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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/26UG/LSC/2016/0012**
Property	:	**4 Bryant Court, Hollybush Lane, Harpenden AL5 4BH**
Applicant	:	**Robert Sheridan-Mills**
Representative	:	**Mr Sheridan-Mills in person** **Accompanied by Mr Hopkins**
Respondent	:	**Bryant Court Limited/Lowstream Property Management Limited**
Representative	:	**Mr Adrian Turner, Property Manager of Francis Butson & Associates** **Mr T Butson, Partner in Francis Butson & Associates** **Mr & Mrs Cree, leaseholders at Bryant Court (Mrs Cree is a director of the Respondent)**
Type of Application	:	**Section 27A and 20C of the Landlord and Tenant Act 1985 to determine the reasonableness and payability of service charges and to limit the recovery of any costs on the part of the landlord**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs M Wilcox BSc, MRICS** **Mrs L Hart**
Date and venue of Hearing	:	**Magistrates' Court, Luton on 10th May 2016**
Date of Decision	:	**18th May 2016**

DECISION

DECISION

1. **The Tribunal determines that the application made by Mr Robert Sheridan-Mills under Section 27A of the Landlord and Tenant Act 1985 shall be dismissed and that the sum payable of £950 is due and owing by him.**
2. **The Tribunal declines to make an order under Section 20C of the Landlord and Tenant Act 1985 for the reasons set out below.**

BACKGROUND

1. This matter came before us for hearing on 10th May 2016 as a result of an application made by Mr Sheridan-Mills dated 31st January 2016 seeking a determination as to the reasonableness and payability of service charges under Section 27A of the Landlord and Tenant Act 1985 (the Act). The application is somewhat scant in respect of the matters which form the complaint. In addition to this application Mr Sheridan-Mills made an application under Section 20C of the Act which purported to represent other leaseholders. No information was contained in the form about other leaseholders agreeing and certainly no evidence of any other leaseholder wishing to be involved in the application either under Section 27A or 20C was put before us.

2. It would appear from subsequent correspondence that the issue in this case relates to an additional charge of £950 raised by an invoice dated 23rd November 2015 said to be the "first instalment of contribution to replace gutters and drainpipes and new underwater pipes and soakaways." There was no dispute relating to the usual service charges. In a letter written by the Applicant dated 12th February 2016 he says as follows: *"I am disputing this invoice for a number of reasons including the fact that no contractor has yet been instructed to carry out works to gutters and downpipes and underground drainage as well as the fact that I consider the proposed works unnecessary (my reasons for this opinion I can expand upon but to simplify this letter I shall not go into detail at this point)."*

3. The letter also went on to ask us to consider whether the landlord had the right to refuse the extension of his lease on the grounds that this invoice had not been paid. That is not something that we were able to deal with in this application.

4. In a bundle provided by the Respondents prior to the start of the hearing we were given copies of the various applications made and the directions as well as statement of case dated 2nd March 2016 prepared by Francis Butson & Associates (FB). This letter set out some of the chronology relating to investigations undertaken both to the gutters and downpipes but more importantly to the soak away system presently in situ at Bryant Court. We noted all that was said. In addition, this letter confirmed that Section 20 consultation procedure had been undertaken. Mr Sheridan-Mills confirmed that he had not disputed that the s20 procedure had been properly followed.

5. A copy of what we understand to be the lease of the subject property was included as well as correspondence, which in effect formed Mr Sheridan-Mills' statement. This was in the form of a letter dated 19th April 2016 and set out his thoughts as to why the gutters were overflowing and the downpipes clogged. He considered that

the state of the soakaways was irrelevant. It was not he said required by building regulations to have soakaways 5 metres from the property unless rainwater was discharged onto a paved or solid surface. He also considered that the expenditure of over £40,000 to solve occasional overflowing gutters was "ridiculous." In an earlier letter of 13th April 2016 he had included some photographs and affirmed his views on the need for the works. The bundle included a number of other items of correspondence, one of which was a letter from a Mr Kevin Hopkins which bears no date and which confirmed he had inspected the gutters on several occasions and found the outlets to the drainpipes to be blocked with moss and debris. He recommended that the gutters were cleared at least twice a year. Copies of some newsletters and what appeared to be minutes of meetings were also within the bundle. We were also provided with a copy of a report from Brading and Harmer dated 10th June 1992 but this appeared to relate solely to Akrill House, which was the neighbouring block on the development.

