FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/LSC/2021/0330**
Property	**:**	**20 Leysdown, 3 Malden Road, London NW5 3HT**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Applicants	**:**	**Janna Zeka and Zeqirja Zeka**
Representative	**:**	**Ardita Zeka, the Applicants' daughter**
Respondent	**:**	**London Borough of Camden**
Representative	**:**	**Insley Ettienne, in-house Court Officer**
Type of Application	**:**	**For the determination of the liability to pay a service charge**
Tribunal Members	**:**	**Judge P Korn** **Judge H Lumby** **Mrs S Redmond MRICS**
Date of hearing	**:**	**11 April 2022**
Date of Decision	**:**	**3 May 2022**

DECISION

Description of hearing

This has been a remote video hearing which has not been objected to (as a type of hearing) by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we have been referred are in an electronic bundle, the contents of which we have noted. The decisions made are set out below under the heading "Decisions of the tribunal".

Decisions of the tribunal

(1) The disputed charges are payable in full.

(2) The tribunal makes no cost order against the Respondent under either Section 20C of the Landlord and Tenant Act 1985 or Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. However, the tribunal notes the Respondent's assurance given at the hearing that it will not be seeking to recover from the Applicants any costs incurred by it in connection with these proceedings.

Introduction

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of certain service charges, namely the Applicants' share of the cost of district heating works. Their share equates to £18,956.95.

2. The Applicants are the leaseholders of the Property pursuant to a lease ("**the Lease**") dated 15 June 2015 and made between the Respondent (1) and the Applicants (2). The Property is a three-bedroom flat in a block of flats.

3. Originally Zeqirja Zela was named as the sole Applicant, but as Janna Zeka and Zeqirja Zeka are joint leaseholders of the Property it was agreed at the start of the hearing that the two of them are in fact joint Applicants.

Applicants' case

4. In written submissions, the Applicants state that the amount of the district heating works charge is extortionate. The initial estimate was £15,326.56 and the amount has now risen to £18,956.95. They previously paid major works charges of £1,232.43 in 2016 and £1,534.70 in 2017, which they thought was unreasonable considering that they were paying around £2,500.00 a year in general service charges on top of this.

5. They note that they had the opportunity to voice their opinions on the proposed works during a consultation meeting. During that meeting they, together with other leaseholders, stated that they were not happy with the proposals primarily due to the extortionate cost. Other factors such as noise, disturbance and whether the system was necessary and/or the most suitable system to be installed were also raised. In the Applicants' submission the consultation was just a formality, as it was clear that their concerns were not going to be addressed and that the Respondent was going to go ahead with the work despite their objections.

6. The Applicants also state that gas boilers are currently being phased out and that the Government is pushing towards home heat pumps with the possibility of grants to help with the cost of installing them. Therefore, it seems to the Applicants to be the wrong time to be installing a gas heating system when people are being discouraged from installing them in the first place. Aside from any other considerations, according to the Applicants this may mean that in the future the heating system will need to be changed again in order to be in line with the law and Government recommendations. This ultimately will lead to further major works charges.

7. The Applicants also state that during consultation meetings it was not mentioned that individual apartments would have to be damaged in multiple areas to allow for the installation of the pipes. In particular, it was now clear that various areas in their apartment would need to be broken down and drilled through and that the pipes would need to be boxed, which in turn would lead to there being less space and would ruin the aesthetics of the apartment. In addition, one cupboard door would no longer be able to open fully once the installation has been completed. In the Applicants' view, all of this would devalue the Property.

8. At the hearing, Ms Zeka took the tribunal through the above arguments.

Respondent's case

9. In written submissions, the Respondent states that the estate of which the Property forms part comprises 586 dwellings and that the entire estate is supplied with heat and domestic hot water from central boilers in a communal heating scheme. Heat energy leaves the boiler house in twin supply-and-return insulated pipes to individual blocks on the estate. Noting that the heating system was old and in need of an upgrade, the Respondent commissioned an Options Appraisal to determine the best method of bringing the system up to a modern acceptable standard.

10. The Respondent continues to provide heating and hot water through existing district heating networks as it believes this to be the most

efficient method of service provision. At the same time, the Respondent is actively developing new networks, following Central Government and Greater London Authority policies. The Clean Growth Strategy published by the Department for Business, Energy & Industrial Strategy focuses on heat networks development and extension and the London Environment Strategy outlines policies to support maximising the number of district heating networks in the transition to a low carbon economy.

11. In the Respondent's view, heat networks are the most efficient way to provide heating and hot water and to reduce CO_2 and NO_x emissions. The Respondent has made a commitment to tackle Climate Change, including targets for reductions in carbon emissions, and the UK as a whole is committed to reducing its greenhouse gas emissions by at least 80% by 2050. Heat networks are, in the Respondent's view, an important part of a long-term strategy for heat decarbonisation. Having a central plant room will enable the transition to other alternative low carbon sources, as outlined by the Clean Growth Strategy and the London Environment Strategy. In addition, through competitive energy contracts, the Respondent purchases the gas cheaper compared to the commercial rates, benefiting the residents on district heating networks as opposed to customers with individual boilers and direct contracts with other energy suppliers.

12. The Options Appraisal commissioned by the Respondent recommended a like-for-like replacement of the existing communal heating system. The existing pipework was old and in need of replacement, and pursuant to the Lease the Respondent has obligations in respect of maintaining, overhauling, repairing and where necessary replacing the whole of the heating and domestic hot water systems and gas, electricity and water. The heating and hot water on the estate was being supplied from a district heating system which was failing and had to be replaced.

13. In the Respondent's view, district heating networks are one of the most cost-effective and efficient ways of reducing carbon emissions produced by heating systems. Furthermore, their efficiency and carbon-saving potential increases as they grow and connect to each other. The Respondent has also fitted heat meters to properties and to the plant rooms. This enables users to be recharged so that they are billed for the energy they use in accordance with the Respondent's 2014 heat metering strategy, meters being a requirement of the Heat Network (Metering and Billing) Regulations 2014.

14. The Respondent sent detailed letters to all residents of the estate throughout this process setting out all available information in relation to the general background, options appraisals, options offered, costs etc. The Better Homes Framework contains agreements with up to 36 contractors under the umbrella of a Better Homes Framework

Agreement, and leaseholders were consulted on this long-term agreement. The Framework Agreement is designed to deliver the works included in the Better Homes programme and delivers a planned programme of works that in the Respondent's submission represents value for money for residents and maintains the housing stock in a good condition.

15. In response to the Applicants' comments on Government intervention, the Respondent states that as part of its efforts to work towards net-zero carbon emissions by 2050 the UK government is planning to phase out gas boilers in homes. The exact date when this will become mandatory for all UK dwellings is still to be confirmed, but in the meantime the Respondent recognises that it must transition away from fossil fuel heating towards renewable alternatives if it is to drive deeper carbon reduction across the borough. However, the Respondent believes that it will also need to make sure that its current heat networks operate as efficiently as possible, and this means replacing communal gas boilers where immediately necessary. This is considered to be the best option in relation to this estate, where an immediate switch to renewable technologies such as air sourced heat pumps or ground sourced heat pumps is not feasible. This is because the running costs for residents would be exceptionally high if not forming part of a wider package of work to upgrade the fabric of the buildings.

16. The new boiler plant room will have a minimum service lifespan of 25 years, and the Respondent would not be looking at another heating system project at this estate during this timeframe. It would also expect in 25 years' time that renewable technologies will have developed further, and the integration of these renewable technologies to the centralised plant room will then be a lot easier to do than to individual systems. The Respondent will be testing such technology as part of its pilot projects, and it is proactively working with a wide range of partners to develop funding solutions for its stock-wide retrofit programmes.

17. The Respondent states that it carried out the required statutory consultation pursuant to the Service Charges (Consultation Requirements) (England) Regulations 2003. Specifically, it consulted pursuant to Schedule 3 of those Regulations, paragraph 3 of which provides in relation to observations as follows: *"Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or recognised tenants' association, the landlord shall have regard to those observations"*. The Respondent states that it had regard to all observations made in relation to the proposed works or the estimated expenditure received within the relevant period. The relevant period ended on 18 March 2018. A summary of the observations made, and the replies, is exhibited to the Respondent's statement of case.

