

11499



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

Case Reference : **BIR/00FY/LSC/2015/0008**

Property : **1 – 42 Regent Court,
38 – 40 Derby Street, Nottingham
NG1 5FF**

Applicant : **Kewmoor Ltd**

Representative : **Highstar Ltd**

Respondents : **The Respondents listed in the
Appendix to this decision**

Representative : **None**

Type of Application : **Application for determination of
liability to pay and reasonableness of
service charges under sections 27A
and 19 of the Landlord and Tenant Act
1985**

Tribunal Members : **Judge C Goodall LLB
Mr C Gell FRICS**

**Date of inspection and
deliberation** : **24 March 2016**

Date of Decision : **21st April 2016**

DECISION

Background

1. This is an application for determination of the reasonableness of the inclusion in the service charge for 2016 of a provision for major works at 1 – 42 Regent Court, Derby Street, Nottingham. The amount for which approval is sought is £174,252.00.
2. This application is supplemental to a decision dated 16 December 2013 under reference BIR/00FY/LIS/2013/0036 by this Tribunal (“the Previous Decision”) in which the Tribunal determined that it would be reasonable for a total of £240,000.00 to be included in the service charge demands for major works. In the Previous Decision, the sum determined as reasonable was spread out over four service charge years as follows:

2013 - £25,000
2014 - £90,000
2015 - £100,000
2016 - £25,000

3. The Applicant’s case is broadly that the sums approved in the Previous Decision are now inadequate to cover the likely cost of the works, and approval is sought for the anticipated additional cost.
4. The Tribunal met to determine the application on 24 March 2016. No party had requested a hearing, and the determination was therefore made on the basis of the written representations of the parties. Prior to making the determination, the Tribunal had inspected the property in the presence of Ms K Levene, the managing agent’s representative, and Mr A Marti a representative from Accord Surveyors, who are instructed by the Applicant to supervise the works.

The Property

5. There are 42 residential flats in Regent Court. It comprises a courtyard development in two separate buildings on three storeys with commercial units at street level on the southern side. A fuller description is given in the Previous Decision.

The leases

6. The property is subject to a headlease granted in 1997 and made between Sol Construction Ltd (1) and Derwent Housing Association Ltd (2). No copy was provided to the Tribunal. The Tribunal has assumed that the Applicant is lessee under the headlease and lessor of the 42 underleases that it assumes have been granted to the Respondents.
7. The Tribunal was provided with a sample underlease and has worked on the basis that each Respondents’ underlease is identical in all material respects that relate to this application.

8. The Applicant is obliged, under clause 5.1 of the underleases to “maintain and keep in good and substantial repair and condition the structure of the “Block”. The Tribunal accepts that this includes Regent Court, but the definition of the Block is contained in the headlease which was not supplied to the Tribunal. The definition of “structure” includes the roof, walls and window frames. Under clause 5.3, the Applicant must also decorate the internal common parts of the Block.
9. Each underlessee is obliged to pay 2.38% of the costs incurred by the Applicant in complying with its covenants above. The Respondents together must therefore pay 99.96% of this cost.
10. Clause 1.1.4 of Schedule 4 of the underleases allows the Applicant to collect a service charge contribution towards the future costs the Applicant expects to incur in replacing, maintaining and renewing those items which the Applicant has covenanted to replace.

The Works for which approval of a reserve fund contribution is sought

11. The major works (“the Works”) which the Applicant proposed in 2013 to fund from the reserve are works described in paragraph 3 of the Previous Decision. The Applicant proposed to carry out the Works in three phases, as follows:

Phase 1	External works to flats 1 – 30: stonework and masonry repairs and cleaning and roof repairs; replace or repair rainwater goods; external joinery repairs and external decoration – estimated cost ££141,781.42
Phase 2	Similar external work as was required in Phase 1 to flats 31 – 42 – estimated cost £64,921.02
Phase 3	Internal decoration to communal areas to all flats – estimated cost £17,997.60
12. With a provision for fees and contingencies, the Previous Decision authorised collection of annual sums over 4 years to cover the cost of the Works in the sum of £240,000.
13. The Tribunal’s understanding of the Applicant’s case, gleaned from consideration of its written submissions, is that the original provision of a total reserve fund for the Works of £240,000 has turned out to be inadequate for the following reasons:
 - a. The original tender in 2013 upon which the proposed reserve figure was based was from a company called Alfred Bagnall & Son Ltd, whose tender price for all three phases was £185,583.08 plus VAT.

