



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

Case reference : **LON/00AK/LSC/2021/0101**

HMCTS code : **Face-to-Face hearing**

Property : **Flats 7, 8, 28, 32, 35, 36 & 39 Duncan Court, Green Lanes, London N21 3RL**

Applicants : **George Vassillou (Flat 7)
Andrew Polycarpou (Flat 8)
Greg Christoforou (Flat 28)**

Applicants : **Andreas Chrysanthou (Flat 32)
Bidhan Ganguly (Flat 35)
Angel Grablev (Flat 36)
Nicholas Georgiou (Fat 39)**

Representative : **Andrew Polycarpou & Greg Christoforou**

Respondent : **Duncan Court RTM Limited**

Representative : **Ms Robyn Cunningham, counsel**

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal members : **Judge Tagliavini
Mr Duncan Jagger MRICS**

Venue & date of hearing : **10 Alfred Place, London WC1E 7LR
27 & 28 January 2022**

Date of decision : **31 January 2022**

DECISION

Covid-19 pandemic: description of hearing: Face-to Face hearing

Summary decisions of the tribunal

- (1) The 18 balconies situate at the premises known as Duncan Court, Green Lanes, London 21 3RL ('the Premises') are not demised to the respective individual lessees and remain within the landlord's liabilities under the terms of the respective leases.
- (2) The respondent has to date complied with the ongoing consultation requirements under section 20 Landlord and Tenant Act 1985 ('the 1985 Act') in respect of the works ('the Works') intended to be carried out in the Initial Notice dated 17 May 2021 i.e., (i) Essential works to the balconies and (ii) Fire and Safety Works.
- (3) The nature and extent of the Works identified and specified in the various reports and tenders relied upon by the respondent are reasonable and within the respondent's obligations under the terms of the leases.
- (4) The collection of a Reserve Fund of £2,000 per annum per flat for the years 2019/2020 and 2021/2022 is reasonable.
- (5) The tribunal declines to identify a reasonable amount for the collection of a reserve fund for future years as further, yet to be costed major works projects are likely to be carried out at the Premises.
- (6) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

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 amount of service charges are payable by the applicants in respect of the reserve funds payments collected as service charges for the years 2020 and 2021, as well as future years to 2027. The applicants also seek a determination as to whether any sums should be charged to all lessees in respect of work to balconies or only those who have access and use of a balcony?

The hearing

2. The Applicants were represented by Mr Polycarpou and Mr Christoforou at the hearing and the Respondent was represented by Ms Robyn Cunningham of counsel.

The background

3. The property which is the subject of this application is a purpose-built block of 39 flats, 18 of which have external balconies
4. Photographs of the building were provided in the hearing bundle. 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.
5. The Applicants hold a long lease of their respective flats which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease(s) and will be referred to below, where appropriate.
6. The applicants' flats are all without balconies, although their leases are identical in terms to those flats having the use of and access to balconies. Service charges are now equally divided between the 39 flats (previously 1/27 in accordance with the original number of flats in the block).

The issues

7. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether the balconies remain within the repairing obligations of the landlord (respondent) or form part of the demise of the relevant flat to the respective lessee?
 - (i) The reasonableness of the reserve fund collected at the rate of £2,000 per annum per flat for the service charge years 2020 and 2021 as well as for future years.
 - (ii) Whether the section 20 consultation requirements have been complied with by the respondent?
 - (iii) Whether the nature and extent of the proposed major works is reasonable?
 - (iv) Whether an order under section 20C of the 1985 Act should be made?

8. Having heard evidence and submissions from the parties and the respondent's witnesses (both written and oral) and considered all the documents provided by the parties, the tribunal has made determinations on the various issues as follows.

Whether the balconies have been demised to the respective lessees or fall within the respondent's (landlord) repairing obligations?

The tribunal's decision

9. The tribunal determines that the 18 balconies at the Premises have not been demised to the respective lessees and remain within the landlord's obligations to maintain under the terms of the lease(s).

Reasons for the tribunal's decision

10. It was contended by the applicants that the lease for Flat 15 showed on its attached Plan that the balcony was included in the demise. Therefore, by inference as all leases were identical, all 18 balconies formed part of the demise of the relevant 18 flats. The applicants also asserted that, because only the lessee of the flat could use the balcony outside the respective flats, it must therefore form part of the demise. In addition, the applicants asserted that the installation of decking and waterproofing by two of the lessees with balconies, supported their argument that the balcony must form part of the lessee's demise. Consequently, the applicants should not be required to contribute towards the costs of maintaining the balconies.
11. The respondent submitted that all the leases were in identical terms and did not differentiate between flats with a balcony and those without. Ms Cunningham submitted that the express terms of the lease at clause 1 did not in any part refer to the balcony as forming part of the demise of Flat 15 which is a flat with a balcony and that clause 1(b) included those parts of the Premises that did not fall within the demise,
12. Ms Cunningham also submitted that if the balconies were demised to the respective lessees, the Premises would be rendered practically unmanageable, and the respondent would be unable to fulfil its obligations of maintaining the exterior of the Premises.
13. The tribunal finds that clause 1 of the lease sets out the extent of the demise and determines that it does not include the balcony as part of the demise. Further, the tribunal finds that paragraph 14 of the Fourth Schedule states:

Not to leave or deposit or allow to be left or deposited on the balconies or window sills forming part of the Flat any article or thing.....

