



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

**Case Reference** : **LON/00BF/LSC/2021/0429**

**Property** : **46 Audley Place, Sutton SM2 6RW**

**Applicant** : **Hamed Edward Ramani**

**Representative** : **In person**

**Respondent** : **Malcolm Carter & Susannah Segal**

**Representative** : **Mr Drake-Lee, Proxim Property  
Management**

**Type of Application** : **For the determination of liability to pay  
a service charge**

**Tribunal Members** : **Judge W Hansen (chairman)  
Mr S Johnson MRICS**

**Date and venue of  
Hearing** : **Remote hearing on 6 April 2022**

**Date of Decision** : **20 April 2022**

---

**DECISION**

---

## **Determination**

- (1) The Tribunal determines that a reasonable figure to have demanded from the Applicant in advance by way of Quarterly Reserve Fund contribution for the service charge year 2021/22 was £850.96 per quarter;
- (2) The Tribunal determines that the figure demanded from the Applicant in advance by way of Quarterly Reserve Fund contribution for the service charge year 2020/21 (£120.20 per quarter) was reasonable;
- (3) The Tribunal makes an order (i) pursuant to paragraph 5A(2) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing on the part of the Applicant any liability to pay an administration charge in respect of any costs incurred by the Respondent in relation to these proceedings and (ii) under section 20C of the Landlord and Tenant Act 1985 Act that the Respondent shall not be entitled to add the costs incurred in connection with these proceedings to the service charge.

## **Reasons**

1. By an application dated 29 November 2021 the Applicant seeks the Tribunal's determination under s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") of the reasonableness of demands for advance service charge contributions towards a reserve fund. Specifically, his challenge relates to two service charge years, 2020/21 and 2021/22, where he alleges that the sums demanded by way of contribution towards the reserve fund have increase from £120 per quarter to £927 per quarter, an increase of more than 600%. He does not challenge the Respondent's contractual right to demand contributions towards a reserve fund but he alleges that the sums demanded are unreasonable.

2. The Applicant is the lessee of 46 Audley Place, Sutton, Surrey, a one-bedroom flat in a purpose built block of flats constructed in or about 1970 pursuant to a lease dated 29 October 1971 ("the Lease"). It is one of 52 flats spread of over two blocks, Block A and Block B. He has appeared in person to pursue this application. The freehold is held by Malcolm Carter and Susannah Segal as Trustees of the Locker Foundation. Their managing agents are Proxim Property Management and the Respondent has been represented by Mr Drake-Lee BSc Hons, MRIPM, AssocRICS.
  
3. The Lease provides for the lessee to pay a specified percentage of the total estimated costs for the next 12 months as mentioned in Schedule 4. In the Applicant's case that percentage is 1.9231% as his is a one bedroom flat. The percentage for 2-bedroom flats is 2.4038%. The costs identified in Schedule 4 are, principally, all the costs associated with the landlord complying with its various repairing obligations, including obligations to repair the main structure of the building with the roofs thereof and the entrance hall, passages landings staircases and lift in the building. Paragraph 4 of Schedule 4 also specifically entitles the landlord to demand sums by way of contribution to a reserve fund as follows: "*such sum as the Lessor may reasonably require as a reserve towards future expenditure of its obligations hereunder*".
  
4. Historically, the sums demanded by way of contribution to the reserve fund have been very low, in the region of £120 per quarter. We note that these very low demands were made by a previous freeholder and are reflected in the condition of the building. Although this challenge purports to cover the year 2020/21 on the basis that the figure demanded for that year had increased to £927 per quarter, the figure did not in fact increase until 2021/22. The figure demanded in 2020/21 was £120.20. On that basis there is clearly no merit in the challenge for the year 2020/21 and the Applicant rightly focused on the subsequent year 2021/22.

5. The service charge year commences on 1 September in each year. On 17 August 2021 the landlord demanded from the Applicant £927.90 for what was described as “Quarterly reserve fund in advance” for the period 1 September 2021 to 30 November 2021. This represents an increase of more than 600% on the previous year. Whilst this demand did not come out of the blue, the steps taken to advise and warn the Applicant (and indeed the other lessees) in advance of what was coming were less than satisfactory. On 10 March 2021 the managing agents wrote to the Applicant to advise him that there were insufficient reserves to cover the intended upgrade of the communal fire doors or the proposed “*roof renewals for both blocks*” that “*need to be brought forward*”. The reserves as at the 2020 year end, 31 August 2020, were £24,213.93. On this basis, as the letter explained, the landlord proposed to demand “*approximately £5,200 from each leaseholder*” to cover the following work in the financial year 2021-22: 1) replacement of communal doors; 2) refurbishment of vent system; 3) renewal of main flat roofs to each block and repair of parapet walls; 4) repair of garage walls.
  
