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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BY/LSC/2021/0001**
HMCTS code (audio,video,paper)	**:**	**P:PAPERREMOTE**
Property	**:**	**Unity Building, Rumford Place, Liverpool L3 9BZ**
Applicants	**:**	**FIT Nominee Limited & FITS Nominee 2 Limited**
Applicants Representative	**:**	**JB Leitch Limited**
Respondents	**:**	**Various Leaseholders (See Annex)**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 27A**
Tribunal Members	**:**	**Judge J.M.Going** **J.Faulkner FRICS**
Date of Deliberations	**:**	**25 August 2021**
Date of decision	**:**	**16 September 2021**

DECISION

Covid -19 pandemic: description of hearing:

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face to face hearing was not held because, in the event, no one requested the same, it was not necessary nor practicable, and all the issues could be determined on the basis of the papers. The documents that the Tribunal was referred to were in the Application, those supplied with it, the Applicants' bundle and its responses, together with such representations as were received from the Respondents, all of which the Tribunal noted and considered.

The Decision made by the Tribunal is set out below.

THE DECISION

The Tribunal has determined that the costs of installing the proposed new fire detection and alarm system proposed by the Applicants and estimated by RNM Electrical at £190,170 plus VAT are recoverable from the Respondents as service charges under the terms of the long-term leases held by them.

Preliminary

1. The Applicants applied on 23 December 2020 to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination as to whether, if costs were incurred for installing a new fire detection and alarm system, a service charge would be payable, and as to whether the relevant costs are reasonable.

2. The Tribunal issued initial Directions on 17 February 2021, stating that the matter would be dealt with based on the papers provided by the parties without holding a hearing, unless any of them requested a hearing. None of the parties requested a hearing (except for one Respondent who later withdrew that request).

3. The Applicants provided a sample lease with the Application and, as part of the Directions, were mandated to inform each of the over 160 Respondents of the Application, making a copy available on a designated website, accessed via a suitable link, to which additional documents, as set out in the Directions and including its Statement of Case, would be added as the Application progressed.

4. The Directions also confirmed that any of the Respondents could send both to the Applicants and the Tribunal any statement that they wished to make in response to the Applicants' case.

5. Two Respondents made statements in reply. Mr Hart issued a detailed statement. There were also brief emails from Mr and Mrs Evans.

6. The Tribunal convened on 25 August 2021 to decide the Application.

The factual background

7. Unity Building, having its address at 1-3 Rumford Place Liverpool L3 9BW, is described (in the Fire Prevent Report referred to below) as "attached to the Unity Commercial Building and is 86 metres in height. The building was constructed in 2007 and there is a total of 161 private residential apartments over 26 floors… There are two basement car parking levels. The ground floor contains a residential entrance foyer with a concierge desk along with private residential apartments. The upper floors contain private residential apartments and ancillary areas. A gymnasium is provided on the sixth and seventh floors only. The upper floors are provided with a single protected stair that serves the 24th floor down to the ground floor. Two additional protected escape stairs are provided from the larger floors. There are two firefighting lifts that provide access from the ground floor to the 24th floor. The pod at the top of the building houses the penthouse apartments of three floors from the 24th floor up to the 26th floor."

8. The Applicants now own the freehold, and each Respondent is the leasehold owner of an apartment within Unity Building. Each apartment is held under the balance of a 150-year term computed from 1 January 2003.

9. The following core facts and events are confirmed by, or referred to, in the papers. None have been disputed, except where specifically referred to.

2007	The initial phase of the development appears, from the entries on the freehold title, to have been completed in 2007, by the end of which over 100 of the apartments had been sold.
2008 – 2011	Over 40 more flats were completed and sold.
2012 – 2016	The remaining flats were completed and sold.
13 June 2017	Rumford Investments transferred the freehold to the Applicants.
14 June 2017	72 people died and more than 70 others were injured in the Grenfell Tower fire in London.
2017 – 31 January 2021	Mainstay Residential Management Ltd ("Mainstay") acted as the managing agents for Unity Building.
20 January 2020	The Ministry of Housing, Communities and Local Government ("MHCLG") issued the document "Advice for