6. Importantly from the Respondent's point of view we had before us a report prepared by John Tillit Eur Ing CEng PhD BSc MICE MIStructE. Dr Tillit is the Managing Director of Tillit Engineering Consultants Limited, a company apparently known to FB, whose report is dated 12th June 2014 addressed to Lowstream Property Management Company Limited. This records a site visit that he undertook with another person and the inspection and observations that he made at that time. The recommendations are as follows:
"1. Consider replacement gutters and downpipes as they are close to their lifespan. If this is done then install wider, larger-capacity gutters.
2. All the rainwater should be discharged to soakaways at least 5m from the building to comply with the building regulations. This is not the case with at least four of the existing pipes. This should be done in the near future to avoid subsidence/settlement damage to the building.
3. The existing soakaways need to be replaced as those were poorly constructed and inadequate in some cases non-existent. Consider installing the more efficient crate-type soakaway. These should be designed according to the permeability of the soil which is currently unknown and needs to be determined by a soakage test to allow efficient design." A permeability test was conducted by a Mr Smith in November of 2014 and the results provided.
As a follow-on from this Dr Tillit contacted Mr Turner by email dated 20th December 2014 setting out in, effect, a specification for dealing with the installation of new soakaways. A subsequent summary document was provided by Dr Tillit on 13th February 2015 which fully set out his findings and his recommendations.

7. The bundle also included the notices given in respect of these works under the Section 20 procedure and we had a copy of the latest building regulation instructions dealing with the requirement for soakaways which took effect from 1st April 2002.

INSPECTION

8. Prior to the hearing we inspected the subject premises, in particular viewing the downpipes and guttering to Bryant Court. We should add that our inspection took place at a time of rain. This is a purpose-built block built we think around the 1980s sitting in the grounds of an older building (Akrill House) which forms the

sister block to this one. The grounds were in good order and the Property appeared to have no obvious faults. We noticed there were 14 downpipes, two of which were to an extent internal in that they served balconies. At least one of the downpipes had a notch cut into it adjacent to ground floor level to enable water to run away. It appeared from our inspection that the section of pipework below that notch running into the ground was clogged up with detritus. Another downpipe did not seem to be connected properly although was simpley enough to put back together and there appeared also to be some repairs to the lower section. This ran into an open gulley which did not appear to be blocked. Another downpipe appeared also to be blocked and again the blockage appeared to come from the ground upwards. Two other drainpipes discharged directly onto the surface of the garden and not into any form of soakaway. Our inspection was obviously limited as it was not possible to see any of the existing soakaway arrangements.

HEARING

9. The hearing of the matter took place, following inspection, at the Luton Magistrates' Court. Those people named at the front attended.

10. Mr Sheridan-Mills the tenant of 4 Bryant Court said in his view that the proposal to spend over £40,000 on creating new soakaways was unreasonable. He was surprised that no second opinion had been sought. He told us that he had lived in the Property since 1994 and had not in that time seen any pools of water around the flats. Initially when the matter was raised he had been left with the impression that the costs of dealing with these works would be taken from reserve funds money. It was only when he unexpectedly received an invoice for, £950 that he decided to take further steps to look into the works and the costs. He was also concerned that this £950 was only the first instalment.

11. His view was that there was a large amount of moss on the roof and that this together with other roof debris had caused first the gutters, then the downpipes to become blocked. He had undertaken some clearing of gutters through Mr Hopkins who attended the hearing and he said that Mr Hopkins had found debris in the gutter and also that a tile had slipped adjacent to a Velux window and had itself lodged in the gutter causing more overflowing, but this clearly was a one-off.

12. He was asked whether if the totality of the costs of these works could have been met from reserve fund he would have made the complaint and he was honest enough to say that it was not really certain that he would have brought proceedings. His view was that a more proactive approach to cleaning the roof, the gutters and the downpipes perhaps four times a year would avoid the difficulties. He did not think it was necessary to create the soakaways to comply with current building regulations and although apparently he had been on the internet and had had confirmation as to this no such documentation was produced.

13. Mr Hopkins had attended both the inspection and hearing with Mr Sheridan-Mills but had not made a witness statement. However, Mr Turner for the Respondents had no objections to him giving some evidence. He told us that he ran a one-man company called Harpendenclean.co.uk which carried out repairs and maintenance to gutters. He said that he had visited the property some two or three times over the last nine months and had had the opportunity of inspecting some eight

downpipes. He confirmed that a number were blocked but he had not been able to clear them. He had, however, tipped water down the downpipes, although only about four in number, and this had drained off. He had cleared the guttering. He had apparently provided an estimate for replacing guttering but this was only an estimate and was based on him doing the work himself, which he thought probably he would not be able to do. He did not replace gutters on a regular basis. He had no useful comment to make on the question of the soakaways.

