be looked at in isolation but as cyclical costs that have become payable in some form in the near future.

15. The Respondent acknowledged the difficulty caused by the fact that the leases of the flats, in common with many others had failed to establish any reserve or sinking fund which would have funded, in whole or in

part, such expensive items of cyclical repair or replacement, but was tied by what the leases provided for and what now needed to be funded.

**Tribunal's Conclusions and Reasons**

16. The law relating to jurisdiction in relation to service charges falling within Section 18 is found in Section 19 Landlord and Tenant Act 1985 which provides:
(1) relevant costs shall be taken into account in determining the amountof a service charge payable for a period-
(a) only to the extent that they are reasonably incurred, and
(b) where the are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard

17. Further section 27A landlord and Tenant Act 1985 provides:
(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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services(subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

18. Section 20 Landlord and Tenant Act 1985 provides:
(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.

19. With some reluctance the Tribunal is drawn to the conclusion that the cost of the replacement roof is reasonably incurred and at reasonable cost. It is of the opinion that the matter might have been dealt with more sensitively, particularly given the age profile and likely financial resources of the Applicants, but that it also had regard to the other occupiers on the Griffin Estate, both long leaseholders and assured tenants. It might also have been prudent to allay some of the concerns of the applicants by securing and circulating an independent report given the relative cost thereof, as indicated in the documentation supplied to the Tribunal, when compared with the total estimated cost of the re-roofing project. It is not however the duty of the Tribunal to impose a solution of its own simply because it

considers it more reasonable that that which has been adopted. The Tribunal regards Mr Garnett as competent in his field and assumes in the absence of any evidence to the contrary so too are the other council officers with appropriate technical expertise. It is not an unreasonable conclusion to draw that given what they find occurring in some blocks similar roofs will be effected and problems will get worse. It is also reasonable to adopt a programme which benefits the whole estate and bears the fruits of economies of scale. The professional experience of the Tribunal suggests that the work being undertaken is at a reasonable cost.

20. The Tribunal is also satisfied that the consultation process required by Section 20 has been complied with. It has considered particularly the extent to which the Respondent must take into account the nominations of contractors to be considered for the contract in question and should try to obtain estimates from them as provided for by the Service Charges (Consultation Requirements) (England) Regulations 2003. The relevant regulations are set out at length in the document supplied by Mr Pritchett at the hearing. It is not clear how hard the Respondent is required to try. It clearly sought to identify the contractor by the name of Cleary or Clarey as evidenced by documentation provided to the Tribunal and also made extensive enquiries as to the probity of DSF Roofing, again as evidenced in the documentation. The Tribunal is satisfied that the Respondent paid more than lip service to the requirement and set in train reasonable enquiries that would have led in different circumstances to the prospect of estimates being obtained. The Tribunal also takes the view that in the circumstances there is no evidence before it that, so far as the cost of the works are concerned there is no evidence of prejudice to the Applicants by not pursuing those enquiries further.

21. In the above circumstances the Tribunal is satisfied that the costs of the roof replacement as currently estimated is a reasonably incurred in a reasonable amount. The Tribunal is conscious of the indication given on behalf of the Respondent that the works might now come in under budget but it is proper at the present time to have regard to the existing estimate until the prospect of a budget saving becomes clearer.