	Building Owners of Multi-storey Multi-occupied Residential Buildings" ("the MHCLG guidance").
6 July 2020 (as apparently amended on 8 July 2020)	FirePrevent Ltd ("FirePrevent") issued a written report which referred to various fire safety defects at the premises. It concluded that whilst the materials on the face of the external façade were compliant with the requirements of the Building Regulations, the majority of the non-facing materials were not. Combustible insulation panels and combustible breathable membrane were identified. It was stated that "overall, the external fire spread risk for Unity Building is high/medium". Various physical remedial actions were advised. The report concluded that the overall management of the premises was good, but that the fire alarm, compartmentation, and fire doors all required attention. The initial advice within the report confirmed that the concierge could be utilised to undertake a Waking Watch service. However, the Applicants statement of case says that this was subsequently deemed to be unsuitable on the basis that a full walk round of the development would take at least 45 minutes and the patrols would need to be undertaken hourly while still managing parcels and other concierge duties. (Mr Hart has questioned the necessity of a full internal and external walk round, noting that FirePrevent's original report had only proposed an external walk round, and he attributed the change as having been influenced by Mainstay).
6 July 2020	FirePrevent also completed a form EWS1, being the External Wall Fire Review assessment form prompted by various institutional lenders with the help of the RICS. That confirmed a B-2 rating i.e. the conclusion that "an adequate standard of safety is not achieved".
10 July 2020	The Applicants notified Merseyside Fire and Rescue Service ("MFRS") of the FirePrevent report, confirming that a Waking Watch would be implemented, and that the evacuation policy would be changed to simultaneous evacuation. This was in accordance with the recommendations of the National Fire Chiefs Council ("NFCC") "Guidance to support a temporary change to a simultaneous evacuation strategy in purpose-built block of flats" where a "stay put" policy was part of the original design but is no longer considered appropriate owing to significant risk issue such as combustible external façades. Paragraph 4.4 of that Guidance states that "the installation of a temporary fire alarm and detection system is preferred over a continued use of a Waking Watch system". Paragraph 4.14 states in bold letters" NFCC strongly recommends that where a change to a simultaneous evacuation is deemed appropriate and required for medium to long periods of time, that a temporary common

	fire alarm system is installed. This… is a more reliable and cost-effective way to maintain a sufficient level of early detection. An appropriate communal fire alarm and detection system will generally provide more certainty a fire will be detected and warned at the earliest opportunity rather than rely on using trained staff". The latest amendments to the Guidance are said to "underscore the…. NFCC's firm and long-held expectation that building owners should move to install common fire alarms as quickly as possible to reduce or remove the dependence on Waking Watches. This is the clear expectation for buildings where remediation cannot be undertaken in the "short term". This approach should, in almost all circumstances, reduce the financial burden on residents where they are funding the Waking Watches."
July 2020	A simultaneous evacuation policy was put in place together with a two-person trained Waking Watch team patrolling the building every 60 minutes.
31 July 2020	Surety Fire Solutions Ltd ("Surety") confirmed in a fire risk assessment various actions were required including rectification of a fault within the fire alarm, which it had identified as a high – substantial risk, together with a long list of other issues, classed as medium – moderate risks requiring action over the next six months, including various compartmentation issues, cold smoke seals, fire door threshold gaps, firefighting equipment, riser cupboards, signage, bin stores, the regime for testing of emergency lighting, et cetera.
27 August 2020	MFRS wrote to Mainstay following a visit on 14 August stating its opinion "that some people are in risk in case of fire" and enclosing a Schedule of required works and actions.
August 2020	JBH Property Consulting Ltd ("JBH") were instructed to provide contract administration project management services for the installation of an interlinked alarm system. It was specifically tasked with reviewing the information previously obtained, providing proposals to meet with the approval of MFRS, and a solution which was cost-effective and would cause minimal disruption to residents.
August 2020	JBH's report recommended an automated interlinked wireless heat detection and alarm system installed in all apartments running in tandem with the existing system, which once activated would cause building wide evacuation. The report noted that the current fire detection system is limited to automatic detection in the common areas and basement level car parks, with the individual apartments having stand-alone smoke detectors. The report stated that a fully automated detection system was required across all the apartments to be able to effect the simultaneous evacuation of the building and contact