14. Mr Turner told us that the matter had first arisen when the owner of Flat 8, a Mr Hillesden had been in contact concerning pooling of water and water running down the exterior walls of his flat. After a preliminary inspection the survey which we have referred to above was undertaken. The intention appeared to be that instead of the five soakaways that are presently in situ three are to be created which will result in re-run of pipework. We were told that there was presently no evidence of any structural problems with the Property as a result of the alleged faulty soakaway.

15. Mr Butson told us that he had known Dr Tillit for a number of years. They managed quite a number of properties and his view was that the management company at this property, Lowstream Properties Limited, was very proactive. He was content that the works needed doing and would rely on the report from Dr Tillit. It was also made clear to us that at least three of the directors of Lowstream own property in this block and will therefore have to contribute towards the costs. We were told that there was some £20,000 being taken from the reserve and some £23,000 being provided by the leaseholders. Under the terms of Mr Sheridan-Mills' lease he has to pay one twelfth of the block costs.

16. An application under Section 20C had been made by Mr Sheridan-Mills. We were told by Mr Turner that he estimated the costs would be in the region of £1,000. His charge-out rate was £30 per hour and a good deal of time had been spent on dealing with the application. He confirmed that these costs were solely as a result of this application and no other matters. Mr Sheridan-Mills had nothing more to add other than to mention that he thought he had made the application on behalf of others but there was no evidence before us that anybody had agreed to participate in any of the applications before us.

THE LAW

17. The law applicable to this application is set out in the appendix hereto.

FINDINGS

18. The issue that we need to consider as raised by Mr Sheridan-Mills is whether the additional charge of £950 towards the guttering, downpipes and soakaway works is a reasonable expense, which is payable by him. Of course it does not stop there as a second invoice will no doubt follow if we find that the works are reasonable.

19. We find it appropriate to us to include Lowstream Property Management Limited in this decision. They are the management company provided for in the lease and it is clearly accepted by them that they are a party that needs to be involved and to defend the application brought by Mr Sheridan-Mills.

20. This has not been a straightforward decision. We were not helped by the fact that Dr Tillit did not attend the hearing. He was not requested to do so by the Respondents for costs reasons. Neither were we helped by the fact that although Mr Sheridan-Mills relied upon his experience in having built an extension to his own property, he provided no expert evidence to counteract that provided in Dr Tillit's report. The inspection we undertook indicated there were problems with some of the gutters but there was no obvious flooding of the grounds, notwithstanding that we attended at a time of rain. However, this did follow a lengthy dry period and therefore was perhaps not the best time to view the difficulties that might arise.

21. The costs involved are substantial. Some £23,000 for the leaseholders and a denuding of the reserve fund by some £20,000.

22. However, we are provided with a report by Dr Tillett, an expert in this matter. This is a report provided by a structural and civil engineer of some 30 years' experience, known to the Respondent's managing agents. A great deal of time has been spent by him in preparing the original report in June 2014 and subsequent reviews of permeation tests and as the summary provided in February of this year shows that he has seriously considered the matter and made his recommendations based on his knowledge, experience and his inspection.

23. We have noted the recommendations contained in the original report. In particular, the possibility that if the work is not undertaken in the near future there may be subsidence or settlement damage to the building. This is clearly not something that a prudent landlord would allow to happen.

24. In the absence of any evidence from Mr Sheridan-Mills other than his own views following a limited experience in construction and the limited assistance we were given by Mr Hopkins, who as we have indicated above could make no comment on the question of the soakaways, we feel that Mr Sheridan-Mills has not satisfied us that the costs to be associated with these works are unreasonable. Indeed, he does not challenge the actual costs, he challenged the need for the work to be done. It seems to us that relying on the report of Dr Tillit that there is a need for this work to be undertaken to prevent more serious problems arising in the future.

25. In those circumstances we conclude that we must dismiss Mr Sheridan-Mills' application and in the absence of any further challenge to the quantum of the works, allow those to proceed presumably using the lower quotes that have been obtained both for the guttering and downpipe work and for the soakaways.

26. Accordingly, the sum of £950 is due and owing from Mr Sheridan-Mills and there will be an additional sum of a similar amount payable in due course.

27. Insofar as the application under Section 20C is concerned we do not consider that it is just and equitable to make such an order. Mr Sheridan-Mills has been unsuccessful in his application. In any event the position is that each leaseholder is a shareholder of Lowstream Property Management Limited and may also indeed be a shareholder or member of the landlord Bryant Court Limited. Accordingly, a Section 20C order would give Mr Sheridan-Mills something of a pyrrhic victory.

However, we do not think it is appropriate to make such an order. We make no comment as to the quantum of the fees. It was put to us that they were in the region of £1,000 but if they are recovered as a service charge then any leaseholder will have the right to challenge those under provisions of Section 27A of the Act.

Andrew Dutton

Judge:

A A Dutton

Date: 18th May 2016

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.