



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

Case Reference : **MAN/3OUF/LSC/2019/0031**

Property : **De Vere Gardens, 47/49, South Promenade, Lytham St Annes FY8 1LZ**

Applicant Limited : **De Vere Gardens Services**

Representative : **Homestead Consultancy Services Limited**

Respondents : **Various (See Annex A)**

Type of Application : **Landlord and Tenant Act 1985 – s27A**

Tribunal Members : **Tribunal Judge C Wood
Ms S Latham**

Date of Decision : **22 October 2019**

Date of Determination : **28 October 2019**

DECISION

Order

1. The Tribunal determines that, subject to section 19(2) of the Landlord and Tenant Act 1985, the service charges totalling £118,852.05 are reasonable and each of the Respondents is liable to pay 1/27th of such costs.

Background

2. By an application dated 18 April 2019, (“the Application”), the Applicant sought determinations from the Tribunal as follows:
 - 2.1 that the liability of each Respondent for the costs of external repair works to the Property (including professional costs) is £4401.94;
 - 2.2 that the budgeted costs of the works is reasonable; and
 - 2.3 regarding the adequacy of the section 20 consultation.
3. Directions were issued dated 10 May 2019 pursuant to which written submissions were received from the Applicant. No response to the Application and/or written submissions were received from any of the Respondents.
4. None of the parties requested a hearing and the application was accordingly scheduled for determination on the written submissions on Monday 23 September 2019.
5. An inspection was scheduled for Monday 23 September 2019 at 10:00am.

Inspection

6. The Applicant was represented at the inspection by Mr D Bentham, the Company Secretary of the Applicant and Mrs. H. Douglas-Brown, the Chair of the directors of the Applicant. None of the Respondents attended or were represented at the inspection.
7. The Tribunal was assisted at its inspection by the Applicant’s representatives who described the works to be undertaken and the proposed timetable. The property comprises two buildings. The proposed works relate to the larger of the two buildings. The inspection was limited to the exterior of this building.
8. At the inspection, Mr Bentham told the Tribunal that:
 - 8.1 service charge demands for the costs of the repair works have been issued to all of the Respondents;
 - 8.2 monies have been received from 25 of the 27 Respondents; and,

8.3 county court proceedings have been issued against 2 of the Respondent in respect of their unpaid service charge demands.

Law

9. Section 18 of the Landlord and Tenant Act 1985, (“the 1985 Act”), provides:
 - (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 a 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.
10. Section 19 provides 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.
11. Section 27A provides that:
 - (1) an application may be made to a leasehold valuation 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 date at or by which it is payable, and
- (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3)
- (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- 12. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].
- 13. Section 20C of the 1985 Act provides as follows:
 - (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before...the First-tier Tribunal...are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
 - (2) ...
 - (3) The...tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Determination

- 14. Having regard to the works to be carried out (as detailed in the Schedule of Works contained in the documents at page 490 of the Bundle), the Building Condition Survey insofar as it relates to these works, (pages 420-478 of the Bundle), and its inspection, the Tribunal was satisfied that, subject to section 19(2) of the 1985 Act, the estimated costs of £118,852.05 are reasonable.
- 15. In paragraph (1) of the Applicant’s Statement of Case, the Applicant states that “The leases vary slightly and all 27 are enclosed at exhibit 1”. From its review of the Leases, the Tribunal is satisfied that:

- 15.1 all of the Leases contain a clause identical to, or substantially the same as, clause 2(5) of the lease of Flat No.1. This clause sets out how service charge is to be paid: specifically, it obliges each tenant to make 4 payments of £40 on each quarter day in each year and then “...as and when demanded after each year end...” to pay an amount equal to one twenty-seventh part of the shortfall (if any) between the amount payable in any one year in respect of the Buildings and the amount actually received from all of the tenants of the Buildings;
- 15.2 there is no obligation on a tenant to pay **in advance** more than £40 on each quarter day in the year in which the relevant expenditure is incurred;
- 15.3 at the end of the relevant service charge year, the Landlord is entitled to demand payment of any shortfall due from any tenant;
- 15.4 under the terms of the Leases, the Respondents’ obligation to make payment in advance in respect of service charge expenditure for any year is limited to an aggregate amount of £160, payable in 4 instalments on each quarter day. Any shortfall must then be demanded at the end of the service year by the landlord; and,
- 15.5 the rights and obligations of the Respondents under the Leases had not been varied by the voluntary acts of 25 of the 27 Respondents to have made payment to the Applicant of the amount set out in the service charge demands in advance of the expenditure having been incurred.
16. The Tribunal was referred by the Applicant to the decision in *Morshead Mansions Limited v Leon Di Marco* [2008] EWCA Civ 1371 in which the right of to seek recovery of certain monies from a tenant as a member of the limited company which managed the property/owned the freehold reversion rather than as service charge expenditure under the terms of the lease was upheld. It was noted in the judgment that obligations to make payment as a tenant under a lease and as a member of a company under its Articles of Association could co-exist.
17. The Tribunal noted that, in the present case, at the inspection, payment obligations existed under both the Leases and the Applicant’s Articles of Association, and that all of the Respondents were members of the Applicant. However, in the present case, the Applicant:
 - 17.1 had confirmed that, contrary to the statement in paragraph (9) of the Applicant’s Statement of Case that demand would be made pursuant to Article 16 of the Applicant’s Articles of Association, it had issued service charge demands to the Respondents for the cost of the works to the Property; and,
 - 17.2 was seeking a determination under s27A of the 1985 Act as to the reasonableness and payability of the costs.

- 17.3 The Tribunal was satisfied that, in view of paragraphs 17.1 and 17.2 above, the Applicant had accepted that the costs in question were service charge expenditure and subject to the 1985 Act and the Tribunal's jurisdiction. To that extent, whether or not such costs could also have been demanded and/or recovered under Article 16 of the Applicant's Articles of Association is irrelevant to the Tribunal's determination.
18. In the Application, the Applicant had requested that the Tribunal make a determination regarding the adequacy of its section 20 consultation. There is no express provision enabling the Tribunal to make such a determination but, in any event, the Applicant had not provided the Tribunal with all documentation relating to its consultation. Accordingly, no determination is made. The Tribunal noted, however, that there was no evidence that any new/further consultation had been undertaken following the change in identity of the main contractor.

Judge C Wood

22 October 2019

Annex A

Mr B Wilson
Mr & Mrs C Horton
Ms S Pemberton
Mr & Mrs L Birch
Mr & Mrs B Eccles
Mrs J Howard
Mr & Mrs K Rice
Mrs J Smithies
Mr & Mrs A Kenyon
Mrs C Stevenson
Mrs K Zolfaghari
Mr & Mrs G Hughes
Mr & Mrs B Fazakerley
Mr E Pass
Mr & Mrs W Fagen
Mrs B Piers-Fisher
Mrs B Terras
The Estate of Mrs Neiman
Mrs M W Craghill
Mr W Lawson
Mr & Mrs M Hodgson
Mrs D Howe
Mr D B Coop & Mr D P Coop
Mrs H D Brown
Mode Hotel Limited
Mr & Mrs R Carroll