	MFRS. The new system would provide heat detectors in each room with a window that overlooks those parts of the external wall identified as being a significant or notable fire hazard, and to provide adequate coverage within the apartments in accordance with the NFCC guidance, typically a one-bedroom apartment was likely to require 2 detectors, and a two-bedroom apartment 3. The type of system proposed was a "wireless addressable system" whereby "the detectors are simply screwed to the ceiling, causing minimal disturbance and mess. The detector is then linked to the main panel wirelessly". The report referred to a budget cost including contingency, fees, and VAT of £296,694.
30 September 2020	Tender documents including a specification and drawings were provided by JBH to 7 contractors with the request that the contractor provide a lump-sum fixed-price basis.
21 October 2020	The 7 contractors quotations ranged from estimated costs, adjusted to be compatible, of £189,640 plus VAT to £316,081.65 plus VAT (exclusive of fees but including provisional sums of £2500 for unforeseen works and a further £2500 for additional works to interface with the commercial units). RNM Electrical gave the cheapest and most competitive quote and provided one of the shortest timeframes for installing the new system. As such the Applicants wish to instruct RNM Electrical to commence the works.
23 December 2020	Mainstay organised a virtual leaseholder meeting with the Respondents to discuss the various issues including the Building Safety Fund, the Waking Watch and the proposed new fire alarm. They referred to the monthly cost of the Waking Watch as being £15,859 plus VAT (which for a year would equate to £228,370).
1 February 2021	FirstPort Property Services, part of a connected group of companies, took over as the managing agents of the development in succession to Mainstay.
March 2021	It was confirmed that the Applicants have registered the premises for the Waking Watch Relief Fund and the Building Safety Fund.

The relevant terms of the Lease

10. A sample Lease ("the Lease") was provided to the Tribunal and it is understood that all the Leases contain comparable provisions.

11. Clause 5 confirms a covenant by the Landlord that "subject to the payment by the Tenant of the Service Charges Proportion by this Lease covenanted to be paid it will perform and observe the obligations set out in the Sixth Schedule hereto…"

12. Clause 9 states: –
"For the sake of clarity the parties acknowledge that notwithstanding anything herein contained or implied: –
……(e) Unless otherwise specifically provided nothing herein shall inhibit or in any way restrict or prevent the Landlord providing or installing any system or service not in existence the date hereof for the purposes of good estate management of the Block and the maintenance of the Block as a block of residential flats and…. the cost charges and expenses incurred by the Landlord in connection therewith shall be deemed to be an expense incurred by the Landlord in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fourth Schedule hereto
(f) Nothing herein contained or implied shall in anyway prevent or restrict the Landlord from removing changing adding to or otherwise altering any system or service in existence at the date hereof for the purposes of good estate management of the Block and/or the maintenance of the Block as a block of residential flats and… the cost charges and expenses incurred by the Landlord in connection therewith shall be deemed to be an expense incurred by the Landlord in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fourth Schedule hereto.

13. The rights and easements excepted and reserved to which each flat is subject are set out in the Third Schedule and include by paragraph 1 of that Schedule "All such rights corresponding to those mentioned in the Second Schedule as are enjoyed or intended to be enjoyed as against the Flat by any other flat in the Block" and by paragraph 4 of the same Schedule "The right for the Landlord… with or without agents surveyors and workmen from time to time and at all reasonable times… to enter into or upon the Demised Premises… for the purpose of inspecting cleansing maintaining repairing renewing or replacing any mains pipes wires conduits appliances meters mains switches drains or equipment or service of whatever nature (whether or not within the flat)…". Paragraph 8 includes the further right for the "the Landlord… with or without agents surveyors and workmen from time to time and at all reasonable times whenever necessity shall arise (or in the case of emergency at any time) to enter into and upon the Demised Premises or any part or parts thereof… for any proper purpose connected with their respective interests in the Flat and/or the Block and/or for any other proper purpose whatsoever".

14. The Second Schedule setting out the rights appurtenant to each Flat includes in paragraph 6 "Such rights of access to and entry upon the remainder of the Block and any other flat in the block as are necessary for the due performance of the Tenant's obligations under this Lease and for the purpose of carrying out any permitted works to the Flat…".Paragraph 1 of the Third Schedule, as referred to above, reserves corresponding rights.

15. The Fourth Schedule to be Lease setting out the Tenant's Covenants with the Landlord includes reference to the need to "to pay and keep the Landlord indemnified against the… Service Charge Proportion of all costs charges and expenses which the Landlord shall incur any complying with the obligations set out in Clause 9 and the Sixth Schedule hereto and/or in doing any works or things to the parts of the Block used solely by the residential tenants and/or the

maintenance and/or improvement of the Block and/or any other costs charges or expenses which the Landlord designates as a …service charge item…".

