



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

Case reference : **CAM/26UC/LSC/2022/0008**

**HMCTS code
(audio, video,
paper)** : **V: CVPREMOTE**

Property : **21 Evans Wharf and 105 and 112
Stephenson Wharf, Hemel Hempstead,
Hertfordshire, HP3 9WU**

Applicants : **Sharon Powell, Rekha Teli, Rakee
Bouri,**

Representative : **In person**

Respondent : **Apsley Mills Blocks A B and D**

Representative : **Mr Cameron Stocks (counsel)
Sampson Coward LLP (Solicitors)**

Type of application : **Liability to pay service charges**

Tribunal members : **Judge Aaron Walder
Mr Neil Martindale**

Date of decision : **25 August 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote

hearing. The documents we were referred to are those described in paragraph 8 below. We have noted the contents.

Decisions of the tribunal

(1) The tribunal determines that in relation to the following sums demanded by the Respondent landlord from each applicant for the following years, and relating to sums held in the reserve fund:

- a) April 2020 to March 2021 - £327.10
- b) April 2021 to March 2022 - £607

Those sums are reasonable and payable.

Further, the proposed sum for all leaseholders (not just these applicants) for the year April 2022 to March 2023, given as £135,000 in the service charge budget [p.288] is also reasonable.

- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 (the “**1985 Act**”) that the costs incurred by the Respondent in connection with these 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 Applicant.
- (3) The tribunal makes no order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the “**2002 Act**”).
- (4) The tribunal does not make any order in relation to application and hearing fees paid by either party.

Reasons

Applications

1. The Applicant sought determinations under section 27A of the 1985 Act as to whether certain service charges from were payable by them. Extracts from the relevant legal provisions are set out in the Appendix to this decision. The Applicant also sought an order to limit any recovery of the Respondent’s costs of the proceedings through the service charge, under section 20C of the 1985 Act.

Procedural history and Documents before us

2. The application, dated 24 February 2022, was lodged at the office for the Eastern region (where the Property is situated). On 11 April 2022, a

Procedural Judge gave case management directions which required that the Applicants send to the Landlord a schedule setting out the charges in dispute and their reasons for that dispute; a statement setting out the relevant service charge provisions in the lease; any legal arguments that they wished to rely upon and any other matters they wished to rely upon.

3. The directions further required the Landlord to complete certain columns of the Applicants' schedule, and file a statement setting out their case on the disputed items of service charge.
4. In fact, the Applicants filed a 4 page document setting out a number of general complaints about how the building is managed, and how the company structure of the Landlord is organised. In their schedule, they noted the figures demanded for the reserve charge sums, and complained about the percentage level of increase, rather than identifying any particular sum or matter that they complained about. Attached to that document were some 135 pages of appendices, attaching papers that were difficult, at first sight and without explanation, to see the relevance of in the context of this dispute – although it is clear that they go to the general dissatisfaction with the general management of the building.
5. The Landlord filed a statement of case setting out the issues and addressing them one by one. It drew the Tribunal's attention to the relevant parts of the Lease, and make submissions of law and fact in support of the sums charged.
6. Further, two witness statements were filed and served, one of Mr Graham Pym who is a Director of the Respondent company; and the other from Mr Scott Honeyman-Baker, who is a senior property manager at Crabtree PM Limited, who are the managers of this property.
7. Shortly before the final hearing of this matter, the Applicants filed a further document headed Statement of Applicants (but unsigned by any of them and without a statement of truth) which set out further matters on which they intended to rely, although again much of this document was not relevant to the issues before the tribunal, being more in the nature of a general complaint about a number of matters.
8. The Respondent also filed a clip of service charge demands, which were accepted by the Applicants as being the demands they had received – although one document was agreed by all parties as not relating to this building or this dispute.
9. There was no inspection. Neither party requested an inspection and we are satisfied that an inspection is not necessary to determine the issues in this case. There was also only limited relevant photographic evidence, which appears in a document headed Planned Maintenance Programme,

prepared by Hamilton Darcey LLP surveyors, and sets out the current state of repair of the building, as well as a future plan of works.

