



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
& IN THE COUNTY
COURT AT NEWARK sitting at The Justice Centre
NOTTINGHAM**

Case Reference : **BIR/37UG/LIS/2019/0041
BIR/37UD/LLC/2019/0011
BIR/37UD/LLD/2019/0010**

Property : **The Gatehouse, Ossington Mews, Newark,
Nottinghamshire, NG24 1TP**

Applicant : **George William Price Limited**

Applicants' Representative : **Miss M Verity, Counsel
Cleggs Solicitors**

Respondent : **Nicholas and Lynne Lamb**

Type of Applications : **(1) Application for a determination of
liability to pay and reasonableness of service charges
pursuant to ss 19 & 27A Landlord and Tenant Act 1985 (the
1985 Act)**

**(2) Application for an order limiting the Respondent's costs
in the proceedings under s20C of the 1985 Act and**

**(3) Application under paragraph 5 Schedule 11 Commonhold
and Leasehold Reform Act 2002 (CLRA 2002) reducing or
extinguishing the tenant's liability to pay an administration
charge in respect of litigation costs**

Inspection & Hearing : **9 December 2019**

Tribunal : **Tribunal Judge Mr.P. J. Ellis
Tribunal Member Mrs A. Rawlence**

County Court : **Tribunal Judge P.J. Ellis (sitting as a
Judge of the county court District Judge)**

Date of Decision : **7 January 2020**

DECISION

Summary of the Decisions made by the First-tier Tribunal

- (1) The Respondents are liable to pay service charges for the years 2015 and 2016 in accordance with the Applicant's claims as varied by the reduction of management charges as follows**

	Claim	Allowed	Respondents' Share
2015	£5,825.27	£2625.27	£197.68 inc VAT
2016	£5489.00	£2289.78	£172.42 inc VAT

- (2) The Respondents are liable to pay Interim Charges as follows**
- a. 01 January -4 March 2017 £430.06 inc VAT**
 - b. 25 March – 23 June 2017 £472.80 inc VAT**
 - c. 24 June - 28 September 2017 £318.00 inc VAT**
 - d. 29 September -24 December 2017 £318.00 inc VAT**
 - e. 25 December 2017 – 24 March 2018 £186.00 inc VAT**
 - f. 25 March – 23 June 2018 £186.00 inc VAT**
- (3) In determining the Building Service Charge for the accounting periods 1 January 2017 – 24 December 2017 the Respondents are liable for not more than 7.53% of 20% of the management charge including VAT**
- (4) In determining the Building Service Charge for the accounting periods 25 December 2017 -23 June 2018 the Respondents are liable for not more than 7.53% of 20% of the management charge including VAT**
- (5) In determining the Building Service Charge for the accounting periods 1 January 2017 – 23 June 2013 the Respondents are not liable for the accounts fee in year 2017 and sums claimed for health and safety external repairs and maintenance**
- (6) The costs incurred by the Applicant are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.**
- (7) The Applicants are not entitled to charge the Respondents with legal costs as an administration charge under the terms of the lease the subject of these proceedings.**

Summary of the Decisions made by the county court

- (1) Judgment for the Applicant for the sum of £2280.96**
- (2) Interest at 5.75% as provided for in the lease from the date of demands for service charges to the date of judgment in the sum of £363.13 and continuing at £0.13 per day**
- (3) Fixed costs on issue of the proceedings in the total sum of £285.00**

(4) Pursuant to Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 the Tribunal Judge sitting as a Judge of the County Court extinguishes the Defendants' liability to pay an administration charge in respect of litigation costs being costs incurred or to be incurred by the Claimant in connection with these proceedings before the First-tier Tribunal and the County Court

Introduction

1. This is an application by George William Price Limited for determination of the reasonableness and payability of service charges together with cross applications by the Respondents Mr and Mrs Nicholas and Lynne Lamb for orders under s20C Landlord and Tenant Act 18985 and Paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002.
2. The Applicant is the freehold proprietor of The Ossington Beastmarket Hill Newark Notts NG24 1BH. It acquired the property on 13 August 2014. The Respondents are the assignees of the residential leasehold property The Gatehouse which they acquired on 26 August 2011. The Gatehouse is the mid-terrace house of three individual residences together known as the Mews. The property is more particularly described below.
3. At the hearing the Applicant was represented by Miss M Verity of counsel instructed by Cleggs Solicitors. Mr Lamb represented himself and his wife.

