

MAN/00BQ/LIS/2006/0004

FLAT 17 PARKFIELD MIDDLETON MANCHESTER M24 4AS

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION
UNDER SECTION 27A LANDLORD AND TENANT ACT 1985.

Applicant: Mr Raymond Hughes

Respondent: Rochdale Boroughwide Housing

Application: 7 September 2006

Inspection: 4 December 2006

Hearing: 4 December 2006 and 19 January 2007

Appearances for Applicant: Mr Raymond Hughes in person

Appearances for Respondent: Mr Stephen Sudworth (Rents and Right to Buy
Manager)
Mrs Sue Hoyle (Leasehold Officer)
Mr Ian Metcalfe (Finance Officer)

Witness (for Respondent) Mr Vince Pool (Senior Architect)

Members of the Leasehold Valuation Tribunal:

Mr. M. Davey (Chairman)
Mr. M. Hope
Mrs D. Rivers

The Application

1. By an application dated 7 September 2006, Mr Raymond Hughes seeks a determination under section 27A of the Landlord and Tenant Act 1985, as to the payability of a service charge in respect of Flat 17 Parkfield, Middleton, Manchester M24 4AS. Mr Hughes is the lessee of the property under a lease for 125 years granted to him on 8 December 1989 by the freeholder Rochdale Borough Council. The management of the Council's housing stock has since been transferred to Rochdale Boroughwide Housing (RBH). The application relates to a demand in respect of the financial year 2002- 2003 for the sum of £6713.20 being a one ninth share of the total cost for the re-roofing of the block of flats in which the subject property is located. A procedural chairman issued directions to the parties on 28 September 2006 and a hearing was fixed for 4 December 2006. Both parties made written submissions.

The lease

2. Clause 1 of the lease includes a covenant by the lessee to pay a yearly rent of £10 and, by way of further and additional rents during each year, the percentages shown in the first column of the schedule of the total costs incurred by the Council in each year of the term in providing the services and other heads of expenditure mentioned in the second column of the schedule. The first head of expenditure shown in the second column relates to keeping in repair the structure and exterior of the flat and of the Building and any other property over or in respect of which the Lessee has any rights by virtue of Schedule 6 of the Act including drains gutters and external pipes (including repairs which would amount to making good structural defects)" No percentage is shown against this head in column 1.
3. By clause 2 of the lease the Lessee covenants with the Council "(i) To pay the rents reserved and (ii) To pay to the council on demand the costs incurred by the council in executing improvements to the flat or a proportion of the costs of executing such improvements to the Building or any other building or land based upon the division of such costs between the number of flats improved or benefiting from the improvements....."
4. By clause 3 of the Lease the Council covenants with the Lessee (i) to maintain repair redecorate renew amend clean repoint paint grain varnish whiten and colour as appropriate (a) the structure of the Building... and in particular but without prejudice to the generality thereof the roof foundations external walls...timbers gutters and rainwater and soil pipes

thereof (b) the sewers drains channels watercourses gas and water pipes electric cables and wires and supply lines in under or upon the remainder of the Building.....

The Law

5. Section 18 of the Landlord and Tenant Act 1985 provides:

- (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 provides that

- (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 provision 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.

Section 27A provides that

- (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 date at or by which it is payable, and

- (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
 - (3)
 - (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The inspection

6. The Leasehold Valuation Tribunal inspected the property and surroundings on the morning of 4 December 2006. The property is a third floor, one bedroom flat with living room, kitchen and bathroom/w.c. The block in which it is located is one of 9 blocks in total on the estate. It is the only double block the others being single. At the hearing later that morning Mr Hughes appeared in person and the freeholder was represented by Mr Stephen Sudworth and Ms Sue Hoyle, Rents and Right To Buy Manager and Leasehold Officer, respectively of RBH.