10. At the hearing on 7 July 2022, the Applicants represented themselves, and also attended and gave evidence. Mr Stocks of counsel represented the Respondent. Mr Pym was present on the telephone, and Mr Honeyman-Baker gave his evidence via video link on line.
11. The Applicant prepared a 390 page paginated hearing bundle, which contained all relevant material.

Lease

12. The Applicants are the long lessees of 21 Evans Wharf; 112 Stephenson Wharf; and, 105 Stephenson Wharf, Hemel Hempstead, Hertfordshire, HP3 9WU.
13. We were provided with a lease dated 8 February 2012 and made between (1) Fairview New Homes (Apsley) Limited and (2) Apsley Mills (Block A, B and D) Flat Management Company Limited of the one part and Francesca Probert. The lease is for a term of 125 years from 24 June 2001. The parties agreed at the outset that this lease was in the same terms as all of the relevant flat leases, and as such we have used it as a representative sample lease.
14. The following summary refers to relevant terms dealing with service charges:

“Part IV

Subject to the due performance by the Lessee of his obligations to contribute to the costs charges and expenses of the Company as herein provided (the condition hereinbefore expressed being referable to the Company's covenant with the Lessee only under Clause 7 of this Lease and shall not apply to paragraph 7 of this Part)

1. The Company will whenever reasonably necessary or whenever the Lessor its Agents or Surveyors for the time being consider it reasonably necessary and in any event within two months of any notice served under Clause 8 of this Lease maintain repair redecorate and renew:-

(a) The external walls and structure and in particular the main load bearing walls and foundations and roof storage tanks gutters rainwater pipes of the Property and any party walls and the boundary fences (if any) marked "T" on the Plan and any gates for access and/or egress or which are otherwise constructed or provided by the Lessor in conjunction with the construction and development of the Property and the balconies (if any) but so that the Company shall only be liable to decorate the external walls and the underside of any balconies

(b) The gas and water pipes drains and electric cables and wires in under and upon the Property and any master T. V. aerial system and any other communal facilities thereto enjoyed or used by the Lessee in common with the lessees of other parts of the Property

(c) The main entrances common passages landings and staircases each separate flat entrance door and all other parts of the Property so enjoyed or used by the Lessees in common as aforesaid

(d) All such dustbin areas drying areas drives paths forecourts and off street parking spaces as are included in the Property (excluding any parking area specifically included in this demise (if any)

.....

5. The Company may at its absolute discretion provide maintain or install in or about the Property any services for the comfort and convenience of the Lessee

6. The Company will not less frequently than once in every fifth year decorate with two coats of good paint in a good and workmanlike manner the external parts of the Blocks (including the windows and frames and the external walls and the underside of the balconies) in such manner as shall be agreed in writing by the majority of the Lessees of the Property or failing such agreement in the manner in which the same were previously decorated or as near thereto as circumstances permit PROVIDED that the exterior walls and paintwork of the Blocks shall not be painted or decorated otherwise than in the same uniform colour or colours

.....

8. The Company will do and execute or cause to be done and executed all such works as under or by virtue of any Act or Acts of Parliament for the time being in force or any regulations or orders made pursuant thereto and whether directed by any Government Local Statutory or Sanitary Authority or other body howsoever are or shall be directed or necessary to be done or executed upon or in respect of the Property or any part thereof other than the demised premises (whether by the owner landlord lessee tenant or occupiers thereof) and at all times keep the Lessor indemnified against all claims demands and liabilities in respect thereof.

.....