The Claim

4. The Applicant initiated these proceedings when it issued County Court proceedings seeking recovery of arrears of service charge, insurance premiums and ground rent in the total sum of £3621.89. The service charges claimed were from 1 January 2017 to 23 June 2018 in the total sum of £1910.86. In addition there were claims for ground rent and insurance in the sum of £322.36 and an outstanding demand from earlier years 2015 and 2016 in the sum of £1388.67.
5. On 18 June 2019 Deputy District Judge Powell gave judgment in favour of the Applicant in relation to insurance and ground rent and interest in the total sum of £483.43. He then transferred the issue of reasonableness and payability of the service charges to this Tribunal. On 26 September 2019 the Respondent made a payment of £479.33 in contribution of the outstanding charges.

6. The service charge claim included a sum of £1388.67 for earlier years unpaid charges. That sum was partially discharged by the Respondent's payment of ground rent and insurance reducing that claim to £823.53.
7. After deducting payments made by the Respondent the sum outstanding is £2734.39.

The Property

8. The Ossington Building was built in 1882 as a Temperance Hotel on the site of a previous palace. It is now a multi-use complex in a good city centre location. The development was constructed on the east-side of the river Trent. Although access is at modern street level the west side of the development, adjoining a car park at river level, is retained by a high stone wall.
9. The main building is three storeys high of brick and tile construction with ornate plaster and timber work and cast iron windows. Vehicular access to the east side under the arch leads to residential accommodation, service roadway known as Ossington Mews and car parking, some under cover.
10. At the site inspection the extent of the lease of The Gatehouse was clarified as being the mews property and a small front garden, all maintained by the Lessee. In addition, there was a shared garden area between 4 properties, referred to in Part 4 of the 9th Schedule. The Tribunal observed a new gate had been recently installed at the top of a stone staircase leading down from the garden to street level. Furthermore, the yard and the car parking were common to the whole development and referred to in Part 1 of the 9th Schedule.
11. A retail unit to the east of the property appeared to have a parking space in the yard along with right of access. At the hearing the Lessors clarified that no contribution was made for this as they understood that Lessee had no right to park a vehicle.
12. A restaurant occupies the ground floor of the building to the west of the yard. There is no right of access to the restaurant through the development but there is a bin store serving the restaurant in the yard.

The Lease

13. The lease of the Gatehouse was made 24 September 2002 between Hestran Limited and the original Lessees. The Respondents acquired the lease in 2011. Clause 1 of the lease the Lessor demises to the Lessee the Premises described in Schedule 1 where the Gatehouse is described for identification purposes only as that shown on plan B annexed and edged red. Thereafter throughout the lease the subject property is referred to as the Premises.
14. The Lessees' covenants are set out in the Fourth Schedule and include at paragraph 2 an obligation to pay all charges for premises and parking space also, for any charges in respect of the Building (outlined in blue on Plan A) to pay a proportion (determined conclusively by the Surveyor) as to those attributable to the premises and parking space. By paragraph 3 the Lessee undertakes an obligation to "*pay the Interim Charge and the Excess Charge as the times and in the manner provided in the Sixth Schedule*". the Lessee undertakes.
15. The Interim Charge is defined in Schedule 6 paragraph 1(4) as "*such sums to be paid on account of the Building Service Charge in respect of each Accounting Period as the Lessor or the Surveyor shall specify at their discretion to be a fair and reasonable interim payment*".
16. The Excess Charge means balancing payments due from the Lessee if the Building Service Charge exceeds the amount of the Interim Charges paid in respect of the Accounting Period.
17. The Building Service Charge is defined at clause 1(3) sixth schedule as "*the percentage of Total Expenditure mentioned in the Eighth Schedule hereto*".
18. By clauses 6 and 7 of the Sixth Schedule the Lessee will receive as soon as practicable a certificate signed by the Surveyor containing the amount of the Total Expenditure for that Accounting Period, the amount of the Interim Charges and Building Service Charge and the amount of the Excess Charge if any. The certificate is conclusive and binding but the Lessee has a right (at his own expense) to inspect receipts and vouchers relating to the payment of the Total Expenditure.

19. Clause 4 of the Sixth Schedule provides that *“the surplus of the Interim Charges paid over and above the Building Service Charge shall be carried forward by the Lessor and credited to the account of the Lessee in computing the Building Service Charge in succeeding Accounting Periods....”*
20. The Ninth Schedule defines the parts of Ossington Building and Mews which are the responsibility of all Lessees. The Schedule is in four parts. Part 1 is common to the whole development as follows
- “1 To maintain and keep in good hands substantial repair and good decorative condition*
- a) Ossington Mews the Bin Store the boundary walls and fences of the Estate not included in the lease of the Premises or other parts of the Estate*
 - b) all such gas and water mains and pipes drains waste water and sewage ducts and electric cables wires and Conduits in under or upon the Estate and enjoyed or used by the Lessee in common with the owners or tenants of premises on the Estate(excluding those exclusively serving the Building)*
 - c) The car parking space and the building (if any) of which it forms part including lighting therein*
- 2. to cultivate common landscape arears*
 - 3. to operate a refuse disposal system from the Bin Store*
 - 4. to keep Ossington Mews cleaned and lighted”*
21. Part 2 is common to the Building and not included in the Respondent’s liability.
22. Part 3 is common to Flats 1-5 and not included in the Respondent’s liability.
23. Part 4 is maintenance of the garden area and forecourt.
24. By the Eighth Schedule the Respondent’s liability for Building Service Charge is defined as 7.53% for Part 1 costs, nil for Parts 2 and 3 and 24.98% for Part 4 costs.
25. In summary, the scheme for service charges in this lease is the payment of Interim Charges together with an excess charge in the case of shortfall and a roll over of any surplus against future charges in the event of excess of income over expenditure in any Accounting Period.