That cost (plus the VAT and professional fees) was covered by the approval granted in the Previous Decision.

- b. In October 2014 Alfred Bagnall & Son Ltd were instructed to carry out the Phase 3 works, which were completed in January 2015. There was a direct cost overrun of £4,416.60 plus VAT as emergency repairs to two windows and re-plastering of certain communal staircases were required and heaters to dry out the works were also used at a cost of a further c£5,000. The total cost of Phase 3 eventually came to £30,115.00, i.e. a cost overrun against initially estimated costs of c£12,000.
- c. Alfred Bagnall then informed the Applicant's agents that their estimator had made a major mistake in the costings of their initial tender and they would not be able to accept any further instructions to proceed with the Works. The Applicant's agent retendered to four proposed contractors. Only one responded who was CLC Contracts Ltd. Their tender price for Phases 1 and 2 only was £212,990.93 plus VAT, split as £139,166.15 for Phase 1 and £61,824.78 for Phase 2 plus an overall contingency of £12,000.
- d. The Applicant therefore instructed CLC Contracts Ltd to carry out the Phase 2 works in 2015. They were certified as practically complete on 6 November 2015 with a final account value of £63,125.05 plus VAT and fees. The Applicant's case is that the final cost of Phase 2 work is £87,875.53, which is c£23,000 above the allowance granted in the Previous Decision.
- e. In December 2015, a council refuse collector noticed that masonry had fallen from the side of Regent Court onto the pavement below. As a result, the Applicant carried out urgent repairs at a cost of £6,240.70.
- f. Phase 1 has not yet been carried out. A delay arose in 2015 because Nottingham City Council refused to grant a scaffolding licence as works were being undertaken to the main Derby Road which would have made scaffolding impractical. The tendered cost from CLC Contracts Ltd of £139,166.15 plus VAT and fees will total approximately £186,000, which is approximately £44,000 more than the allowance of £141,781.42 approved in the Previous Decision.
- g. Whilst the emergency work referred to above at paragraph 4e was being carried out, the Applicant's agent arranged for a specialist stonework company, Bonsers (Nottingham) Ltd, to report to it on the condition of the ten gable sections of the roof. Bonsers reported that extensive additional stone repair and replacement was required, at a cost of approximately £55,000 plus VAT. The Applicant's surveyor has in fact priced this additional work ("the

Additional Work”) as in the order of £71,600 plus professional fees and VAT. This cost would therefore be about £95,000, for which the Applicant has obtained no prior approval from the Tribunal.

- h. The Applicant says, so far as the Tribunal understands its documentation, that it will therefore need to incur additional costs, being:

i. Phase 3 additional cost as above	12,000.00
ii. Phase 2 additional cost as above	23,000.00
iii. Urgent repairs	6,240.70
iv. Phase 1 additional cost as above	44,000.00
v. Additional Work to stonework	95,000.00
Total	180,240.70

14. The Applicant included a page in its submissions that provided different figures (page 35). It uses the same figures as appear above for the cost of Phase 2 (£87,875.53) and Phase 3 (£30,115), but Phase 1 is priced at £260,088.78, which includes the Additional Work. To these sums are added £36,172.57 for fees. These sums total £414,251.88. As approval for a reserve of £240,000 has already been granted, the additional sum for which approval is sought is £174,252 (rounded).

The Respondent’s case

15. Only Mr Bunting, the twelfth Respondent, made any submissions to the Tribunal. He expressed concern at the level of fees being charged, particularly as the managing agent is already charging a management fee. He says he is not in a position to assess the costs of the Works, though he expresses concern that only one company has tendered. Finally, he complains that he has not been able to communicate with other leaseholders as the agents have not passed on his details to them.