16. The Sixth Schedule setting out the Landlords Covenants includes: –
"6. To repair in good and tenantable state and condition the structure and exterior and the Common Parts of the Block and all fixtures and fittings in the Common Parts and additions thereto…
7. To provide such facilities for the benefit of the Block as the Landlord may from time to time determine (acting reasonably)…
10(a) To use all reasonable endeavors to keep the Common Parts and all fixtures and fittings therein and all additions thereto which are used by residential Tenants within the Block only in good and tenantable repair…
10(b) Without prejudice to the generality of the foregoing to use all reasonable endeavors to maintain any equipment and/or facilities which may from time to time be available for communal use by residential Tenants within the Block only and is for as may be applicable to pay and discharge all and any other rental or other payments (including the maintenance payments) which may from time to time be payable in relation to… any… such facilities …whether such facilities are situated wholly or partly within the Common Parts of the Block or elsewhere within the Block".

The Parties submissions

17. The Applicants having set out the details of those matters referred to in the timeline confirmed their belief that the Waking Watch cost could not remain indefinitely and that the solution was to install the new interlinked heat detection fire alarm system. It was their intention that it, together with use of the existing concierge, would negate or reduce the need for the Waking Watch. Invoices showed that the Waiting Watch had cost £34,361 60, inclusive of VAT, for July and August 2020.

18. It was the Applicants' submission that the new system is justified for various reasons including for the benefit of the Respondents and good estate management, and that the consequent costs would be reasonably incurred and payable as a service charge.

19. Mr Hart, acting in a personal capacity but who mentioned that he is chair of the Unity Residents Association, raised various points in response, distinguishing between what he referred to as "reserved" and "substantive" matters. He acknowledged and agreed that his reserved matters, in particular the costs of the Waking Watch which he computed at a rounded weekly cost of £4500 annualised to £234,000, and the costs of consultants' fees, were outside the Tribunal's present remit.

20. He stated that "as to the first substantive matter (of whether the cost of alarm installation associated costs are recoverable from leaseholders to the service charge), I do not oppose the Application in principle, as long as it can be demonstrated to the leaseholders' satisfaction beyond any doubt before any costs are incurred, the installation of the fire detection system achieves the objective of eliminating the leaseholders' exposure to all ongoing costs relating

to Waking Watch, or fire wardens, or evacuation officers howsoever called". "It would be unfair to expect leaseholders to pay the significant sums involved were the alarm not to achieve its clearly stated purpose".

21. Mr Hart amplified his position by later stating "if the objective of Waking Watch elimination is not achieved, the Applicant may argue that the facility (i.e. interlinked alarm) is still for the benefit of the premises and for the Respondents in that it is beneficial in raising the alarm for simultaneous evacuation. Such a position would be ill founded and unsustainable as it overlooks the fact that Waking Watch already covers that detect and alert function. Further, there is absolutely no requirement in the guidance for both Waking Watch and an interlinked alarm system to be present simply in order to execute the detect and alert function… There is therefore no need or justification have both for that same purpose – If it cannot eliminate Waking Watch by its introduction, the inter-linked alarm brings no additional benefit or functionality not already provided by the Waking Watch. Indeed, if the Waking Watch as provided was inadequate for the purpose of detect and alert, then leaseholders should not and would not be funding circa £4,500 per week for this service".

22. In conclusion he stated that "if the installation of the inter-linked fire detection system achieves its stated objective of negating the need for Waking Watch, then I unreservedly support the Applicant in that matter". He also confirmed "for the avoidance of doubt, should the fire detection system qualify for full or substantial partial funding from the Waking Watch Relief Fund, then I support the case for expenditure in any event".

23. Mr Hart also stated "as to the second substantive measure in relation to whether the costs of installation and associated costs are reasonable, I offer no evidence to the contrary in relation to the main contractors costs, which do appear to have been properly tendered and have been subject to proper leaseholder consultation. For the avoidance of doubt, the direct costs referred to above are those of the preferred contractor, RNM Electrical…". He then went on to question the fees charged by various consultants in addition to the direct costs of installation but again made it clear "I am not asking the FTT to consider the reasonableness of the secondary costs, as time is of the essence…"

24. Mr and Mrs Evans objected to the raising of the service charge for 2021 stating that the 71.5% increase when compared to 2020 is unreasonable. They stated "The responsibility for following UK health and safety law, Building Regulations and adhering to the UK Fire Regulations lies with the Landlord, not the leaseholder and should be paid for by the Landlord. He owns the building, not us".