14. (a) The Company may at its option create and maintain a reserve fund of such sum (to be fixed annually) as shall be estimated by the Company or its managing agents (if any) to be reasonably required to provide a reserve fund for items of expenditure in connection with the provision of the service facilities and amenities specified in this Part IV of the Schedule or any of them to be or be expected to be incurred at any time during the period of three years commencing with the date upon which the estimate is made

(b) The said reserve fund shall be kept in separate accounts and any interest on or income of the said fund shall be held by the Company in trust for the tenants of the flats of the Blocks and shall only be applied in accordance with the terms of Part IV of this Schedule

Service charges in dispute

15. The Applicants confirmed at the commencement of the hearing that the sums they are concerned with relate solely to the sums charged for the reserve fund. They do not take issue with any of the other sums that form their service charge demands. Thus, the figures in dispute are
 - a) £327.10 applied to each lessee's service charge demand for 2020-21;
 - b) £934 applied to each lessee's service charge demand for 2021-22;
 - c) The budgeted sum of £134,000 to be apportioned between all lessees in 2022-23

16. Indeed, the Applicants confirmed that paragraph (2) of the "Background" to the case management order accurately reflected the position. That states:

"The applicants describe the properties as purpose-built, two bedroom, two bathroom flats. The main concern appears to be whether the payment demanded for the reserve fund is reasonable in each of the service charge years, whether this is being appropriately managed in compliance with the lease and what the reserve fund money has been spent on in the years in question."

17. Thus, from that, it is clear that the task of this Tribunal is to consider whether the relevant charges are payable under the lease, and whether they are reasonably incurred/reasonable, based on the evidence before us.

18. It ought to be noted that throughout the Applicants written representations there are a number of matters raised that amount to either (i) complaints about Crabtree's management of the development; (ii) issues relating to the implementation of Health and Safety work (which the Applicants contend has not been done); (iii) issues relating to the general cost of living crisis (which affects the Applicants them and their fellow leaseholders); or (iv) issues relating to the corporate governance of the Landlord as a company, and the experience of the Applicants as both directors of that company and ordinary members.

19. Those matters were raised again in both questions to the Respondent's witnesses and evidence/submissions from the Applicants themselves. As sympathetic as the Tribunal may be to these matters, which are clearly live issues between the Applicants and Respondent, it was necessary to remind the Applicants on a number of occasions that they are simply not within the jurisdiction of this Tribunal to determine. Furthermore, in the main, they do not assist with determining the matters we do need to consider, namely whether the relevant charges are payable under the lease, and whether they are reasonably incurred/reasonable.

20. The Applicant also makes the following general points:
- a) Looking at other properties in the general vicinity of this property, the sums that are demanded are excessive, since they are more than residents of other developments pay;
 - b) The amount of the increase, in percentage terms, is very large. That fact alone ought to make the sum unreasonable;
 - c) Contrary to the terms of the Lease, the sums for the reserve fund are not paid into a separate account; and
 - d) The Respondent company ought not to be entitled to increase the sums required to be paid into the reserve fund, because its directors do not have the requisite authority from the members

The Evidence

21. Given that the Tribunal had established the sums in dispute with the Applicants at the outset, and given that the Applicants were in person but the Respondent was represented, the Tribunal decided that the most appropriate way to hear the evidence would be for the Respondent to present its case first. Thereafter, the Applicants could (with appropriate aid from the Tribunal where necessary) ask questions of the Respondent's witnesses. After they had heard the Respondent's case, they could then give their own evidence.
22. The first witness that the Tribunal heard from was Graham Pym. As stated above he is a director of the Respondent. Unfortunately, Mr Pym, who had intended to give his evidence in the normal way over the video link, had found himself the victim of an illness which necessitated him being confined to hospital. Furthermore, that hospital was in Germany.
23. This was not a matter that the Tribunal had been given any advanced notice of. Mr Stock, counsel for the Respondent, who may well have been in a similar position of not having notice of this, proposed that Mr Pym give his evidence over the telephone, since it seemed he had a good connection to the hearing. He was somewhat hampered since he did not have a copy of his witness statement in front of him, but that issue was resolved by having Mr Stock read the statement to him and inviting him to agree it paragraph by paragraph.
24. The evidence given by Mr Pym was not controversial. He explained that the general state of the communal areas of the estate, and the intercom system was "tired and dated". He explained that no provision had been made to pay for the cost of any updating works previously. In 2019 this changed, and a plan was formulated to update the internal communal areas.
25. He explained that his effort to make financial savings was somewhat thwarted by the onset of the Covid-19 pandemic and the fact that since

the Grenfell tower tragedy a fire report had been commissioned which found that a great deal of fire safety work was urgently required. He candidly admitted that the internal renovations were put on hold while the fire safety issues were dealt with.

