



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

Case Reference : **MAN/00BY/LSC/2021/0050**

**HMCTS code
(audio,video,paper)** : **P:PAPERREMOTE**

Property : **19 Princes Park Mansions, Croxteth
Road, Liverpool L8 3SA**

Applicant : **Princes Park Mansions Management
Company Limited**

Respondent : **Edgar Jones**

Type of Application : **Landlord and Tenant Act 1985 – s 27A**

Tribunal Members : **Judge J.M.Going
S.D.Latham MRICS**

Date of Hearing : **30 August 2022**

Date of decision : **31 August 2022**

DECISION

Covid -19 pandemic: description of hearing:

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no one requested the same, it was not necessary, and all the issues could be determined on the basis of the papers. The documents that the Tribunal was referred to were in a series of documents, statements, accounts, responses and submissions as described below, all of which the Tribunal noted and considered.

THE DECISION

The service charges demanded by the Applicant from the Respondent for each of the years ending on 31 May 2019, 2020, and 2021 are payable.

Preliminary and background matters

1. The Applicant, Princes Park Mansions Management Company Limited (“the Management Company”) applied on 3 May 2021 to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination that the service charges which had been demanded from the Respondent (“Mr Jones”) for the 2019, 2020, and 2021 service charge years are payable and reasonable in amount.
2. The Management Company is the freehold owner of Princes Park Mansions, Croxteth Road, Liverpool L8 3SA (“the Mansions”). Mr Jones owns a long leasehold interest in 19 Princes Park Mansions (“the property”) which is one of 44 residential apartments within the Mansions. It is understood that all the apartments are held under comparable leases and that each apartment owner also owns a share in the Management Company.
3. In December 2021, the Tribunal wrote separately to each apartment owner. It gave notice of the Application, and of the right to apply to be joined into the proceedings as a party. A copy of the Application was enclosed, and it was explained that the notices were sent to any persons named in the Application whom the Tribunal considered likely to be significantly affected by it. A pro forma was also enclosed to assist those who might wish to be made a party to the proceedings.
4. No one requested to be joined in. Only one response was received, on behalf of an apartment owner who wanted to formally confirm that he did not wish to be joined as a party and would be satisfied to be notified of the outcome.
5. The Management Company had confirmed in the Application that it would be content for the Application to be dealt with entirely on the basis of written representations and documents, and without the need for the parties to attend and make oral representations, if the Tribunal thought it appropriate.

6. Regional Judge Bennett issued Directions to the parties on 7 April 2022 informing them that Tribunal considered it appropriate for the Application to be determined on the papers without holding a hearing, unless either party requested one, which they could do at any time before the determination. No such request was made, and accordingly the Tribunal convened on 30 August 2022 to decide the Application.
7. All of the written evidence, which is on record, was carefully considered. It included copies of the Application (which, inter-alia, referred to 2 previous Tribunal Decisions made in 2015 and 2018 respectively) the Lease, a Deed of Variation, the Management Company's completed and signed sets of accounts for the years to 31 May 2019, 2020, and 2021, and various year-end statements, letters and budget figures.
8. The Tribunal has highlighted only those issues which it found particularly relevant to, and to help explain, its decision-making.

Princes Park Mansions

9. The Mansions is an imposing Grade 2 Listed Building dating from the 1840s. It is located on the corner of Croxteth Road and Sefton Park Road in Liverpool 8, but mostly hidden behind mature trees, and with Princes Park itself and its lake immediately to the south. It is understood to have been originally constructed as a terrace of five large mansion houses and later converted into 44 apartments, each with between one or four bedrooms. It has a basement with five storeys above, and it is believed that fifth storey was a later addition to the original building. Major restoration works were carried out in or around 2015 to 2018. The first phase (including structural and light-well repairs, works to the basement, a retaining wall, and the roadway) was completed before the 2015 Decision. The second phase was described in the 2015 Decision as comprising the replacement of the roof, the renovation of first floor balconies and removal of balconies to the upper floors, repairs to external soil pipes and rainwater goods, and external redecoration. To cover the costs, the Applicant imposed additional service charge levies on each apartment owner of £15,200 in 2015, and £7,200 in 2017. In each instance the Tribunal found such charges to be reasonable.

The Lease

10. A copy of Mr Jones' Lease ("the Lease") was included in the papers. It was completed in 1986 by the then Landlord and freehold owner, the Company, and the then tenant and owner of the property, who was granted a 999-year term lease at a peppercorn rent.
11. The Lease confirmed that all the apartment leases would be in a common form containing materially identical terms, and that the freehold would be transferred to the Management Company as soon as the last apartment had been sold. Each leaseholder was allocated a share in the Management Company and obliged to transfer that on to any new owner.