25. None of the remaining Respondent leaseholders have sought to make any additional representations to Tribunal.

26. The Applicants in reply referred to the terms of the Leases placing the costs of the new system through the service charges, included (inter-alia) various comments about the costs of the Waking Watch, the tender costs for the

new system, the secondary costs of JBH, as well as a denial of allegations of influence and intervention by Mainstay in respect of the role and duties of the Waking Watch.

The relevant legislation

27. Section 27A of the 1985 Act provides that:-
"(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.
.....
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment."

28. Section 18 states that: –
"(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 the service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or an earlier or later period."

29. Section 19 of the 1985 Act confirms 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.
(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."

The Tribunal's Reasons and Conclusions

30. The Tribunal began with a general review of the papers, in order to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal's procedural rules permits case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).

31. None of the parties has now requested an oral hearing and having reviewed the papers, the Tribunal was satisfied that this matter is suitable to be determined without a hearing, and that the issues to be decided have been clearly identified in the papers enabling conclusions to be properly reached in respect of the issues to be determined, including any incidental issues of fact. The Tribunal was assisted by the clarity and comprehensive nature of the written submissions.

32. The documentation is persuasive in that it is clear and obvious evidence of its contents. Except where referred to, it has not been challenged and the Tribunal finds no reason to doubt the detail contained.

33. The Tribunal also considered whether an inspection was necessary. It studied Google Street View to better understand the location, scale, general configuration of Unity Building and to gain an idea of the outside of the development. Having then carefully considered the papers the Tribunal decided that an inspection is not necessary and will have done little, if anything, to assist with its decision-making.

34. The Tribunal is also, as explained below, persuaded of the urgency of the present situation.

35. The issues for the Tribunal to determine can be encapsulated in the following 4 questions: –

- Does the Lease allow for the installation of the new fire alarm system?
- Are the costs of the proposed new fire alarm system reasonably incurred within the meaning of Section 19 of the 1985 Act?
- Is a service charge payable by the Tenants in respect of such costs?
- Is the tender cost of £190,170 plus VAT reasonable within the meaning of Section 19 of the 1985 Act?

Does the lease allow for the installation of the new fire alarm system?

36. The Tribunal is satisfied that the short answer is yes.

37. As the Supreme Court confirmed in the leading case of *Arnold v Britton (2015) UKSC 36* when interpreting a lease, the court has to identify the parties' intentions by reference to what a reasonable person having all the relevant background knowledge would understand the terms to mean. It has to focus on the meaning of the words in their documentary, factual, and commercial context and in the light of the natural meaning of the clause; and any other

relevant provisions of the lease; the overall purpose of the clause and the lease; the facts and circumstances known by the parties at the time; and commercial common sense: but disregarding subjective evidence of any party's intentions.

38. The Tribunal is clear that installing the proposed new fire alarm system fits squarely within the ambit of Clause 9(e) of the Lease where it confirms "Nothing herein shall inhibit or in any way restrict or prevent the Landlord from providing or installing any system or service not in existence at the date hereof for the purposes of good estate management of the Block". The only limitation imposed by that Clause is as to whether new installations satisfy "the purposes of good estate management".

39. The Tribunal is satisfied that the new fire alarm system is required for not just for the safety of the residents (which in itself would be enough) but also for the purposes of good estate management.

40. Because the primary concern must always be the safety of the residents, the Tribunal rejects Mr Hart's contention that it must be a precondition of the installation of the new fire alarm system that definitive confirmations are given that the Waking Watch be immediately and completely discontinued after the new system is in place.

41. Nevertheless, the ongoing costs of the Waking Watch which it is hoped will be mitigated, if not eradicated, by the new fire alarm system clearly have to be weighed in any assessment of what might be required for good estate management.

42. If, and here it must be stressed that the Tribunal does not make this a condition of its decision, the present Waking Watch costs were able to be fully forgone following the installation of the new fire alarm system, the costs of installing that system as tendered would pay for itself in approximately a year.

43. The principal concern must always be the safety of the occupants. Nevertheless, it is also of note when considering "good estate management" that better facilities enhance a property's value for all its stakeholders.

44. Very sadly, it is clear to everyone that whilst Unity Building remains demonstrably unsafe each apartment's value is severely compromised, and all are potentially unmortgageable and/or unsaleable until the necessary remedial works are completed. The Tribunal is convinced that there is an imperative that there should be no ongoing unnecessary delays.

45. Having carefully studied the lease and applying the principles set out in *Arnold v Britton*, the Tribunal is also satisfied that the necessary rights are conferred by the Lease to allow for the new fire alarm system to be installed both in the common parts and within the different apartments.

