



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

**Case Reference** : CHI/OOHN/LIS/2019/0046

**Property** : Hilton House, 17 St Johns Road, Bournemouth  
BH5 1EQ

**Applicant** : Tyrrel Investments Inc.

**Representative** : Napier Management Services Limited

**Respondents** : (1) Miss R Smith  
(2) Miss D L walker  
(3) Mr A D Ogilvie  
(4) Mr P R Holt  
(5) Dr Andrew and Dr Rhodes  
(6) Mrs H Alleway-Hayes

**Representative** : -

**Type of Applications** : Determination of service charge under S27  
Landlord and Tenant Act 1985

**Tribunal Members** : Judge A M Lock

**Date of hearing** : 14 November 2019  
Determined on the papers

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**DECISION**

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## **Background**

1. The Applicant landlord seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable in 2019 for major works (external redecoration and repairs).
2. The property which is the subject of this application is a converted semi detached 2 storey property with accommodation in the roof space and contains 6 flats divided over 3 floors.
3. 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.
4. On 9 July 2019 the Tribunal issued directions in relation to the application under section 27A. They provided for the application to be determined on written submissions and without a hearing unless a party objected within 28 days. There was no such objection.
5. The directions also required
  - (i) *the Applicant to send to the Respondent by 2 August 2019*
    - *a signed and dated statement with a statement of truth which sets out each aspect of its case*
    - *Copies of all documents relied upon*
    - *Witness statements*
  - (ii) *each Respondent to send to the applicant by 23 August 2019*
    - *A signed and dated statement with a statement of truth which sets out each aspect of its case*
    - *Copies of all documents relied upon*
    - *Witness statements*
6. The Applicant has provided
  - a signed and dated statement with a statement of truth.
  - Specification of works December 2017;
  - Schedule of works December 2017;
  - S 20 Notice of intention to carry out works and example covering letter;
  - quotes from Arranmac, Greendale Construction Ltd and BPS Builders Ltd;
  - S20 'Notice 2' Covering letter, summary tender sheet and paragraph B. dated 5 March 2019;
  - Corrected S 20 Notice covering letter and tender sheet dated 19 March 2019

7. The Respondents have not replied to Directions.
8. The matter came before the Tribunal for a paper determination on 14 November 2019.

**The Decision:**

9. The Applicant asked the Tribunal to decide whether the works are the responsibility of the landlord and that the costs of those works are reasonable and payable under the terms of the lease.
10. The Applicant relies upon Fourth Schedule Clause 3 and Fifth Schedule Clause 2 of the lease.
11. A copy lease has been provided [at pages 13 to 29 of the bundle] dated 1 March 1988 between James Alastair Lyndon Staig (the lessor) and Rebecca Helen Velate (the lessee).
12. The lease has been amended by hand and, in addition, the applicant has not confirmed that all 6 leases are in the same terms. The Tribunal has assumed that the lease for flat 1 is identical to those for the other 5 flats, and that the amendments have been agreed and accepted by the parties.
13. Under 4<sup>th</sup> Schedule, Clause 3 of the lease the lessee is to “*pay a proportion of one sixth of the reasonable and proper costs charges and expenses reasonably and properly incurred by the Lessor in carrying out its obligations under the Fifth Schedule hereto with 28 (**Crossed out and overwritten with 14**) days after receipt of vouchers and receipts evidencing (**crossed out suitable and another unreadable amendment**) such expenditure*”
14. Under the Fifth Schedule, Clause 2 states: “*The lessor will redecorate in a proper and workmanlike manner the exterior of the premises at least once every four years and will repair as often as is reasonable and necessary in a good and workmanlike manner the shared entrance hall and stairs access pathway coloured brown on the plan annexed hereto subject to being reimbursed a proportionate part of any cost by the lessee in accordance with Clause 3 of the 4<sup>th</sup> schedule hereof.*”
15. Clause 3 of the 5<sup>th</sup> Schedule is not referred to by the Applicant in their statement; however, this states” *The lessor shall from time to time and at all times in the said term well and substantially maintain repair and renew (if necessary) the foundations roof roof timbers and main walls chimney stacks eaves gutters and downpipes fences walls and other drains sewers wires cables and pipes (used in common by the other flats) forming part of the premises whether or not notice of disrepair has been given to the lessor either by the lessee or the lessee for the time being of the other Flats subject to being reimbursed a proportionate part of any cost by the lessee in accordance with Clause 3 of the Fourth Schedule hereof.*

16. The Tribunal has examined the schedule of the works proposed at 55 – 58 and 73 – 74 of the bundle and considers that the proposed works fall under the landlord’s responsibilities under clause 2 and 3 of the 5<sup>th</sup> Schedule of the lease, and that the landlord is entitled to recover the costs of those works once they are incurred subject to the requirement of reasonableness from the leaseholders.
17. The tender provided by Arranmac and proposed by the Applicant refers to “Re Internal and external decorating. Hilton House, 17 St Johns Road, Bournemouth Bb5 1EQ Priced as per the specifications and drawings provided”. Scaffolding to be erected around perimeter of property. To reach all areas. Portaloo hire. Labour and materials £7750.00 +VAT
18. Over the page is a more detailed form of tender but it is unclear whether this relates to Arranmac. This states:  
External Redecorations £5750  
Internal Redecoration: £2000 which includes the Contingency sums of £750 and £300 referred to within the tender documents but Excludes VAT Repairs as per specifications and drawings provided by the Applicant referred to above.
19. The summarised tender sheet provided at page 86 of the bundle refers to the £9,750 (not the £7750 referred to on the same sheet) and in addition Napier (S20 fee) £200 plus VAT of £2.050. In addition there is a surveyor/contract administrator fee of £1,586 making a grand total of £13,886. It was unclear why the amount of £9750 was referred to as the tender from Arranmac when the actual tender refers to £7750. This was later corrected by Notice dated 19 March 2019 to a tender amount of £7750
20. The Tribunal finds that the landlord has complied with the consultation procedures under section 20 of the 1985 Act and that the landlord proposes to accept the lowest tender which is £11,486 inclusive of fees and VAT.
21. The Tribunal notes that the landlord received no written observations from the leaseholders in connection with the consultation on the proposed works.
22. The Tribunal observes that there is no provision in the lease for the landlord to demand service charges in advance before expenditure is incurred.
23. In this case the service charges only become payable when the costs have been incurred and demanded from the leaseholders. In those circumstances the Tribunal is not in a position to determine whether the charges are payable or reasonable because the costs of the works have not yet been incurred.

24. The leaseholders are entitled to challenge the reasonableness of the incurred costs once the works are completed by bringing an application to the Tribunal under section 27A of the 1985 Act.
25. The Tribunal comments under the circumstances outlined in this application and where there appears to be no opposition from the leaseholders, the landlord would usually proceed with the works without recourse to the Tribunal. The leaseholders would retain the right to challenge the reasonableness of the costs once the service charge is demanded.

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking