



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

Case Reference : **BIR/00CN/LSC/2020/0004**

Property : **Wake Green Park, Belle Walk, Moseley,
Birmingham, B13 9YJ**

Applicants : **Wake Green Park Management Ltd**

Representative : **P M Legal Services**

Respondent : **Various Leaseholders**

Representative : **None**

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

Tribunal Members : **Nicholas Wint FRICS
Vernon Ward FRICS**

Date of Hearing : **8 December 2020**

Date of Decision : **18 February 2020**

DECISION

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Introduction

1. This is an application to the First-tier Tribunal Property Chamber (Residential Property) dated 1 September 2020 for the determination of the reasonableness and payability of service charges pursuant to section 27A Landlord and Tenant Act 1985 ('the Act') for the year ending 31 March 2021.
2. The Applicant is Wake Green Park Management Limited who owns the freehold of Wake Green Park, Belle Walk, Moseley Birmingham ('the Property').
3. The Respondents are named as the lessees of the development.
4. The development comprises 302 residential units arranged within 13 separate Courts known collectively as Wake Green Park.
5. Each residential unit is let subject to a long lease agreement and the Tribunal understands that each is broadly identical to the specimen lease provided in respect of 50 Bowen Court dated 10 July 1984.
6. The Tribunal issued its Directions on 23 September 2020 and in accordance with these received a submission from Cassandra Zanelli of PM Legal Services made on behalf of the Landlord. Only one lessee made a submission to the Tribunal.

Inspection

7. Under normal circumstances the Tribunal would carry out an inspection of the Property before making its determination however due to the Public Health Emergency arising from Covid-19 the Tribunal has proceeded without an inspection.

The Issue

8. The Applicant proposes to install a vehicle gate system at a budgetary cost of £88,265 which will enable the Applicant to dispense with the services of a security company whose annual costs are approximately £30,000.
9. The Applicant, therefore, seeks a determination from the Tribunal as to whether or not the costs of the gate system are relevant costs and can be charged back to the Respondents as a service charge.
10. The Applicant also advises that they will undertake the necessary consultation exercise under section 20 of the Act.

The Law

11. The relevant provisions in respect of liability to pay and reasonableness of service charges are found in sections 19 and 27(A) of the Act (as amended), which are set out as follows:

Section 19 Limitation of service charges: reasonableness

(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.

Section 27A Liability to pay service charges: jurisdiction

(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.

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The Lease

15. Clause 1 of the Second Schedule provides that the lessee is to pay their proportion of the lessor's expenses.
16. The lessor's expenses are set out in the Third Schedule and are divided into Fund A, Fund B and Fund C expenses which are all payable by the lessee under the provisions set out in the Fourth Schedule.
17. Fund A expenses only relate to Bowen Court and the costs incurred arising from the repair and maintenance of the main structure of the building as well as the staircases, lifts, halls, passages and all other common parts.

18. Fund B expenses relate to all the other Courts (Wallis Court, Venice Court, James Court, Gallagher Court, Bucknall Court, Oulsnam Court, Browns Court, Stanley Court, Charles Court, Royston Court, Major Court and Robert Court) arising from the repair and maintenance of the main structure of these buildings as well as the staircases, lifts, halls, passages and all other common parts.
19. Fund C expenses relate to costs incurred by the lessor in carrying out its obligations under the Fifth Schedule in relation to the Development which is defined in the lease as the land at Belle Walk Moseley Birmingham known as Wake Green Park.
20. The Fifth Schedule sets out the lessor's covenants with the lessee and in particular paragraph (g) states:

“at all times during the term to maintain the Amenity Areas and the sewers drains pipes cables and wires which are on under or over the Development and serve the Buildings in good order and to repair and replace the walls and fences and maintain and repair the other appurtenances and amenities of the Development in good order and condition (including the trimming of all hedges and grass) and reasonably free from litter and will keep the stairs and passageways within the Buildings lighted during reasonable hours and where appropriate provide suitable lighting for the access roads and Amenity Areas generally”.
21. In addition, paragraph (k) (ii) also states the lessor will:

“...pay or contribute to the expense of constructing repairing rebuilding and cleansing all party walls fences sewers drains pipes watercourses and other things the use of which is common to The Development and the occupiers of adjoining or neighbouring premises”.

Hearing

22. Neither party requested a hearing, the Applicant having indicated that they are content with a paper determination.
23. The matter was therefore listed on 8 December 2020 and the Tribunal proceeded on the basis of the documents provided by the parties.

Submissions

24. The Applicant asserts that the costs of installing the security gate system falls under paragraph (g) of the Fifth Schedule which requires the lessor to maintain the amenity areas and to repair and replace the walls and fences and to maintain and repair the other appurtenances and amenities of the Development.

25. The Applicant considers the 'Amenity Areas' to mean the access roads, parking areas, footpaths and garden grounds within the Development including its boundary walls and fences.
26. It is understood that the installation of a vehicle gate system requires the removal of existing fencing and its replacement with newer fencing together with works to the access road. It is therefore the Applicants contention that the installation of the gate system is caught by paragraph (g) as the works are works of repair and/ or replacement.
27. Further, the Applicant considers that the works are caught by paragraph (k) (ii) and the costs are therefore recoverable from the lessees.
28. For the Respondents no submissions were received apart from an email from the Applicant dated 14 October 2020 advising that the lessee of Flat 17 Major Court, Mr Boucher, had asked Ms Zanelli to forward to the Tribunal his comments that he is in support of the application for the installation of the gate system.

The Tribunal's Determinations

29. The Tribunal has considered the written evidence submitted by the Applicant and the comment submitted by Ms Zanelli on behalf of Mr Boucher as one of the Respondents.
30. The Tribunal notes that the costs of the gate system are likely to trigger the threshold requirements set down by section 20 of the Act and that the Applicant therefore intends to undertake the necessary consultation process with the lessees.
31. The Tribunal also notes that Applicant considers the proposed gate system will be a more cost-effective security solution in the longer term than the present arrangements that are in place.
32. The Tribunal has also considered the budget cost plan set out in the letter from Hamilton Darcey dated 27 July 2020, submitted by the Applicant, which details the proposed works and costings. In particular that the works entail the installation of new gates, widening the access road, alterations to the drainage, new intercom system and replacement fencing as well as the costs of any subsequent tidying up as well as a contingency sum in addition to the various professional fees and charges.
33. The Tribunal considers that the wording in the Fifth Schedule and more particularly paragraph (g) or paragraph (k) (ii) only enable the lessor to recover costs incurred in relation to the repair and maintenance of the Development and the Amenity Areas which includes the access roads, parking areas, footpaths, garden grounds and boundary walls and fences.
34. Both clauses are limited to the extent that they do not go beyond the requirement other than to repair and maintain and in the event of

replacement this would only extend to direct replacement and not an improvement which the installation of a new gate system would require.

35. There is also no sweeper clause to allow for the Applicant to undertake such works and the Tribunal therefore finds that the proposed works do not fall within the scope of being relevant costs under the provisions set out in the lease.

Appeal Provisions

36. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Nicholas Wint FRICS

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