46. Viewing the various Lease clauses in context of their overall purpose, the Tribunal is satisfied that Clauses 9(e)and(f), paragraphs 1, 4 and 8 of the Third Schedule, paragraph 5 of the Fourth Schedule, paragraphs 6, 7, 10(b) in the

Sixth Schedule, together, give the Applicants the necessary rights to be able to install the proposed new fire alarm system within individual flats, and without further authority, albeit of course undertaking the appropriate works only after having given reasonable prior written notice, causing as little damage and disturbance as reasonably possible, and making good any damage caused in a good and workmanlike manner.

47. The Tribunal finds that the Lease clearly allows the landlords to make improvements and add additional services provided that reasonableness and good estate management can be established.

Are the costs of the proposed new fire alarm system reasonably incurred within the meaning of Section 19 of the 1985 Act?

48. The following principles, derived from decided cases, were helpful to the Tribunal in making its decision as to what is reasonable:-

- the Tribunal must take into account all relevant circumstances as they exist at the date of the decision in a broad, common sense way giving weight as it thinks right to various factors in the situation in order to determine whether a charge is reasonable. *London Borough of Havering v MacDonald (2012) 3 E.G.L.R. 49.*
- whether costs are reasonably incurred is not simply a question of the landlord's decision-making process. It is also a question of outcome. The requirement that costs be reasonably incurred does not mean that the relevant expenditure must be the cheapest available, although this does not give a landlord a licence to charge a figure that is out of line with the market norm. The fact that the landlord has adopted appropriate procedures in incurring the costs does not mean that such costs are reasonably incurred if they are in excess of the appropriate market rate. *Forcelux v Sweetman (2001) 2 E.G.L.R. 173*.
- There is a real difference between works or services which a landlord is obliged to carry out on the one hand, and optional improvements or extras which he is entitled to carry out on the other. Different considerations may therefore apply in relation to the assessment of reasonableness as between the two. The Court of Appeal in *Waaler v. Hounslow LBC (2017) EWCA Civ 45* confirmed that no error of law had been committed where a Tribunal held that a landlord, who decided to carry out a scheme of works which went beyond what was required to effect a repair must take particular account of the extent of the interests of the lessees, their views on the proposal, and the financial impact of proceeding.
- the question of reasonableness must be considered by reference to the circumstances when the costs are incurred and not by reference to how the need for such costs arose. Accordingly, the fact that repair works may only be necessary because of neglect or breach of a landlord's repairing covenant does not prevent the cost of such works from being reasonably incurred. *Continental Property Ventures v. White (2006) 1 E.G.L.R. 85*
- the purpose of the consultation requirements is to ensure that tenants are protected from paying for inappropriate works or paying more than would be appropriate. *Daejan Investments Ltd v. Benson and others (2013) UK SC 14*

49. As has been confirmed the Tribunal is persuaded that the new fire alarm system is justifiable under the aegis of good estate management.

50. It has also been confirmed that the statutory consultation process under Section 20 of the 1985 Act relating to the new system has been both complied with and completed. The Tribunal is satisfied that the Respondents have been given ample opportunities over many months to make representations about the specification of the new system and finds it significant that none have raised any objection to that specification with the Tribunal during the course of the proceedings.

51. The Tribunal assumes that this may well be because the majority of the Respondents are persuaded that the Applicants are acting within the Guidance provided by various statutory bodies as well as that of the expert advisers that have been commissioned.

52. The Tribunal is satisfied both that the costs of a new fire alarm system are being reasonably incurred, and clear that the relevant works should be undertaken as soon as possible.

53. The Tribunal finds that whatever the reasons for any delays to date, they do not eradicate the continuing dangers.

54. There are also other compelling reasons as to why the works should continue to be regarded as urgent. These include the need to mitigate or bring the Waking Watch costs to an end as soon as possible, and a set of circumstances where time may be of the essence to satisfy shifting criteria relating to insurance, possible sources of funding from the Government or others, and the need to mitigate losses. Unnecessary delay profits no one.

Is a service charge payable by the tenants in respect of such costs?

55. The statutory definition of what is a service charge as set out in Section 18 of the 1985 Act begins and limits the list of the potential items by the words "which is payable". Therefore, the Tribunal must identify whether there is sufficient authority from the Lease or otherwise for any proposed expenditure to be payable.