18. The Respondent states that it also issued the Applicants with the required Section 125 notice prior to their completion of the purchase of the Property.

19. The requirements of the legislation, in the Respondent's submission, are for the consultation notice to describe in general terms the works proposed and to give reasons for carrying out the works. It must also include estimated block/estate cost, the estimated leaseholder contribution, details of the proposed contractor, how to view the proposals and details of how to raise formal observations. With the notice the Respondent included a detailed breakdown of the proposed works. In the Respondent's view, it has not only met but exceeded the consultation requirements.

20. As regards the basis on which these costs can be passed on to the Applicants (amongst other leaseholders), clause 4.4 of the Lease contains the following landlord's covenant: *"Provided only that the amenities hereinafter in this sub-clause mentioned are provided to all the Flats in the Block at the date hereof but not otherwise and subject as hereinafter set out at all times during the Term to supply hot water for domestic purposes to the Flat by means of the boiler and heating installations serving the Block and also from the 1st October to the 30th April inclusive in each year to supply hot water for heating to the radiators fixed in the Flat so as to maintain a reasonable and normal temperature"*. Paragraph 2 of the Fifth Schedule to the Lease then includes as an expense to which the tenant under the Lease covenants to contribute by way of a service charge, namely: *"The cost of periodically inspecting maintaining overhauling repairing and where necessary replacing the whole of the heating and domestic hot water systems and gas electricity and water pipes and cables serving the Block …"*.

21. The Respondent's Project Manager, Andrew Georgiou, has provided a witness statement in support of the Respondent's case. In his witness statement he states that the existing district heating system is more than 30 years old and is in major need of upgrading. The pipework is made of iron and over the years has corroded and is leaking all over the estate, posing issues with the existing plant which has failed. The appointed contractor for the works is Invicta Building Services Limited. The contract envisages a 22-month programme, and works are in his view progressing well and should be completed by the end of September 2022. There have been leaseholder meetings and 'meet the contractor' meetings.

22. Mr Georgiou states that the increase in cost from the original estimate is due to the original tender not taking account of the Covid-19 pandemic and the resulting lockdown, which increased the costs associated with site activities and site preliminary costs. There were also increased costs in materials due to Brexit. The original tender did

not include all asbestos works, nor did it include the requirement for the boosted water mains due to changes in water pressure from Thames Water to the estate. Under the Lease, it is the Respondent's responsibility to maintain, repair or replace the external parts of the block, and the Applicants are obliged to contribute towards the costs thereby incurred.

23. At the hearing, Mr Georgiou was cross-examined on his witness statement. He was asked where the Respondent had tried to reduce costs and he said that the Respondent had negotiated a cap on asbestos costs and a limit on charging extra for the increased cost of materials caused by Brexit or extra Covid-19 costs due to difficulty of access. He said that the increase from the original estimate was due to inflation.

24. As regards the internal layout of the pipework, Mr Georgiou accepted that some space was being lost but said that there had been consultation and ultimately the Respondent needed to find a solution to make it work. He was asked what would happen if the Respondent discovered that it needed to move away from using gas in the near future, but he was adamant that this would not happen in the near future. As to whether an alternative air pump system would be longer lasting, he said that whilst this was possible it would be very expensive to instal. He also said that that as air pump systems are relatively new it is difficult at this stage to know quite how long-lasting they are and whether they provide sufficient heat. He said that the Respondent had responded to all observations but acknowledged that it had not made any changes as a result of those observations.

25. It was put to Mr Georgiou that given the state of the pipework described by him perhaps the works should not have been delayed so long, and he accepted that this was arguably the case.

26. Ms Ettienne said at the hearing that the Respondent had complied fully with the statutory consultation requirements and had also consulted informally in addition to the required formal steps. It had explained the cost to the Applicants, will work with residents to minimise any aesthetic problems, and can offer a payment plan to spread the cost.

Tribunal's analysis

27. First of all, having considered the terms of the Lease – in particular clause 4.4 of the Lease and Paragraph 2 of the Fifth Schedule – we accept that this category of costs is recoverable in principle under the terms of the Lease. In any event this point is not disputed by the Applicants, whose arguments focus instead on the reasonableness of the cost, the suitability of the chosen heating system and their concerns about aesthetics and property value.