Discussion and determination

16. In the Previous Decision, in approving the collection of sums towards a reserve fund for the works, the Tribunal must be taken to have concluded that the carrying out of the works then contemplated was reasonable. The Applicant’s surveyor has provided a written report summarising his inspection of the stonework in December 2015 and concluding that the Additional Works are required. This evidence is unchallenged, it is a professional opinion, and the Tribunal accepts that it is reasonable for the Additional Work also to be undertaken. The Tribunal has noted Mr Bunting’s concerns. On the question of fees, the Tribunal does not consider it appropriate at this stage to determine the level of fees. It takes the view that the fees budgeted are within the bounds of reasonableness. Managing agent’s fees for overseeing a major building project are not likely to be covered by a standard management fee for general management of a residential block. If when final expenditure figures are produced, a

Respondent considers there is a case for arguing that the actual fees are excessive on the facts of the case, that case may still be brought to the Tribunal.

17. The Tribunal understands also that Mr Bunting wishes to co-ordinate his response with other Respondent's and he is at liberty to do that by making direct contact with them if he wishes. Their addresses are likely to be accessible via the Land Registry if the Applicant will not pass on his details.
18. On the Tribunal's analysis of the Applicant's case, it may be that the budget sum for which approval is requested of £172,252 is inadequate (see paragraph 13h above). However, the Tribunal is not minded to approve a sum which was not requested. The Tribunal accepts that in order to complete the Works and the Additional Works, further expenditure in the order of £172,252 may be required. It determines that it would be reasonable for the Applicant to collect this sum by way of service charge from the Respondents.
19. It is important for the parties to understand that there are limitations to the authority given by this decision. In particular:
 - a. This is an approval of a budget for 2016. It is not approval of the actual costs incurred in 2014 and 2015 when the Phase 3 and Phase 2 costs were (respectively) expended, or indeed in 2016. In particular:
 - i. it does not whitewash expenditure which has gone over budget in those years, and
 - ii. it does not obviate the need for the Applicant to spend the budget reasonably, including the need to show the costs actually incurred were competitive. The Tribunal notes the absence of any further quotations beyond the short and unspecific email from Bonsers for the Additional Works. As a matter of prudence, the Applicant may wish to ensure those works are competitively and professionally priced when it eventually incurs them.
 - b. Nothing in this decision should be taken as acceptance by the Tribunal that consultation on the Works or the Additional Works, as required by section 20 of the Landlord and Tenant Act 1985, has taken place. The Applicant relies on a consultation process which it says it undertook in 2012. Whether that remains adequate consultation, particularly for the Additional Works, identified as necessary only in December 2015, is not determined by anything in this decision.

- c. The Tribunal has not been supplied with full copies of all relevant lease documents in this case. It has therefore not considered whether any contribution towards the maintenance of the Block may also be required from any other party, other than the Respondents, who is occupying any other part of it.

Appeal

20. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)

Appendix

SCHEDULE OF RESPONDENTS

Respondent	Flat	Name
1.	Flat 1	Mr S.M. Jennings
2.	Flat 2	Mr O. Sahinbozkir
3.	Flats 3, 8, 12, 17, 19, 25, 26, 30, 38	Mr N. O'Dwyer
4.	Flat 4	Mr & Mrs Salisbury
5.	Flat 5	Mr S. Jeloos-Haghi
6.	Flat 6	Ms C & Ms H.J. Freeman
7.	Flat 7	Mr P. Panayi
8.	Flat 9	Alagarathanam & Seeta Natarajan
9.	Flat 10	Dr I. Biza
10.	Flat 11, 28, 31	Mr B. Dhaliwal
11.	Flat 14 a	Ms A.J. Baxter
12.	Flat 14	Mr D. Bunting & Mr J.P. Bunting
13.	Flat 15	Mr & Mrs Carter
14.	Flat 16	Mr P.J. Dowling
15.	Flat 18, 23	Mrs C. Norton
16.	Flat 20	Mr & Mrs A. Offer
17.	Flat 21	Ms H.F.K. Kirkham
18.	Flat 22, 27	Leanflex Limited
19.	Flat 24	Mr G. Waller & Mr P. Hargreaves
20.	Flat 29, 33, 37	Vestonte Limited
21.	Flat 32	Mrs J. Jones
22.	Flat 34	Mr & Mrs Villanueva-Leal
23.	Flat 35	Mrs K. Seung Chan
24.	Flat 36	Dr S. Omorphos
25.	Flat 39	Mr S. Atkar
26.	Flat 40	Mr P. Grunert
27.	Flat 41	Mr H. Bashir
28.	Flat 42	Ms P.R. Lawniczak