56. The answer is set out in the Lease provisions.

57. There is a clear nexus between paragraphs 10(a) and (c) of the Fourth Schedule whereby individual Tenants covenant and are mandated to pay their proportion of all costs charges and expenses which the Landlord shall incur in maintaining and/or improving the Block, when complying with its obligations under the operative paragraphs of the Sixth Schedule.

58. There is no ambiguity. The Tribunal has had no difficulty in finding that the costs of the new fire alarm system are a service charge which under the terms of the Lease fall to paid for by the Respondents.

59. This of course does not mean that the Applicants nor yet the Respondents are precluded from seeking to recover such costs from potentially a number of parties, whether that be the manufacturers of the combustible materials, if for example there were warranties as to their suitability, the developers, if for example they were negligent as to the selection and installation of the materials, and/or others, and hopefully and more immediately the funds made available by the Government. The Tribunal is pleased to note from the papers that applications have been made to the Building Safety Fund and also the Waking Watch Relief Fund. Paragraph 10 (e) of the Fourth Schedule to the Lease states that "Notwithstanding anything herein contained the parties agree that if the Landlord shall consider that any part or parts of the costs charges and expenses which the Landlord shall incur as aforesaid shall be the subject of contributions from persons other than the lessees for the time being of the Block then the Landlord shall be entitled but not obliged to reduce the amount of the costs charges and expenses in question of which the Tenant is obliged to contribute….".

60. That having been said, the Tribunal has every sympathy with all the parties, and particularly the individual flat owners staring at costs of thousands of pounds, exacerbated by multiple factors, stemming from the use of dangerous materials. It very much understands Mr and Mrs Evans heart- felt position.

61. However, the Tribunal is not a civil court and cannot make any determination in contract or tort as who may be ultimately responsible for the costs of rectifying existing defects to the property. The Tribunal's own jurisdiction is limited, and specific to only those matters set out in section 27A of the 1985 Act.

62. Having concluded that that the Lease provisions allow for the Applicants both to install the new fire alarm system and to defray the costs of the same through the service charge provisions, the last question for the Tribunal to have to answer is,

Is the tender cost of £190,170 plus VAT reasonable within the meaning of Section 19 of the 1985 Act?

63. Again, the Tribunal finds the answer to be yes.

64. JBH's original budget estimate, including fees, was £296,694.

65. There appears to be no dispute that the statutory consultation process required under section 20 of the 1985 Act was both undertaken and complied with.

66. 7 tender prices were received, and the Applicant has confirmed that it wishes to place the contract with RNM Electrical which provided the lowest estimated price (which after correspondence regarding apparent omissions from the tender) was increased to £190,170 excluding VAT and fees. The

Tribunal noted that that this figure was still some £31,687 plus VAT, less expensive than the next cheapest tender. RNM Electrical also estimated a contract period of 8 weeks, being the second quickest of the 7 tenderers.

67. The Tribunal finds that the RNM Electrical tender cost is reasonable.

Concluding comments

68. As a consequence of all of the foregoing, the Tribunal has found that the costs of installing the new fire detection and alarm system as estimated by RNM Electrical at £190,170 plus VAT are recoverable from the Respondents as part of their service charges under the terms of their leases.

69. Finally, it is emphasized that the Tribunal has deliberately not attempted to make any judgement as to the reasonableness or payability of the separate costs which Mr Hart referred to as "reserved matters" because it would not have been right or proper to do so without a specific application in that regard. It of course remains open for any of the parties to refer such matters to the Tribunal under Section 27A of the 1985 Act at a future date should they feel it appropriate.

Annex

Leaseholders

Chase Properties Ltd
Mr AP King
Mr A F Fox
Ms S Osarumwense
Miss Judith Roscoe
Assuntina Pili
Mr D Burman & Miss Greenberg
Mr B T & Mrs E A McCormack
Dawn Michelle Evans & David Elis Evans
Flanagan Property Services Limited
RMSK Properties Limited
Laila Hasan
Mr M J Stares & Mrs J A Stares
Mr A Berry & Mr G Lakha
J Purdy, A Ward-Purdy, & Humbert Trustees Ltd
Mr D Gupta & Mrs A Gupta
Mrs A M Bovey
Mr Mathew Giles & Ms Melody Beard
Mr B C, Ms C, Ms M E and Mr P A Thompson
Mr Matthew H Collins
Scio Properties Limited
Ms J Scott
Ms J Scott
Mr M Spencer
Mr Wesley John Allmark
Ms S Osarumwense
Mr T M & Mrs M Carlile
Mr A Hall & Mrs M Hall
Ms K McGinn
Mr W Jones
Mr M J Stares & Mrs J A Stares
JNA Holdings Ltd.
Mr R J Preston
Mr J Kurton & Mrs V Kurton
Ms C Stanyer
Russell Trading Investments Limited
Ms R G Leigh
Mr F B Malick
Mr N Bray
Mr M J Stares & Mrs J A Stares
Miss Alexandra Simona Maria
Adams Securities Limited
Mr Eric Lawrence Robinson
Mr James Michael Rutherford
South Coast Property Investments LLC