26. In cross examination he was asked about his evidence that the internal communal areas were tired and dated, but he maintained his position on that. Unfortunately, there are no photographs or any other material provided by the Applicants that rebut that assertion.
27. By contrast, the matters stated by Mr Pym are supported first by the report of Hamilton Darcy and photographs therein, and secondly by the common sense approach that if internal common areas have not been substantially overhauled since they were first constructed 17 years ago, they are clearly going to be dated at best. There is also a fire safety report from August 2021 which confirms his evidence about the need for fire safety works.
28. It is necessary to state at this stage that the fact Mr Pym was giving his evidence from Germany did not cause any concern to the Tribunal at the time, given (a) it was unavoidable as he was out of the country because of a medical issue; and (b) the proposal seemed a proportionate and sensible way to hear what was, on the face of the papers, fairly uncontroversial evidence.
29. With hindsight, and having considered the published guidance on the issue of hearing evidence over video link from a witness abroad, it may have been procedurally incorrect to hear that evidence in that manner, notwithstanding the clear practical sense of doing so. That is not because of any prejudice caused to the Applicants, but rather as a matter of international diplomatic protocol. Indeed, in the Tribunal's judgment this was a better way for all parties to proceed, because it enabled the Applicants to challenge those elements of the evidence they didn't agree with by asking questions.
30. However, the evidence has been heard now, and there is no reason not to consider it simply because of the procedure that gave rise to it being heard. It is also worth recording that had an application been made to consider Mr Pym's witness statement in isolation and without his attendance, which sets out his evidence and is signed with a statement of truth, given the fact that he was out of the Country by necessity rather than choice, that application would almost certainly have been granted.
31. Mr Honeyman-Baker is responsible for managing the property in his role as a senior property manager for Crabtree. The majority of his evidence was explaining various documents that he had exhibited to his statement.

32. He made the point that historically, the amount demanded to place into the reserve fund had been insufficient. He noted this when he took over the management of the building, and caused the sums demanded to be increased. He accepted that the increases have been large, but says that due to the scope of works that the landlord is obliged to do pursuant to the lease, and the insufficient sums held in reserve, made this large increase inevitable.
33. He broke down the total amounts demanded for the reserve fund in each service charge year, and explained the thought processes for arriving at those figures. He referred to the budget letters, which were sent to each leaseholder explaining the basis of those figures. He made the point that in fact the monies were held in a different account to the regular service charge payments as required by the lease.
34. Much of his evidence was not challenged by the Applicants. He was asked some questions about why works had not been done previously, but he explained that in his view previous works had been patch jobs, whereas now much of the internal decoration had come to the end of its natural life and needed full scale repair. This was consistent with Mr Pym's evidence on the point, and there was nothing apparent to rebut it.
35. He was challenged about the sharp rise in the figures, but responded by saying the previous figures were artificially low, and there were further burdens on the landlord in light of the new fire safety legislation.
36. There was also some questioning around whether considering the cost of living crisis it would be prudent to not do the work yet, and also whether payment plans would be available. His answer was that this was a reserve fund, and it had to be in place to do any works whether now or in the future. He contended there was a payment plan available, although the Applicants were adamant there was not. It is not necessary for the Tribunal to make any findings on the availability of a payment plan in order to answer the questions set out above.
37. After the Respondents had concluded their case, the Tribunal heard evidence of fact from the Applicants. Their evidence was that the scope of internal works required is not as extensive as the Respondent contends. However, they were unable to give any specifics, or provide any evidence of the cost of such 'less extensive' work. Further, they gave evidence of the amounts paid by other nearby developments, although they did concede that the landlord's obligations may well be different at a different development. Finally, they referred the Tribunal to the net percentage increase of the demands, which increased over 400% in two years