The facts

7. Rochdale BC built a number of blocks of flats in the 1960s and 1970s using the same design and construction methods. The blocks at Parkfield were built in 1972/73 and were the last to be built using this design. Problems had developed over the years with all of this type of building and the Council decided to deal with this by constructing a fully pitched tiled roof system, including external rainwater pipes etc.
8. On 18 July 2002, RBH wrote to Mr Hughes to inform him that his flat would be affected by an imminent major repair/improvement programme at Parkfield. The work proposed was to over-roof the existing felt roof (which was a pent roof with a slight five degree pitch) with a new pitched roof structure. Details were given in the letter of quotations from two contractors and Mr Hughes was informed that the Council had accepted the lowest tender from Thornwood Construction Limited. The amount in respect of the block containing Flat 17 was £60,418.80 which meant that the cost for Mr Hughes's flat was £6,713.20 including professional fees. Mr Hughes was informed that the letter was sent as a notice under section 20 Landlord and Tenant Act 1985 to give him the opportunity to comment on the proposed works and estimates. Following an oral query from Mr Hughes further details of how the charge was calculated were contained in

a letter from the Council to Mr Hughes dated 25 July 2002. Mr Hughes did not make any written observation in response to the section 20 notice.

9. By a letter to Mr Hughes dated 2 April 2003 RBH confirmed that the works had been completed and that the costs would be added to the annual service charge and payable in four three monthly instalments on 2 April, 2 July and 2 October 2003 and 2 January 2004. Since that date Mr Hughes has disputed with the Council the need for, and costs of, the works that were carried out, although in 2006 he agreed to have the charges re-scheduled for monthly payment by direct debit over a period of 5 years. The first instalment was collected on 20 June 2006. Nevertheless he now brings the present application which is based on his contention that it was wrong for the Council to have gone ahead with a capital expenditure project to roof over the entire Parkfield estate with a pitched concrete tiled roof structure without obtaining quotations for a much less expensive modern repair to the existing structure.

The submissions of the parties

10. The Council states that the basis for its action was that existing roofs throughout the estate were in a very bad state of repair and had been patched and repaired many times. Complaints had been received on a regular basis from tenants and residents on the estate regarding the condition of the asphalt roofing to the 3 storey blocks at Parkfield. It was considered that a pitched roof would reduce the costs of future maintenance. In order to achieve a level eaves line for the new roof it was necessary to raise the brickwork of some of the existing structure.
11. Mr Hughes states that had the existing roof been properly maintained there would have been no need for the roof to be replaced with a different type of roof. Furthermore, he disputes whether such a solution was necessary in any event. He considers that the Council should have also sought quotations for a repair to the existing flat roof to extend its lifespan to that of the replacement pitched roof. Mr Hughes considers that the solution adopted was chosen because it meant that the job could be done without having to decant flat occupiers at a cost to the Council. Moreover, the covering of the existing roof with the new roof meant that more levels of brickwork were necessary to raise the eaves of the new roof adding further to the cost of the project. In addition he considered that it will be difficult to maintain the gutters and keep them clear without the use of expensive equipment to reach the height of the roof. Furthermore, he challenges the quality of workmanship of the repair and points to him having already complained of the same to the Council at the time. He submitted photographs of the work in progress that he had taken and drew

the Tribunal's attention to examples of the poor quality of the work which he says was for the most part unsupervised.

12. At the hearing on 4 December 2006 Mr Sudworth reiterated the point that the Council had received many complaints about the roofs on this and other estates with similar buildings and that a policy decision had been taken to replace the pent roofs with new pitched roofs. It was no longer economic to continue with patch repairs from time to time to the old roof. He also noted that Mr Hughes had not responded in writing to the section 20 notice within the 30 day period. Mr Hughes said that the leaks were not in his flat but affected the common parts.
13. Mr Sudworth explained that he had asked the relevant technical officers at the Council for any available details of reports on the project that would have been compiled at the time. However, it transpired that the files relating to this phase of the work at Parkfield had been archived and then destroyed. He could therefore add nothing to what he had already submitted.

