



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

Case reference	:	LON/00BJ/LSC/2019/0109
Property	:	York Mansions, Prince of Wales Drive, London, SW11 4BW
Applicant	:	York Mansions (Battersea Park) Limited
Representative	:	Barry Denyer-Greenford (Counsel)
Respondent	:	Mr Ivan Morel and 117 leaseholders of the Property as set out in the list attached to the application
Representative	:	Mr Ivan Morel (in person)
Type of application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Judge Robert Latham Michael Mathews FRICS
Venue and Date of Hearing	:	10 Alfred Place, London WC1E 7LR on 12 June 2019
Date of decision	:	2 July 2019

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the replacement of the present electrical infrastructure by a new common distribution panel, new cable risers and lateral high-level cable installation routes falls within the landlord's repairing obligations under the terms of each lease; and therefore, the cost is recoverable though the service charge provisions in the leases.

- (2) The Tribunal has not been asked to determine the reasonableness of the any service charge which may be charged in respect of the said works. The Tribunal was informed that the Applicant will carry out a statutory consultation before the proposed works are commissioned.
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The Application

1. By an application issued on 14 March 2019, the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the payability of service charges under the terms of the lease. This application does not involve the reasonableness of the proposed charges. The issue that the Tribunal is asked to determine is whether the replacement of the present electrical infrastructure by a new common distribution panel, new cable risers and lateral high level cable installation routes falls within the landlord's repairing obligations under the terms of each lease; and therefore the cost is recoverable though the service charge provisions in the leases.
2. On 19 March, the Tribunal gave Directions. The Tribunal allocated the case for a paper determination. The tenants were directed to complete a form attached to the Directions which was to be returned to the Tribunal by 23 April. They were asked to specify whether they supported or opposed the application. Any tenant who opposed the application was required to attach a Statement of Case setting out their reasons. Any lessee who had any queries or concerns about the application was asked to supply a summary of these.
3. On 10 May, a Procedural Judge reviewed the application in the light of the responses which had been received. On 5 April, Mr Ivan Morel, the lessee of Flat 90, raised a number of concerns (at p.99). He questioned the justification for complete renewal as opposed to repair. He also queried the extent to which it would be appropriate to pass on the cost of the works to the lessees. In the light of this response, it was decided to set the matter down for an oral hearing.
4. The following lessees have also responded to which Peter Crawford, a Consultant, has responded:
 - (i) Mrs Catharine Kesley (Flat 19): emails - 8 and 10 April; responses – 10 April (at p.105-109);
 - (ii) Pritanjan Kaur Kaler and John Pillar (Flat 45): email - 15 April; response – 29 April (at p.110-112);

(iii) Mr John Matthews (Flat 62): email - 4 April; response – 29 April (at p.90-93); and

(iv) Mr A Howard-Keyes and Countess Von T Zu Daxberg (Flat 89): emails – 3, 4, 9 and 10 April; responses – 9 and 10 April (at p.94-98).

In the light of these responses, the lessees no longer maintain any objection.

The Hearing

5. The Applicant was represented by Mr Barry Denyer-Greenford (Counsel). He was accompanied by Ms Hannah Clements (Solicitor) and Ms Doreen Boulding (a Director of the Applicant Company). Mr Denyer Greenford provided a Skeleton Argument. He took the Tribunal through the terms of the lease and the two expert reports, and addressed each of the concerns raised by Mr Morel.
6. Mr Morel appeared in person. He agreed that Mr Denyer-Greenford had accurately summarised his objections in his Skeleton Argument. He elaborated upon his objections which he had summarised in a brief written statement. He did not rely on any expert evidence.
7. Mr Denyer-Greenford, on instruction, informed the Tribunal that there had only been informal consultation with the tenants and that the formal Section 20 Consultation would commence after the Tribunal has issued its decision. After the hearing, Mr Morel provided the Tribunal with a Notice of Intention which had been served on 14 September 2018. We anticipate that the formal consultation, including a further Notice of Intention will be served in the light of our decision.

The Background

8. The Property comprises five Victorian blocks of flats containing 118 flats over five storeys. During the course of renovation works to one of the flats, it was discovered that the lateral mains cabling serving the flat was in an unsatisfactory and dangerous condition. In consequence, the Applicant commissioned a report from Just Electrical Services Limited (“Just Electrical”). The report, dated 17 May 2018, is at p.38-50. An inspection was carried out over two days. Just Electrical carried out a risk assessment in respect of each of the five blocks (at p.42-46). The defects are highlighted in red where the score is either C1 (danger present) or C2 (potentially dangerous). Mr Morel’s flat is on the fourth floor of the block including Flats 81-100. The risk assessment is at p.46. Just Electrical concluded that the original electrical installations were some 50 to 60 years old and recommended that a package of remedial works be executed as a matter of priority.

9. A further report was obtained from JDP Limited("JDP") at p.50-64. JDP inspected the blocks on 18 October 2018 to review the robustness of the previous report. A diagram (at p.58) illustrates the existing MICC riser cables to the Ryfield distribution boards which are situated on each floor. JDP concluded that the lateral mains cables to the consumer units in each flat are old and very inflexible. JDP concluded that it would not be possible to move or reuse them in any new scheme. JDP recommend that all present electrical infrastructure be replaced by a new common distribution panel to be located within the underpass to feed individually each flat. This would allow all of the riser Ryfield distribution boards on each floor of the blocks to be removed. New cable risers should be installed providing supply direct to each flat and lateral cable installation routes to be at a high level in each corridor. A number of other recommendations of a more technical nature are set out.