6. Not surprisingly, there was concern amongst the body of lessees as to the size of these demands and representations were made. As a result, when sending out the demand dated 17 August 2021 referred to above, the landlord’s agent indicated in a letter of the same date that they had decided to “*re-plan the timings of the roof renewals*” so that only the roof renewal to Block A was to proceed in 2021/22. On this basis the letter explained that the demands would come down to £3,500 per leaseholder. In fact, the demands addressed to the Applicant were for £927.90 per quarter which equates to an annual figure of £3,711.60.
  
7. This figure is 1/52 or 1.9231% of £193,000 which was the figure in the service charge budget for the year ending 31 August 2022 for “*Renewals Contribution*”. This item in the budget has a note against it (Note 22) which reads as follows: “*This has been increased as per the attached letter, due to numerous capital works required*”. The attached letter is a reference to the letter referred to in paragraph

6 above. As that letter indicated, the figure of £193,000 is based on the following four items: 1) the communal doors 2) the vents 3) repair of the roof to Block A only and 4) garage repairs.

8. Mr Drake-Lee could not point to a document in the bundle containing a breakdown of the costs of each of those constituent elements but he told us, and we accept, that he based the figure of £193,000 on the following anticipated costs: firstly, garage repairs estimated to cost £10,000, secondly, replacement vents estimated to cost £16,000, thirdly, replacement doors estimated to cost £62,000 and finally, the replacement of the roof to Block A which was estimated to cost £124,000. It can be seen that these figures in fact total more than £193,000 but we are prepared to accept that these calculations were the basis of the figure in the budget upon which the demands for reserve fund contributions were based.
9. The Lease permits the Lessor "*such sum as the Lessor may reasonably require as a reserve towards future expenditure of its obligations hereunder*". A similar obligation of reasonableness is imposed by s.19(2) of the 1985 Act.
10. We are satisfied that the inclusion of the figure of £16,000 to replace the vents was unreasonable. There was no justification for this work and when we pressed Mr Drake-Lee to provide the justification, he accepted that the work was not in fact necessary and that it was a "*finger in the air*" assessment, made without the benefit of appropriate advice.
11. The provision for the garage work was reasonable. In fact this work has now been done and came in somewhat cheaper than budgeted for, at £6,708, but that does not mean that the budgeted figure was unreasonable.
12. In relation to the doors, the Applicant has obtained a rival quote for £42,900 inclusive of VAT against the landlord's figure of £55,257.32 + VAT. There is a

difference between the rival figures but in our judgment the difference is well within the margin of appreciation open to a landlord acting reasonably. This is not a race to the bottom. It is an assessment of the reasonableness of budgeted sums which form the basis for the reserve fund demands. In our judgment, the figure used by the landlord, based as it was on a quote from a reputable contractor, was reasonable.

13. That leaves the roof which was the main area of controversy between the parties. The Applicant complained about the need for renewal of the roof to Block B and hence the reasonableness of making provision for this cost. However, as is clear from the factual narrative set out above, these costs were ultimately excluded by the time the landlord made its demand in August 2021. So the focus of this challenge is on the costs for renewing the roof to Block A. It is common ground that the roof to Block A needs replacement. Patch repairs are not a viable option. The Applicant has obtained a quotation from JKM Roofing in the sum of £43,895 + VAT for replacement of the roof to Block A including scaffold and skip hire. He also relied on a letter from a Mr Glew, FRICS, dated 2 February 2022, in which Mr Glew provided what he described as *“a desktop survey from information and photographs provided to me”*. In those circumstances, we decline to place any significant reliance on the letter, particularly having regard to the fact that he does not actually provide an estimate for the cost of replacing the roof to Block A; he simply says that he *“could not see costs approaching that figure”*.

