



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

Case reference : **LON/00AW/LSC/2022/0225**

Property : **Nell Gwynn House, Sloane Avenue,
London, Sw3 3AZ**

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

Applicant : **Crabtree PM Limited**

Respondent : **Mr Simon Allison of Landmark
Chambers, instructed by Naylor
Solicitors LLP**

Respondent : **431 Leaseholders**

Type of application : **For the determination of the
reasonableness of and the liability to
pay service charges**

**Tribunal
member(s)** : **Judge Lumby
Anthony Harris LLM FRICS FCIArb**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **12 December 2022**

DECISION

Description of hearing

This has been a remote hearing, using CVP. The form of remote hearing was P:VIDEOREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that the Tribunal were referred to are in a bundle of 371 pages, the contents of which have been considered.

The tribunal's summary decision

In respect of the service charge years 2023 – 2024 – 2025 – 2026 – 2027 and in respect of the amounts referred to in the application form dated 20 July 2022, the Tribunal determines that:

- 1. The amounts to be claimed are payable pursuant to s27A Landlord and Tenant Act 1985 and**
- 2. The amounts to be claimed as payments to the reserve fund are reasonable pursuant to s19 Landlord and Tenant Act 1985.**

The reasons for this decision are set out below.

Background

1. The property is a 1937 Art Deco block comprising 431 flats and five ground floor commercial units. It is a large, ten storey complex with for example around two miles of corridors. The freehold has been acquired by its leaseholders. Services to the building are provided by a separate management company with who each leaseholder covenants.
2. Leaseholders hold under three separate forms of lease, all of which have broadly similar service charge provisions and all provide for covenants to the management company from time to time.
3. The management company, which is controlled by the tenants, has for a number of years prepared five year look forward maintenance plans and sought the determination of the Tribunal first as to whether the amounts to be claimed are payable pursuant to the s27A Landlord and Tenant Act 1985 and, secondly whether the amounts to be claimed as payments to the reserve fund are reasonable pursuant to s19 Landlord and Tenant Act 1985. The Tribunal has in the past found both that the amounts then proposed to be claimed are payable and that the amount to be claimed as payments to the reserve fund are reasonable. Previous applications covered the period 2008 – 2012, 2013 to 2017 and most recently 2018 – 2022. The Tribunal's previous decisions are under references LON/00AW/LSC/2012/0597 and LON/00AW/LSC/2017/0230.

Application

4. The current five year maintenance period is expiring and so the management company is planning for the five years from 2023 until 2027.
5. The total claimed amounts to £4,310,065.16, spread over the five years. A comprehensive maintenance plan has been prepared by Cushman & Wakefield, detailing the proposed works and an estimated cost for each item. The amount to be spent varies from year to year and covers items such as external repair and redecoration, works to create a covering for the bin store, mechanical and electrical works, works to the reception area and corridor redecoration.
6. The intention of the five year reserve fund is to allow the costs of implementing the maintenance plan to be smoothed over the five year period, rather than having fluctuating amounts payable. It also provides leaseholders with a degree of certainty as to the amounts they will have to pay each year.

7. The proposed maintenance plan and reserve fund budget to fund it were both circulated to all leaseholders. Only one objection was received but was subsequently withdrawn. We are satisfied that all leaseholders were made aware of the application and had the opportunity to raise objections and that there were no other objections.
8. The Tribunal heard from Mr Allison on behalf of the applicant. It also heard from Mr Mike Brown, a director of Crabtree PM Limited; Mr Brown is actively involved in the management of the building and provided full and helpful answers to the Tribunal's queries.
9. There were no representations against the application and no one attended the hearing to ask questions in relation to it.
10. It was noted that the Tribunal were only being asked to consider whether the works in respect of works were chargeable and the reserve fund allocation for these was reasonable. It was not being asked to make any determination in relation to day to day expenditure or as to whether individual sums were reasonable, it being accepted that these would need to be the subject of a consultation at the relevant time.