The Lease

10. The leases of the flats are all in the same form. The lease refers both to a landlord and to a Management Company, G.P.H. (York Mansions) Tenants Limited, which has many of the repairing and service charge obligations. All shares, bar one, in the Management Company are held by the Applicant and there is no issue between the Applicant and the Management Company. Reference to the liabilities of the landlord/management company under the lease should therefore be read as liabilities of the Applicant.
11. By clause 1(B) of, and Schedule 1 to, the lease, the premises demised by the lease include

"(d) all conduits, pipes, wires, cables, sewers, water courses and drains which are laid in any part of the Building and serve exclusively the Flat..."
12. The lessees' covenanted obligations to repair, set out in clause 3(3), include an obligation to keep in repair "the interior of the Premises...and all other fixtures and fittings and appliances in the Premises..."
13. By clause 5 of the lease there is a covenant by the Management Company:

"2(i) to maintain, repair and (as necessary) renew the main structure of the Building and all installations and other things forming part thereof (other than those within the Premises) and to keep the common parts...and all structures...pipes, cables, wires...in or upon the Building (other than any fixtures or fittings which the lessee or any other lessee or the lessor shall be liable to maintain) in good and tenantable repair and condition..."

14. The Tribunal is required to construe the respective obligation of the landlord and the lessee in respect of the electrical wiring. Within each flat, there is a meter and consumer unit. We are satisfied that the liability for all the electrical installations whereby the electrical supply is fed into the meter is that of the landlord. Thereafter, any cables or wiring feeding the electrical supply from the meter to electrical installations within the flat is that of the lessee.
15. A particular issue is the lateral cables which run from the Ryfield distribution boards to the meters in the individual flats. There is some ambiguity in the drafting of the lease, and we must construe what the parties would have intended through the eyes of the reasonable reader. We are satisfied that Clause 5(2)(i) of the lease imposes this obligation on the landlord. These run along the common parts. They may serve more than one flat. It would not be practical for there to be more than one person to be responsible for repairing different parts of a lateral cable.
16. Under the scheme proposed by the Applicant, all the present electrical infrastructure will be replaced by a new common distribution panel to be located within the underpass to feed individually each flat. The existing riser Ryfield distribution boards on each floor will be removed. New cable risers will be installed providing the supply direct to each flat. We are satisfied that these works would fall within the Applicant's covenant to repair under Clause 5(2)(i), the cost of which would be recoverable through the service charge.

Mr Morel's Objections

17. Mr Morel's primary concern is the cost of the proposed scheme, which is estimated at some £400,000. He suggests that a more modest package of repairs would suffice. He states that it is not known how many of the lateral wires are faulty. He suggests that keeping the existing risers/MICC cables, updating the Ryfield boards and enforcing the replacement of faulty demised lateral wires by the lessee is a far less expensive and viable option and in line with the lease. Changing the MICC cables is "a nice-to-have" and not an urgent safety concern and remediable works around them are feasible.
18. Mr Morel has adduced no expert evidence. There is no evidence before us of any viable alternative scheme. We find the risk assessment by Just Electrical at p.42-46 to be compelling. These extend throughout the five blocks. A landlord is bound to take action to address these risks, particularly those assessed as "C1 (danger present)" or "C2 (potentially dangerous)". We are satisfied that the electrical installations are in disrepair and that the proposed package of works falls within the scope of the Applicant's liability to repair.
19. Mr Denyer-Greenford assured the Tribunal that the Applicant would be undertaking its statutory duty to consult. This will provide the lessees

with a further opportunity to comment on the works now proposed and to nominate potential contractors.

20. Mr Morel suggests that the repair of the lateral cables from the Ryfield distribution boards to the meters in the individual flats is the responsibility of the lessee under Clause 3(3) of the lease. It seems that some of the lessees may have moved the consumer units within their flats or replaced some of the lateral cables. Mr Morel asks whether, if the lessee's existing lateral wire is of the right size and in good condition, the Applicant can agree to connect this to the new MICC cable in the new riser rather than replacing with the new MICC cables to the lessee's consumer unit.
21. We accept that there is some ambiguity between Clause 3(3) and Clause 5(2)(i). We are satisfied that the only practical way to construe the lease is to place the obligation on the landlord to repair and maintain the lateral cables which run from the Ryfield distribution boards to the meters in the individual flats. Mr Denyer-Greenford informed the Tribunal that if any tenant has replaced their existing lateral MICC from the local Ryfield Board with new cables, those cables, if the correct size and in good condition, would be retained. These are points of detail to be addressed through the consultation process.

Further Matters

22. The Tribunal does not make any order under Section 20C of the Act. The effect of this is that the Applicant will be able to pass on the cost of this application through the service charge. The Tribunal has not been asked to determine the reasonableness of the any service charge which may be charged in respect of the said works.
23. The Tribunal will send a copy of this decision to Mr Morel. The Applicant is directed to serve a copy of this decision on all the other lessees.

Judge Robert Latham
2 July 2019

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).