



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

Case reference : **LON/00BD/LSC/2014/0291**

Property : **Handel Mansions, 94 Wyatt Drive,
Barnes, London SW13 8AH**

Applicant : **Handel Mansions Management
Company LTD**

Representative : **Wilmotts Chartered Surveyors
(Managing Agent)**

Respondent : **39 Leaseholders whose details are
appended to the application**

Representative : **N/A**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal members : **Ms L Smith (Tribunal Judge)
Mr D Jagger MRICS**

**Date and venue of
hearing** : **Dealt with on papers on Monday 18
August 2014
10 Alfred Place, London WC1E 7LR**

Date of decision : **Monday 18 August 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum for the cost of the works to the garden of the estate as estimated and included in the service charge for the 2014 year is payable and reasonable
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 as no application was made
- (3) The tribunal determines that the Respondents shall pay the Applicant £440 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the payability and reasonableness of the amount of service charges for works to the garden payable by the Respondents as part of the service charge estimate for the 2014 service charge year.
2. The relevant legal provisions are set out in the Appendix to this decision.

The application

3. In the application dated 22 May 2014, the Applicant indicated that it was content to have the application dealt with by way of a paper determination. It also asked for the matter to be dealt with urgently as it wished to undertake the works which are the subject of the application as soon as possible. By way of directions dated 6 June 2014, the tribunal indicated that unless a hearing was requested within 28 days of the date of those directions, the application would be determined on the papers in the week commencing 18 August 2014. None of the parties requested a hearing.

The background

4. The property which is the subject of this application is an estate formed of a purpose built block of flats consisting of 39 apartments constructed by Berkeley Homes in 1998, known as Handel Mansions (“the Estate”). The Applicant is the management company for the Estate. The Applicant is planning works to the garden of the Estate (“the Works”) for which a budget of £25,000 has been agreed by the majority of lessees at an AGM of the Applicant management company in 2013. As part of an ongoing s20 consultation procedure, 2 estimates have been

obtained for the Works. It appears that no contract has yet been awarded to either contractor. The estimates are for £20,865 + VAT and £17,815.50 + VAT although it appears from the papers that discussions are ongoing with the preferred contractors which may alter the final sums. It will be open to the Respondents to raise any concerns about the precise cost of the Works once those are known and, in the final resort, to return to the Tribunal if there is a concern about the reasonableness of that cost.

5. The Respondents are the lessees of the apartments comprising the Estate. There were originally 6 objections to the Works during the consultation process which had reduced to 2 objections by the time of this application. There is now only one objection from the lessees of Flat No 5, Handel Mansions. Those lessees have submitted a letter dated 27 June 2014 to explain the substance of their objection. The lessee of 10 Handel Mansions also submitted a letter confirming that he was withdrawing his objection to the Works.
6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Respondents hold long leases of the properties comprised in the Estate which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The tribunal was supplied with a specimen lease in relation to Flat No 29 Handel Mansions ("the Lease") and has assumed that all leases are in the same form. The specific provisions of the Lease are referred to below, where appropriate.

The issue and the Tribunal's decision

8. The only issue for the determination by the tribunal (aside costs and fees) is whether the cost of the Works is payable and reasonable. Having considered all of the documents provided, the tribunal determines that the cost of the Works is payable and that the estimated cost is reasonable for the reasons set out below.

Reasons for the tribunal's decision

9. At an AGM in 2012, the lessees of the properties comprised in the Estate discussed the requirement to undertake works to the front gardens of the Estate. At the AGM in 2013, the lessees agreed by a majority to spend a budget of £25,000 on the Works. The Works will be paid for from the reserve fund.
10. A s20 Notice of Intention to Carry Out Works was served on the lessees on 26 July 2013. A s20 Statement of Estimates was served on the

lessees on 30 January 2014. That Statement annexed quotations from 2 contractors as noted above.

11. The Works include removal of a tree, excavating flower beds and re-soiling, pruning/re-shaping existing shrubs, removal of shrubs, creating new borders, new planting and bulbs and straightening of 2 pathways. On the basis of the scope of the Works as set out in the application and quotations and the quotations themselves, the estimated cost of the Works does not appear unreasonable. As noted above, in any event, the contract for the Works has not yet been awarded and it will be open to the Respondents to challenge the reasonableness of the precise costs of the Works if those are not agreed.
12. The 6 original objections challenged the straightening of the pathways, the significant expenditure proposed, objection to the suggestion that the Works are required to enhance the value of properties on the Estate, the scope of the Works and reference to the fact that the Works favoured the blocks where the directors of the Applicant management company lived.
13. The 6 original objections had reduced to 2 objections by the time of this application and are now confined to one objection from the lessees of Flat No 5. Their objection can be summarised as follows:-
 - (a) The Works constitute an improvement and not essential maintenance which is the limit of the obligation of the management company under the Lease.
 - (b) There is a conflict of interest since the Directors of the management company are advised by Willmotts who will be overseeing the Works and stand to benefit on a percentage basis related to the cost of the Works.
14. As to the latter objection, the Applicant has observed that in fact Willmotts are only instructed in relation to the s20 consultation procedure and will not necessarily be instructed to oversee the Works. Further, in any event, it is standard procedure for a managing agent to charge for services related to a project on a percentage basis. Furthermore, the need for the Works has been sanctioned by the majority of lessees who are also members of the Applicant management company and not driven by the managing agents.
15. Paragraph 2 of the Fifth Schedule to the Lease provides for the Estate Management Company to “maintain repair renew and keep neat and tidy as appropriate” “the gardens and grounds of the Estate Maintained Property including tending and renewing any lawns flower beds shrubs trees and other amenities forming part thereof as necessary...”. As such, the obligation placed on the Applicant goes beyond essential

maintenance and repair and includes the obligation to renew. This clause is therefore sufficiently widely drafted to include improvement even if certain elements of the Works are improvements rather than repair or replacement.

Application under s.20C and refund of fees

16. Taking into account the determination above, the tribunal orders the Respondents to refund the fees paid by the Applicant for the application (in the sum of £440) within 28 days of the date of this decision.

17. The application was made by the Applicant management company and therefore obviously does not seek an order under section 20C of the 1985 Act. The directions noted that s20C may be an issue to be determined by the Tribunal if an application were made but none was made by the Respondents. Accordingly, no order under s20c is made.

Name: Ms L Smith

Date: 18 August 2014

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.

Section 20C

- (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 a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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 or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.