14. Returning then to the rival estimate provided by JKM Roofing, it is significant, in our view, that the quote assumes suitable access can be obtained from a scaffold tower and that the necessary repairs to the parapet wall will be limited to repointing. We accept that he inspected the roof before quoting but he has not quoted in respect of a detailed specification and we have serious reservations about whether the works that he allows for will be sufficient. In particular, based on the photographs that we have been shown, we have

serious reservations about the structural integrity of the parapet wall and we note that Messrs Smithers Purslow, a reputable firm of building surveyors, have made provision for the “*urgent reconstruction*” of the parapet wall on the basis that the “*external face of parapets show severe degradation, recessed pointing and debonding of brickwork*”. Jonathan Marshall, who Mr Drake-Lee told us was a Chartered Building Surveyor in the employ of Smithers Purslow, prepared a 10-year Maintenance Plan in respect of the building on 21 January 2022, which estimated the costs involved in replacing the roof to Block A and reconstructing the parapet wall at £80,360 (£58,500 + £21,860) as well as allowing for scaffolding costs of £20,000, in other words total costs for the replacement of the roof to Block A in the sum of £100,360 + VAT + professional fees. On this basis, we consider that Mr Drake-Lee’s figure of £124,000 was a reasonable figure to use when building up the amount for reserve fund contributions in the budget for 2021/22.

15. Whilst the Applicant questioned the expertise of Mr Marshall, we accept Mr Drake-Lee’s evidence that he is a building surveyor with relevant expertise. We also consider that the figures in his plan, albeit prepared after the start of the service charge year and after the initial demand was sent, are relevant in assessing the reasonableness of the landlord’s approach and the budgeted sums allowed for. In particular, we consider it reasonable, certainly at the budget stage, to allow for reconstruction of the parapet wall, rather than just repointing, and to allow for scaffolding around the entirety of the block to allow this work to be safely undertaken. It follows that we do not believe that a scaffold tower would provide sufficient access if reconstruction of the parapet wall is required and we consider it reasonable to budget on the basis that scaffolding is likely to be required around Block A. We are not therefore satisfied that JKM’s quotation is a reliable quotation for the work that is actually required to safely and properly replace the roof to Block A and attend to the parapet wall. Finally, we would make the observation that insofar as the Respondent’s agent sought to justify its figures by reference to its experience in

relation to the costs associated with re-roofing works at two other buildings, referred to as Elmwood and Wentworth, we have serious reservations about its methodology and the appropriateness of these so-called comparators, but we are persuaded for other reasons that the figures arrived at for this property are reasonable.

16. For those reasons, the only deduction we propose to make is to deduct the sum of £16,000 from the figure of £193,000. On that basis the reasonable sum to have demanded from the Applicant by way of quarterly contribution to the reserve fund for the service charge year 2021/22 was £850.96 ( $193,000 - 16,000 \times 1/52 \div 4$ ). The sum demanded for the service charge year 2020/21 was reasonable for the reasons already explained above.
17. The Applicant also sought to raise issues relating to consultation under s.20ZA of the 1985 Act and invited us, in effect, to conduct some kind of audit of the reserve fund. We decline to do so and decline to consider any issue that does not arise out of the application. In any event, his complaint about consultation is premature. We were shown Stage 1 notices which suggest that the agents are consulting as required and the process is ongoing.
18. The Applicant also applied for orders under and 20C of the 1985 Act. Notwithstanding his limited success, we consider it just and equitable to make such orders because we consider that the landlord via its managing agents have very much brought this application upon themselves through what the Applicant fairly described as a *“lack of transparency”*. We understand that the agents are relatively new on the scene, having become involved with this property in or about 2019 and that historically contributions to the reserve fund have been unrealistically low and that the building is now in need of significant repair and renewal in circumstances where there are insufficient funds in the reserve fund. However, there are ways and means of properly going about righting the wrongs of the past and we consider that the process employed by



the managing agents, certainly in the initial stages, has lacked transparency and clarity and has not inspired trust and confidence on the part of the Applicant or, so it would appear judging from the outcry following the March 2021 letter, the other tenants. Had there been transparency and clarity about the basis for the figure of £193,000 in the budget for reserve fund contributions and proper communication between the agents and the Applicant, we very much doubt whether the Applicant would have brought this application. For those reasons we consider it just and equitable to make an order pursuant to paragraph 5A(2) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing on the part of the Applicant any liability to pay an administration charge in respect of any costs incurred by the Respondent in relation to these proceedings and an order under section 20C of the 1985 Act that the Respondent shall not be entitled to add the costs incurred in connection with these proceedings to the service charge.

**Name:** Judge W Hansen

**Date:** 20 April 2022