14. The tribunal finds that the reference to ‘forming part of the flat’ refers only to the window sills and supports the tribunal’s opinion that the balconies have not been demised to the respective lessees and remain within the repairing/maintaining obligations of the landlord (respondent).
15. The tribunal is also persuaded by the respondent’s submissions that the Premises would become unmanageable in respect of the exterior, and this cannot have been the intention of the leases which require the Premises to be maintained in accordance with the terms of the lease. Although the lessees with balconies now effectively have exclusive use of them by reason of security doors prohibiting access from the communal parts, the tribunal finds this was not the original arrangement and determines that although lessees are permitted to use the balconies, they do not form part of the demise.

Whether the respondent has complied with the section 20 consultation requirements?

The tribunal’s decision

16. The tribunal finds that the respondent has complied with the consultation requirements of section 20 of the 1985 Act

Reasons for the tribunal’s decision

17. At the date of the application being made (16/03/21) the major works intended by the respondent were notified to the lessee in a Notice of Intention dated 8 April 2019. This Notice referred to balcony works and works of redecoration. Estimates in respect of these works were obtained, which if carried out in three Phases (A, B and C) were estimated to cost over £600K with Phase A alone in excess of £157K (*Statement of Estimates dated 29 September 2020*). Having received various observations from the lessees, the respondent abandoned its intention to carry out the works identified in that (first) Notice of Intention, and this was communicated to the lessee in a letter to the leaseholders from the Directors dated 17 May 2021.
18. A Notice of Intention dated 17 May 2021 set out the respondent’s intention to carry out (i) Essential balcony works and (ii) Fire Stopping/Safety Works. Estimates for the works specified in the July 2021 report of Celador were obtained in respect of fire safety works in the sum of between £35K-£100K (*see Statement of Estimates dated 2 November 2021*). Essential Balcony works estimated in the region of £70K to £100K (*see Statement of Estimates dated 2 November 2021*). As at the date of the hearing, no estimate had been selected by the respondent to carry out either of the two major works projects as the

consultation periods were said by the respondent to have only recently closed.

19. Although the original disputed Notice of Intention of April 2019 had been withdrawn as of 17 May 2021, the parties agreed that the same issues raised by the applicants should be considered by the tribunal in the context of the later consultation in respect of the balcony repairs and fire safety works, even though these post-dated the application itself.

The tribunal's decision

20. The tribunal determines that the consultation requirements in respect of the works set out in the Notice of Intention dated 17 May 2021 and the Notice of Estimates dated 2 and 29 November 2021 are compliant with section 20 of the 1985 Act. As an estimate has not yet been selected in respect of either of the major works projects, the tribunal is unable to make any determination as to the respondent's compliance with the third stage of the consultation requirements.

Reasons for the tribunal's decision

21. The applicants accepted they had received all Notices of Intention and the subsequent Notices of Estimates. It was confirmed at the hearing by the respondent that the Notice dated 8 April 2019 was withdrawn and that those works as specified in the Notice would not now be carried out as originally intended. The respondent accepted that the scaled down essential balcony works would be sufficient to remedy the identified problems. However, the tribunal was informed the external works of redecoration would be taking place at some unspecified time and these would be subject to a new consultation. The applicants accepted that Fire Stopping/Safety Works were necessary.
22. The tribunal finds the balcony works have been significantly 'scaled back' and their cost reduced from the works proposed in the Notice of Intention dated 8 April 2019. The tribunal is satisfied that the two major projects currently proposed are both necessary and reasonable and supported by documentary evidence, including the structural report of 2019 and the concrete analysis report of Cemplas of September 2019, as well as the more up to date tender report for essential balcony works of Celador dated 7 November 2021. No other expert reports were provided by or relied upon by the applicants in support of their argument that balcony works were not required.

Whether the collection of £2,000 per annum per flat in respect of the reserve fund is reasonable?

The tribunal's decision

23. The tribunal finds the collection of £2,000 per annum per flat for the service charge years 2020 and 2021 is reasonable.

Reasons for the tribunal's decision

24. The revised scaled back emergency works have been estimated to cost in the region of £80K to £100K and the Fire Safety Works are estimated to cost in the region of £35K-£100K. Consequently, the tribunal finds the collection of £156K over two years to fund these works is reasonable. Although, the sum collected may be over the actual costs, the tribunal considers it is prudent to seek to collect £2,000 per annum from each lessee, as it not uncommon for works to go over budget if unforeseen works are required, and for some lessees not to pay as required.
25. The tribunal is unable to make any determination on the reasonableness of the collection or amount of reserve funds for future years, as although more major works are intended (exterior decorations), these will be subject to a separate specification and consultation process.

Application under s.20C of the 1985 Act

26. In the application form and at the hearing, the applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal declines to make such an Order.

Name: Judge Tagliavini

Date: 31 January 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).