12. The Lease obliges the Management Company (among other things), subject to the payment of the service charge, to insure the buildings and maintain the main structure of the Mansions, including the roof, chimney stacks, gutters and rainwater pipes, the gas and water pipes, drains, and electric cables, and the main entrances landings and staircases, and to decorate the exterior when necessary, to maintain the central lift and other apparatus, keep clean and lighted the passages building staircases and parts of the main building used in common, to keep the footpaths, roadway, and car parking area in good and tidy condition and keep all the gardens and grounds in good condition and cultivation, to install and maintain an entry phone system, and to supply such additional services “if the Management Company deem it to be for the benefit of the Mansions as a whole”. In return, the leaseholders are required “to pay by way of additional rent the service charge calculated in accordance with the Fifth Schedule”.
13. That Schedule contains the provisions for the payment, apportionment and collection of the service charge. Paragraph 1 states that “the service charge shall be payable in two half yearly instalments on the 1st day of January and 1st day of June each year”. Paragraph 7 provides that an estimate of the expenditure for the financial year in question should be certified by a qualified accountant, with the financial year having been defined, in paragraph 4, as ending on 30 May in each year. Paragraph 8 confirms that the expenditure should include the costs of and incidental to the performance of the obligations previously referred to, any statutory and regulatory requirements, any rates and taxes, the full cost of employing caretakers cleaners and other staff of a like nature including national insurance contributions, pensions and the like, insurances, the cost of preparing accounts and certificates, the cost of managing the Mansions and “all other reasonable expenses (if any) incurred by the Lessor or Management Company about the maintenance and proper and convenient management and running of the Mansions”.
14. Paragraph 5 specified that the leaseholder’s fraction of the service charge should be 1/43rd. However, in 2016, following the sale of what had been the caretaker’s apartment, a Deed of Variation confirmed the change of that fraction to 1/44th, with the remaining provisions of the Lease remaining in force and fully effective.

The Management Company’s reasons for the Application and Mr Jones response

15. The Management Company explained that it “is a small residential management company served by voluntary directors that are also shareholders. It collects and expends service charge to ensure that the company complies with the terms of the lease to fund the day-to-day upkeep of the building covering costs such as insurance, communal lighting and building maintenance..... The service charge is set to cover these essential costs as set itemised in the budgets provided. In order for the mortgage provider of the respondent Mr Jones to cover the unpaid service charge they require a determination of reasonableness from the tribunal. The service charge is the only means available for the company to upkeep the building and pay for critical items such as insurance and maintenance...”.

16. Mr Jones failed to comply with the Tribunal's Directions, and a letter was sent stating that it was considering barring him and inviting any comments. In a response dated 28 June 2022 he apologized "for allowing this matter to escalate" stating "I am determined to settle amicably, as soon as possible. The reasons for inaction over the last 3-4 years have been mainly due to my ongoing health, personal and family problems which have seriously reduced my ability to generate income. This was then exacerbated by the Covid situation which affected my coping with the situation. I have occupied the property, as above, for over 20 years. My income, as a full-time musician, constantly fluctuates. On several occasions, especially since 2010, my service charges have fallen into arrears. The Management Company has, historically, accepted that the payment lapses have been due to health or business reasons and allowed me to settle as soon as I was able. Difficulties have been dealt with reasonably and amicably, albeit via the mortgage lender. Unfortunately, the last 2+years have been especially difficult as employment opportunities completely stopped...However, the situation regarding my health and finance is now promising.

I would, therefore, request:

- that any further action is halted or delayed.
 - that I receive an updated balance.
 - an opportunity to discuss with the Court and/or the Company, dates on which the arrears are to be paid; with the intention of arriving at an amicable agreement..”.
17. His letter was copied onto the Management Company, which was asked to provide any comments, which it did by sending the Tribunal a copy of its letter to Mr Jones dated 1 August 2022. That stated that “in the last 20 years... the arrear balances at the end of the individual financial periods varied from a low of £907.29 to a high of £19,810.25. We have not received any payments towards service charges since mid-2019, nor any communication from yourself proposing payments, etc. Your continued failure... has left the Management Company with no alternative but to commence enforcement of the Lease terms. The first stage in respect of any enforcement action being a determination by the First Tier Tribunal that the service charges are reasonable. The balance due on 1 August 2022 is £9180.33 plus interest of £2039.69. Whilst we recognise the difficulties outlined in your letter... the overdue balance is such that it will affect our ability to fulfil our responsibilities in respect of the lease conditions. As you are aware the service charge account does not have any reserves to cover delayed payments and the monthly payments are therefore required when due to meet committed expenditure and enable works of maintenance to be carried out. Cash flow issues are such that we cannot maintain this level of debt..”.
18. The correspondence was referred to the Regional Judge Holbrook who refused Mr Jones' request for the proceedings to be stayed or dismissed.