Submissions

38. The Applicants distilled their case into 4 distinct points. They submitted that
- a) The costs incurred by leaseholders of other developments were much lower, and that of itself was evidence that the costs charged were unreasonably high;
 - b) While there was agreement from the Applicants that some works need doing to the interior common parts, it was not necessary to spend the sums proposed by the landlord;
 - c) The works proposed by the landlord were over and above the standard of work contemplated by the lease. These were works of modernisation rather than maintenance, and works of renewal rather than replacement. An example given was the desire by the landlord to install video intercom systems for each flat, rather than the audio only ones that they have at present;
 - d) It was not necessary to do the same level of works to all of the blocks within the development;
39. The Respondent then made its submissions. Mr Stocks began by analysing the terms of the lease, and encouraged the Tribunal to find the landlord was entitled to establish a reserve fund for the type of works it intended to do.
40. He then took the Tribunal through the service charge budgets, and the accompanying letter sent to the leaseholders, as well as the audited service charge accounts [pp 266-278], which he said showed the landlord had been transparent in its processes and set out at every stage why it was charging a reserve fund.
41. He went through in some detail the Hamilton Darcy 10 year planned maintenance programme [p.283] showing that all of the work fell into the landlord's obligations under the lease. He then went through the Ellis Sloane Fire Risk Assessment, as well as the Compliance Fire Stopping Survey which includes an action plan [p.381]
42. His submission was that in light of the additional fire safety work that was not included in the budget, not only was it reasonable for the sums originally demanded, but in fact it was more reasonable because of those additional works.
43. He finally made the point that these demands are for monies to be held in a reserve fund. The lease sets out the basis of how they can be demanded. There will be a 'next stage' when the landlord actually does the works, when those works will be again scrutinised, and subject to consultation requirements. He submitted that the Applicants complaints were premature, since the works had not yet actually been done.

Discussion

44. The Tribunal accepts the submission of Mr Stocks that it is important not to lose sight of the fact that the sums demanded here are to be held in a reserve fund. It is premature for the Applicants to criticise how those sums may be spent in the future. They will have the opportunity to do that at a later date, when the sums in the reserve fund are applied. For now, it is simple speculation.
45. As the lease makes clear, the landlord may “at its option” create a reserve fund. In other words, it is an unfettered decision for them to make. Further, the amount that the landlord is entitled to demand is any amount it thinks is reasonable for the provision of the services it is obliged to provide.
46. As such, it is clear that the provisions of the lease allow for the collection of a reserve fund.
47. Thus, the only remaining issue is whether the sums demanded are reasonable, in that they amount to a sum the landlord thinks is reasonable for the provision of its services.
48. It is clear that the landlord has instructed professional advisers to undertake a survey to set out what works are going to be needed in the future. As such, it is difficult to see why that is not a reasonable sum. Professionals have been instructed, and they have informed the landlord how much those works will cost. Those works are clearly within the services that the landlord is obliged to provide, the Applicants don't suggest they are not. For all of those reasons the Tribunal consider the sums demanded are reasonable.
49. Furthermore, the arguments relied upon by the Applicants do not really address the main issue, which is can the landlord justify, by reference to the lease and evidence, why it has charged what it has.
50. The evidence of what other developments pay is simply not relevant. They may have different leases, with different obligations, and the development may be in a different condition. Unfortunately, the affordability of the charge is also not the primary consideration as to whether it is reasonable.
51. The other arguments relied upon by the Applicants may well be relevant when the works are actually commenced, but at this stage, when the question is whether it is reasonable to claim the money to put in a reserve account – rather than whether it is reasonable to spend the money in a certain way – those arguments are not persuasive.

Section 20C, paragraph 5A, reimbursement of tribunal fees and costs

52. None of the parties could point to any administration charge which might under the terms of the lease be made in respect of the costs of these proceedings. Accordingly, we make no order under paragraph 5A of Schedule 11 to the 2002 Act.
53. We have decided that it would not be just and equitable to make an order under section 20C of the 1985 Act. None of the sums demanded have been reduced, because they are in fact payable as a matter of law, and we have considered them reasonable. It would not be unjust for the Applicants to have to pay their share of the costs of the proceedings through their service charge in the future.

Name: Judge Aaron Walder

Date: 25 August 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (extracts)

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.