The law

11. Section 27A(3) of the Landlord and Tenant Act 1985 allows an application to be made to the 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. This application is for such a determination in relation to the costs identified in the claim for the years 2023 to 2028.
12. Section 19(2) of the Landlord and Tenant Act 1985 provides that where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable. The application here is for determination as to whether the sum of £4,310,065.16 as a reserve fund for the next five years is reasonable.
13. The previous decisions made on the prior applications have analysed the contractual background and legal framework to the application (and in particular the service charge mechanism under the leases) and we agree with that analysis. We have therefore not repeated this. Suffice for say that there is a robust service charge mechanism allowing for the recovery of costs of repair and maintenance (both externally and internally) and the use of a reserve fund to pay for this.

Consideration of the application

14. The Tribunal raised various issues in relation to the proposed maintenance plans, and received responses as follows:
 - (a) The leases provided for external decoration to be carried out every four years but there would in fact have been an eight year gap before they were next carried out in 2024.
 - (b) Works were necessary to the roof, following a survey revealing rotten battens and falling tiles.
 - (c) It was accepted that the installation of a roof cover to the bin store might constitute an element of improvement benefiting only some of

the leaseholders. However, at this stage all that was proposed was a feasibility study. Bringing these works forward (for which only £40,000 has been budgeted) would require a full consultation with the leaseholders.

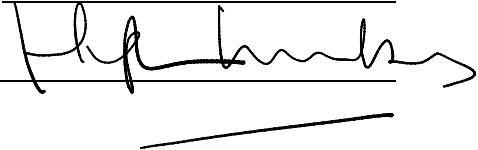
- (d) The internal decorations proposed had last been done in 2014 and were now due to be done again.
- (e) The heating in the reception area was currently ineffective as a result of the entrance doors opening. The proposal is to replace it with underfloor heating which should be more effective.
- (f) A 10% contingency is in accordance with market practice.
- (g) The plan also incorporates a 4% per annum uplift in construction costs, which is at a conservative level.
- (h) The fees for the managing agents and the trustees are all in accordance with the leases and are reasonable in market terms. The Cushman & Wakefield fees (at 8%) have been at the same rate for the last 15 years. They have been compared with other firms and found to be competitive.
- (i) It is likely that up to £240,000 will remain in the reserve fund for the five year period about to expire. The balance will be credited against the new reserve, meaning that the actual amount leaseholders will have to pay will be commensurately less.
- (j) There is a current fire assessment for the property. The fire assessor is happy for the postponement of works around the risers for five years (this will save money in any event).
- (k) There is a current asbestos survey and plan and this is reflected in the new maintenance plan
- (l) The works for the first three years are similar but phased over the building, with the scaffolding moving around rather than being put for the whole building the entire time.
- (m) The lifts need ongoing maintenance, with motor replacement. This will be phased over three years, which is the most effective method and allows continued use.
- (n) The actual amount payable on average per tenant would be approximately £2,000 per annum each, up from £1,600 per annum at present.

Conclusions

15. The Tribunal considered the application and the supporting documentation and took into account the evidence, both written and oral, received from the applicant, including Mr Brown's witness statement and replies to questions.
16. In terms of whether each item of works or the related fees were recoverable, particular consideration was given to the bin store covering and the reception area works. Both these could be considered to be improvements. However, consultation would be required before works were carried out and the bin works would need a separate approval from the leaseholders. We were satisfied that if these processes were followed, the relevant items if claimed would be capable of being claimed pursuant to the relevant leases and would payable pursuant to section 27A of the Landlord and Tenant Act 1985.

17. All other works if claimed (and again subject to the relevant procedures being followed) would be payable pursuant to section 27A.
18. The leases to the leaseholders all allowed for a reserve fund to be set, including all the items proposed, as previously determined by the Tribunal in the earlier cases.
19. We also considered the reasonableness of the proposed figures to be used to calculate the reserve fund. We had received no evidence to suggest that any of the figures were unreasonable. We considered all of these including the fees. In the Tribunal's opinion, all were set at a reasonable level.
20. The increase in the average amount to be paid by each tenant from £1600 per annum to £2000 per annum was not considered an unreasonable increase.
21. It was noted that, although there was a balance in the reserve fund at present, this would be set against the amounts actually claimed to be achieve the new fund.
22. The Tribunal therefore concluded that the amount of £4,310,065.16 to be claimed as payment for the next five years to the reserve fund was reasonable pursuant to section 19 of the Landlord and Tenant Act 1985.

Name: Tribunal Judge Lumby **Date:** 12th December 2022

Signed: 

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).