Ms H Ainscough
Mr S L Sutcliffe
Mrs J A Bilham
Miss H Irshad
Mr J A Caren
Mr P D F Sharp
Mr L Battle
Mr E Downing & Mrs L Downing
Mr N Lymperopoulos
C S Coughlin & A J Carpenter
Mr C A & Mrs C A Clough
Vincent Patrick Ferguson
Mr G J England & Mrs D England
Mr K R Patterson
Mr A M Malick
Lady J H Bourne
Mr B D Hughes
Mr D and Mr M Burman
Ms H Ainscough
Mulian Zou
Mr A D J Broome and Mrs D Broome
Stephanie Wei Ping Wong
Mr W G Gore
Megan Louise Chivers
Mr M A Ullah
Mr J T Benade
Mr Nicholas McDonald
Sue Mautner
Mr A Pepper & Mrs A Pepper
Adam Jonathon Rydings
Mr T Hussain
Mr A J K O'Donnell & Ms L Mae
Ms B Has
Mr C Grek
The Castle Milk Investment Trust
N Sedghi and G Sedghi
Mr M Smith and Mr M Christian
Mr S Sheppard
Mr A Davis and Mr R D Leigh
Mr M Yue
Mr N C Murphy
Mr A Berry & Mr G Lakha
Rachel Ann Little
Mr T M Crutchley & Mr D M Frazer
Mr K K Chung and Miss C W Chung
Jordan M Young and Olivia I Blundell
Mr A P James & Ms C A Young
Mr M C Wright & Mr K T Mathers
Ms J Howard
Mr J R and Mrs J L Huntley

Ms Susan A Lenton & Ms Annabel G Lenton
Mr M R & Mrs W J Hart
Mr N J Rowland & Mrs H Forbes-Rowland
Mr S S Ashman & Mrs A Jones
BCP Alpha 1 Ltd
Mr R D Barger
Mr K K W Wan & Ms V S Tey
Mr M Cushion & Mrs A Cushion
P Paoletti
Ms P Clements
Mr R Barger & Ms J Walker
Ms D M Evans
Mr P Hawes
Chain Break Limited
JA & AL Irvine
Sree Sai Geethika Mavuru
Cricklenook Properties Ltd
Benjamin Maurice Jones
Mr K F Lippold and Mrs E Lippold
Mr Philip M P L Cave
Megan Gilchrist
Mr S Sharma
Mr S Al-Hassan
Mr P Hampson
Mr Jack C Watson
Mr Andrew Lewis & Dr Daniel Langley
Kenneth Edwin Peppin & Brenda Peppin
Ms L Collins
Zoe Angela Stephenson
Dr Hay Cheung
Dip S S Thakkar & Gitanjlie S Thakkar
David Brian Carter
Nicholas Paul Woods & Susan Alexandra Woods
Sofia Cobo De Guzman Dominguez
Mr A Himycz & Mrs S J Himycz
Mr Murray J Dietsch and Mrs Leanne M Dietsch
Mr J R Henstock
Mary Leaker
Dr Abraze Khalique & Anila Khalique
Dr A M Abraham & Mrs M Abraham
David Richard Wiseman
Ms A Leaker
Andrew Lawrence Hughes
Emma Hogg
Jonathan M Egan & Sarah L Egan
Mr D A Thompson
Mr G & Mrs J Underwood
Mr A Park
Mr S Pinder & Miss L Walsh
Mr M J and Mrs H C Dowd

Mr Edward Wright
Nicholas Plummer
B E Lloyd, M E Lloyd & H E Lloyd
Ms J Chaoul
Anita Marilyn Forryan
Alun P James & Carolyn A Young
Mr N E Saxby
Mr W Doyle & Mrs B A Doyle
Gavin M Brown & Karen L Brown
Aaron Geoghegan & Simon Edmund Royall
Sir Rodney Malcolm Aldridge
Mr Sturridge, Mr Sturridge & Miss Sturridge