28. On the issue of consultation, as noted by the Respondent, under the Service Charges (Consultation Requirements) (England) Regulations 2003 the Respondent's obligation in respect of observations made by leaseholders was to "have regard to" those observations. Whilst this involves genuinely considering each observation made, the obligation to "have regard to" each observation does not amount to an obligation to make changes if – having properly considered the relevant observation – the Respondent felt that changes were not warranted.

29. We have considered the parties' respective submissions on the consultation issue, including the detailed list of observations made by leaseholders and the responses given by the Respondent. In our view, on the basis of the evidence before us, the Respondent has made a genuine attempt to answer and engage with the observations made and there is no evidence of any observations having been ignored. Whilst in the absence of a specific change having been made by a landlord in direct response to a specific observation made by a leaseholder there is always the possibility that the landlord in question did not properly "have regard to" that observation, there is no real basis for concluding that this is the case here. Whilst we accept the Applicants' sincerity in this regard, in our view the Applicants have ultimately just relied on a general feeling that their observations have had no impact, and they have been unable to point to any actual evidence that the Respondent has had no regard to their – or other leaseholders' – observations.

30. On the issue of cost, the Applicants describe the cost as exorbitant but they have produced no evidence to substantiate their view. They have offered no expert evidence or expert report, no comparable evidence and no other objective information to support their belief that the cost is unreasonable. In relation to their argument that a different heating system should have been installed, they appear to be relying on gut feeling together with some basic conjecture about the likelihood of the system chosen by the Respondent becoming obsolete in the future. Again, they have provided no expert analysis or other evidence to support their position, and therefore their argument does not really amount to more than an intelligent guess.

31. By contrast, the Respondent commissioned and followed the recommendations of an options appraisal. The Respondent's opinion and actions were in part informed by central and local government policies, and the Respondent has provided a reasonably detailed witness statement from its project manager (Mr Georgiou) on which he was cross-examined at the hearing. The Applicants had the opportunity to challenge Mr Georgiou's evidence, and Ms Zeka did ask him questions as did the tribunal, but despite a small amount of confusion on Mr Georgiou's part at one point as to the precise reasons for the increase in cost from the original estimate his evidence was sufficiently robust and persuasive to deal with the questions posed to him in the absence of any expert evidence supporting the Applicants' position. Furthermore, the Respondent in common with other local

authorities has a significant amount of in-house experience through managing a large housing stock and it is proper that some weight should be attached to this, particularly in the absence of compelling evidence in support of the Applicants' position.

32. In relation to the Applicants' concerns about aesthetics and the effect on property value, we accept that these concerns are genuine. However, if as seems to be the case the heating system was in need of a major overhaul, some method of carrying out the required works had to be adopted. And whilst no leaseholder will welcome a solution which appears to them to be unsightly or to take up more space than necessary, the Applicants have not come up with an alternative solution, let alone one which they can demonstrate would be objectively better.

33. In conclusion, therefore, on the basis of the evidence before us we consider the disputed charges to be reasonable and payable in full. In reaching this conclusion we mean no disrespect to the Applicants who have conducted themselves well and have put their arguments with integrity, but there is simply insufficient evidence to support their position.

Cost applications

34. The Applicants have applied for cost orders under section 20C of the Landlord and Tenant Act 1985 ("**Section 20C**") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**").

35. The relevant part of Section 20C reads as follows:-

(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant …".

36. The relevant part of Paragraph 5A reads as follows:-

"A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".

37. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with

these proceedings cannot be charged direct to the Applicants as an administration charge under the Lease.

38. In the present case, the Applicants have been unsuccessful on the substantive issues. In addition, whilst we are satisfied that the Applicants' concerns about the service charges are genuine and that they have conducted these proceedings in a reasonable manner, the Respondent has also acted reasonably in the context of these proceedings. In the circumstances, it would not be appropriate to make either a Section 20C or a Paragraph 5A cost award against the Respondent. However, at the hearing Ms Ettienne stated that the Respondent would not in fact be charging to the Applicants any of the costs incurred by it in connection with these proceedings.

Name: Judge P Korn **Date:** 3 May 2022

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. 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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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.