Further Directions

14. Having closed the hearing on 4 December 2006 the Tribunal deliberated on the evidence that it had read and heard and decided that it would issue further directions to obtain necessary further evidence that could be dealt with at a reconvened hearing. Those directions included the following requirements.
 3. The respondent is directed to produce an expert report explaining how a decision to replace an existing flat or pent roof is taken by the Council. The report to include details of how alternative solutions including estimated costs, are obtained and evaluated.
 4. The respondent to produce a schedule of those developments in its ownership that have been provided with new pitched roofs since 1 January 2000. The schedule to specify the nature of the previous roof, e.g. flat, pent, pitched etc.
 5. The applicant may provide a report by himself or an expert on alternative solutions to the problems with the original roof at Parkfield other than the fitting of a new pitched roof, together with estimated costs of the alternatives.

The adjourned hearing

15. At the adjourned hearing on 19 January 2007 the Council was represented by Mr Ian Metcalfe, Finance Officer. Also in attendance was Mr Vince Pool, a senior architect at the Council, who spoke to his witness statement. Mr Pool confirmed that, following complaints about the roofs from tenants, a rolling programme was developed to re-roof the blocks in question over a number of years. The Housing Department's Technical Section completed surveys and provided an outline brief to RBH who acted as agents to advise, design, procure, tender and supervise on site the execution of the works which commenced in 2000-20001. Mr Pool listed a number of developments within the Council's ownership where the original flat roofs had been replaced with pitched roofs.
16. As to the brief, Mr Pool reiterated that there was in force at the time a Council decision to install pitched roofs on cost and aesthetic grounds, and that this is still a common, well recognised and sound recommendation. These flats were an element of the regeneration plan for the estate and this design was part of the whole philosophy. He went on to say that the RBH Technical officers were very experienced with this type of work and also had a thorough knowledge of the condition of the roofs and the viability of repair.
17. Mr Pool explained that the existing roof was asphalt to the flat areas above the corridors and felt at a 5 degree pitch to the flat units. These waterproofing materials were laid on insulation decking boards. The pent roofs all drained on to the flat roofs and in turn to the downspouts which went inside the building. Due to the roof pitch this did not present a problem of leaks to the flats. However there were leaks from the gutters and rainwater pipes in the common areas within the buildings.
18. The preferred solution was to build up the external walls and fit a pitched roof using interlocking Redland tiles with a dry verge and ridge system. This would provide a long term solution to future maintenance and avoid further internal problems as drainage was on the outside of the buildings. Insulation was also added. Mr Pool said that the solution proposed by Mr Hughes to repair the roof with an EPDM membrane has the advantage that this is a good one layer product but it is a product more easily susceptible to damage than multi-layer felt. Furthermore, the repair option would not have given a risk free solution to future leaks due to blocked outlets, faulty down pipes etc. In addition there would have been a need for more maintenance visits had the existing roof type been maintained. Mr Pool also confirmed that the logistics behind decanting the blocks for the renewal of the existing roof and the insulation board with all the

disruption that this would have caused to tenants would have influenced their decision to build a new pitched roof above the old.