19. Subsequently, Mr Jones sent the Tribunal details of his proposal to the Management Company of a payment plan, incorporating increasing payments over time “until all arrears are paid in full”.

The Law

20. The Tribunal’s jurisdiction comes from Section 27A of the 1985 Act which provides that:-
- “(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) Sub-section 1 applies whether or not any payment has been made.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.”
21. Section 18 states that: –
- “(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 the 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.”
22. Section 19 of the 1985 Act confirms that :-
- “(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.”

23. The following principles have been confirmed from decided cases: –

- In order to determine whether a charge is reasonable, the Tribunal must take into account all relevant circumstances as they exist at the date of the decision in a broad, common sense way giving weight as it thinks right to various factors in the situation. *London Borough of Havering v MacDonald (2012) 3 E.G.L.R. 49*.
- There is no presumption for or against the reasonableness of the standard of works and the decision will be made on all the evidence made available. *Havering v MacDonald*.
- It is however for the party disputing the reasonableness of sums claimed to establish a prima facie case. *Enterprise Home Developments LLP v Adam [2020] UKUT 151 (LC)*. In the same case it was said “where... the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the (Tribunal) is not required to adopt a sceptical approach”.
- In *Yorkbrook Investments Ltd v Batten (1986) 18 HLR 25* the Court of Appeal, in addressing the issue of the burden of proof relating to the reasonableness of service charges said “Having examined the statutory provisions we can find no reason for suggesting that there is any presumption for or against a finding of reasonableness of standard or costs. The court will reach its conclusion on the whole of the evidence. If the normal rules of pleadings are met, there should be no difficulty. The landlord in making his claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable...”.

The Tribunal’s Reasons and Conclusions

24. The Tribunal has determined the position on the basis of all of the evidence before it.
25. The service charge instalments demanded from Mr Jones by the Management Company, exclusive of any interest chargeable, and as identified in its’ year-end statements, were:-
- £2084.53 for the service charge year ending on 31 May 2019 (made up of half yearly instalments of £983.27 and £1101.26), and

£2202.52 for each of the service charge years ending on 31 May 2020 and 31 May 2021 (in each case made up of half yearly of instalments of £1101.26).

26. For service charges to be payable they must be reasonably incurred, the services must be of a reasonable standard, and authorised under the Lease.
27. The Tribunal has made the following findings: –
 - Mr Jones has not said that the standard, or amount, of the costs of the services were unreasonable, rather he has cited his own personal circumstances as the reason, and the only reason, for not paying the same when demanded,
 - he has not made any assertion that the service charges were unreasonably incurred,
 - whilst the Lease includes the requirement for certification of budget amounts and the papers are silent on this, the point has not been raised,
 - the Accounts have been approved by the Management Company,
 - it employs managing agents and professional help,
 - the Management Company is made up exclusively of the apartment owners,
 - there is no evidence before the Tribunal that any of those apartment owners (who have all been given the opportunity to participate) have asserted that the relevant service charge costs were unreasonably incurred or that the relevant works or services were not of a reasonable standard,
 - analysis of the Accounts, prepared by chartered accountants, and approved by the Management Company, shows that, apart from the Mr Jones', there are few arrears. The latest Accounts to 31 May 2021 referred to total debtors of £10,190. Mr Jones' year-end statement calculated to the same date referred to him owing £7178.71.
 - it is clear that the overwhelming majority of those asked to pay the service charges have done so promptly, which, whilst not providing conclusive proof, is indicative of and consistent with the general acceptance of those charges,
 - no suggestion has been made to the Tribunal that any item of expenditure referred to in those Accounts was outside the charging provisions provided for by the Lease,
 - the expenditure headings in the Accounts were all as one might reasonably expect, and the totals themselves appear to be entirely reasonable and within market norms, particularly having regard to the age and size of the Mansions, its complexity, and status as a Listed Building.
28. The Tribunal is not unsympathetic to Mr Jones' (or indeed either party's) personal circumstances but finds that such considerations fall outside its

jurisdiction, where the sole focus is whether the service charges are reasonable and payable.

29. There has been no evidence nor suggestion that the service charges which have been demanded are not payable under the terms of the Lease or are unreasonable and should be limited pursuant to Section 19 of the 1985 Act.
30. The Tribunal has therefore determined, because of all of the foregoing, that the service charges demanded by the Management Company from Mr Jones for each of the service charge years ending in 2019, 2020, and 2021 (which as referred to above, and before any interest or other charges, amounted in total to £6,489.57) are all reasonable and payable. The dates by which they were payable, in half yearly instalments, as specified in the Lease and reaffirmed by the Deed of Variation, were 1 January and 1 June in each year.

J M Going
Tribunal Judge
31 August 2022