19. Mr Pool also produced a report that he had compiled from a number of Building Maintenance Price Books (viz; BMI Building Maintenance Price Book (2006 edn); Spon's Architects and Builders Price Book (2007) and Laxton's Building Price Book – Major and small works (2006)). Taking a mean average of the three sources he priced the cost of re-roofing with a pitched roof and the cost of roof recovering to an existing flat roof – including new decking and insulation. The respective sums were: £54,807 for a pitched roof with a life expectancy of 35 to 50 years and £48,269.24 for recovering the existing pent roof (including the decanting of tenants during works) to give a life expectancy of 15 to 20 years. He considered that it was therefore more economical to choose the former solution.
20. Mr Pool agreed, when questioned by the Tribunal, that the real problem was the entire flat area portion of the roof. This was because of the need to clean the internal rainwater gulleys which had caused many problems with blockages. He agreed that there were other ways of dealing with the various problems with the roof but repeated that the adopted method of re-roofing was applied throughout the Council's stock of this type of building. He also said that he was not aware of any leaks within the flats under the pent roof area and that by removing the need for access to the rainwater gulleys this would reduce the need for a foot fall on the roof.
21. Mr Hughes said that when costing an alternative solution he had done the best that he could given that Rochdale MBC was unable to provide him with any of the documentation concerning the contract for the new roof. He had used a pricing method that was used and approved by the Royal Institution of Chartered Surveyors for determining costs of replacing structures in the event of loss. He had also used the average prices supplied in the RBH report.
22. Mr Hughes calculated the respective areas of the pent and flat sections of the roof. He then calculated the cost of providing timber decking and built up felt to the flat area of the roof and built up felt only to the pent area (because that is in good condition). He then added the cost of scaffolding. This produced a total cost of £14,812.74 which divided amongst nine flats comes to £1654.86 per flat. He said that this was the reasonable sum that he should be required to pay by way of his service charge contribution to the total cost.

The Tribunal's determination

23. The Tribunal considered very carefully the written and oral submissions of the parties and also took into account its own expertise. It is not disputed that:

- (a) the Council had the power by the terms of the lease to carry out works of repair or improvement to the roof of the Building;
- (b) the Council is empowered by the lease to recover from Mr Hughes a proportionate share of the relevant costs;
- (c) that the amount payable by Mr Hughes falls within the meaning of "service charge" for the purposes of section 18 Landlord and Tenant Act 1985 and that accordingly;
- (d) the amount payable is limited by section 19 of that Act to the extent that the relevant costs are reasonably incurred and to the extent that the works in question are of a reasonable standard;
- (e) the Council served a valid notice on Mr Hughes under section 20 of the Landlord and Tenant Act 1985 and that he did not respond in writing with comments;
- (f) Mr Hughes has paid at least one instalment of the sum demanded by the Council;
- (g) this does not prevent an application by Mr Hughes to the Tribunal under section 27A of the LTA 1985 and
- (h) Mr Hughes is not to be taken to have agreed the charge merely by reason of having made any payment.

24. The issue to be determined therefore is (a) to what extent, if any, the costs incurred by the Council were reasonably incurred and if so (b) to what extent if any the works were of a reasonable standard and (c) the amount to be payable by Mr Hughes.

25. The Council states that the work was formally tendered to a number of contractors on the design drawings and a bill of quantities. However, it is clear that tenders were invited only for a re-roofing of the existing roof structure with a new pitched roof. A decision had already been taken not to seek tenders for any alternative means of dealing with the problem of the defective roof. Mr Pool says that the Council would have carried out an exercise to compare the advantages and disadvantages, if any, of the alternative courses of action. He says that the solution adopted will have been chosen as the most cost effective way of dealing with the problem having regard to factors such as (1) the need to minimise future maintenance (2) the costs to the Council and disruption to tenants of decanting them in the case of the repair option (3) aesthetic considerations of replacing flat roofs with pitched roofs on this type of development. However, Mr Pool was not able to provide the Tribunal with

contemporary documentation and reports showing what happened at the time because these had been destroyed.

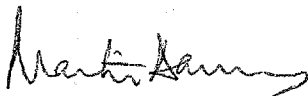
26. By contrast Mr Hughes says that it was not reasonable for the Council to have re-roofed his block with a pitched roof because other less expensive solutions were to hand that would have been as equally effective to deal with the leak problems. He relies on a decision of the London Leasehold Valuation Tribunal in the case of *Re Smithwood Close and Weydown Close, The Argyle Estate, Southfields, London SW19* (LVT/SC/P/013/070/98 and LVT/SCC/013/080/98). That was also a case where flats in a block of flats had been sold on 125 year leases under the right to buy. The Council had replaced the existing flat roofs with new pitched roofs in order to solve long term problems of disrepair. One of the lessees succeeded before the Tribunal in arguing that the extra costs of the pitched roof over the likely replacement cost of a new flat roof were unreasonably incurred.
27. Understandably, as a lay person, Mr Hughes was unaware of the fact that the LVT decision in the above case was overturned on appeal by the Lands Tribunal (*Wandsworth London Borough Council v Griffin and another* [2000] 26 EG 147) which decided that the decision to replace the roofs with pitched roofs was a reasonable one once it became clear that the pitched roof was more cost effective.
28. Nevertheless, the question for this Tribunal is whether the Council could reasonably have concluded that it was more cost effective to re-roof with a pitched roof over the old roof rather than repair the existing roof. The Tribunal agrees with Mr Hughes that that conclusion was not reasonable.
29. The Tribunal is satisfied that aesthetic considerations loomed large in the Council's policy decision to over-roof all blocks of this type with a pitched roof. The Council is of course permitted to take into account comparative cost calculations when choosing which solution to adopt in respect of the problems caused by leaking roofs. However, in the absence of contemporary documentation of such a comparison by the Council the Tribunal, having heard the evidence, has come to the conclusion that, in the case of the roof at Mr Hughes's block at Parkfield, the renewal of the existing roof would have been capable of being effected at a much lower cost than the solution adopted. Renewal would also have offered an equally viable long term solution to the problem.
30. This solution would have required a renewal of the flat area covering and base of the original roof and painting of the surface with solar reflecting paint. The surface of the pent area could then have been covered with felt and painted. This solution would also have entailed use of a reduced amount of scaffolding which would have been necessary only to reach the

flat section of the roof with security fencing used to protect the edges to the cant roof sections which could be repaired from the roof deck itself. The gutters could have been relocated to the edges of the flat roof section and the downspouts moved to the outside of the building and linked into the ground drains. The inlets (gulleys) at the tops of the internal down pipes could have been blocked before the new flat roof boarding was installed over the old roof gulleys thereby making them redundant. This would have minimised the need for persons to walk on the roofs, thereby significantly enhancing the life expectancy of the roof covering.

31. The Tribunal has calculated the total cost using 2006-2007 figures to be £19789.69 which divided by nine produces a figure of £2198.85 say £2,199 for Mr Hughes's share. However, the Tribunal then had regard to the equivalent figures for 2002-2003 which produced a reducing factor of 0.95 giving a sum of £2089.05 say £2089 for the one ninth share. Details of the calculation are given in the annex to this decision.
32. The Tribunal accordingly determines that the reasonable sum that should be paid by Mr Hughes is £2089.

Reimbursement of Fees

33. Mr Hughes also asked the Tribunal to exercise its power under regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 (SI 2003 No 2098) to order the respondent to reimburse the fees paid by him in respect of the proceedings.
34. The Tribunal has decided that it is just and equitable that the respondent should reimburse the application fee (£200) but not the hearing fee. This is on the basis that although Mr Hughes did not respond in writing to the section 20 consultation notice he has been substantially, but not wholly, successful in his application.



M Davey
Chairman

Annex	
Flat area:	
Felting, decking, insulation and vapour barrier	
32.71 sm @ £82.29	2691.71
Pent area	
Bituminous felt and solar reflecting paint	
175sm @ £29.15	5013.80
Scaffolding to flat area	
482sm @12.05	5805.34
	<u>13513.85</u>
Security fencing	350.00
Guttering, downpipes and connections	1100.00
Contingency for cleaning surfaces, blocking roof gulleys and providing cover over landing areas	2244.58
	<u>17208.43</u>
Fees at 15%	2581.26
	<u>19,789.69</u>
Divided by 9	2198.85
Say	2199.00
Adjusted to 2002-2003 figures	2089.05
Say	2089.00