26. The lease defines Estate as being the area hatched black on the lease plan. The area so defined does not include Ossington Mews or the car parking area. It includes the main three storey building and the restaurant at the rear of the building along the west side of the overall development.
27. The lease also provides at clause 4(ii) that without prejudice to the Lessor's other rights and remedies unpaid service charges whether formally demanded or not bear interest on a daily basis from the date the charge fell due until paid at the rate of 5% above Barclays Bank base rate.

The Issues

28. The Applicant contended that the action was in respect of Interim Charges only and that any charges improperly allocated or accrued in any Accounting Period would be dealt with when the Building Service Charge was calculated.
29. It was the contention of the Respondents that they were not liable for service charges because they had not received any services from the Landlord.
30. Secondly that there had been wrongful allocation of costs by the Landlord in that charges which properly belonged in Parts 2 & 3 had been allocated to Part 1.
31. Whether there has been a change of ownership of the freehold causing a change in practise relating to the apportionment of service charges.
32. The Tribunal also identified the issue of whether or not the lease properly identified the parts of the development the subject of Part 1.
33. There was no dispute the Respondents are liable for service charges properly incurred in respect of Parts 1 & 4 liabilities.

The Parties Submissions

34. Miss Verity on behalf of the Applicant confirmed the terms of the lease and that the Respondents were not responsible for any charges relating to the Building or flats 1-5 but they are responsible for 7.53% of charges incurred in providing services under Part 1

of Schedule 9 and 24.98% of charges incurred in the provision of services under Part 4 of Schedule 9.

35. Charges are prepared on a budget basis. According to the lease the charges are payable each half year but in order to assist the leaseholders the charges are rendered on a quarterly basis.
36. Any charges raised in excess of the Building Service Charge are rolled over to the next year. Interim Charges had been raised in accordance with the terms of the lease. They were properly allocated to Parts 1 & 4 and were payable.
37. Mr Lamb maintained that there has been no management or maintenance of his property since he acquired the lease in 2011. He asserted that he and other Lessees of mews properties had maintained the garden area subject to Part 4. There had been no work beyond the fence which forms a boundary between the mews residences and the remainder of the development.
38. He agreed that his demise included a right over the Ossington Mews roadway and the building in which he has one car space. As there had been no services provided to his property including the roadway and car port there should be no management charges relating to them.
39. Mr Lamb referred to the presence of bins belonging to the restaurant and asserted some of the costs should be assigned to it. He referred to the cost of electricity for lighting in Ossington Mews roadway. The restaurant should pay a rateable portion of the charges. The owner of the retail unit has a car park space in Ossington Mews but it was unclear whether any parking charge was levied for the space.
40. There is a caretaker who is capable of doing many of the functions for which a separate charge is made such as meter reading and rubbish clearance from the yard. His charge is £1500.00pa. His charges are always in the budget and not reduced.
41. In 2016 on the appointment of the present managers a planned maintenance programme was prepared for the Building. It is in need of repair and restoration. It will

require considerable attention in view of its age and complexity. However, the charge for the programme should not fall within his liability under Part 1.

42. He had not been consulted regarding the installation of the gate at the top of the stone stairs in the garden. He did not approve of the appearance of the gate.
43. The Respondent referred to a change of ownership of the freehold leading to the appointment of new managing agents. The Tribunal is satisfied there was no change of ownership of the freehold but there may have been a corporate restructure of the Applicant leading to new shareholders and the appointment of new managers in the business. Such a change might have appeared as a change of ownership. In any event it is not in dispute that FHP replaced the earlier managing agents in 2016.
44. The annexed schedule of charges was collated by the Tribunal from evidence supplied by the Respondent. There was no dispute about the charges themselves but whether or not they were properly allocated.
45. As far as management charges are concerned in 2019 the charges were reduced to reflect the time taken on preparation of a programme of planned maintenance of the building which is not the concern of the Respondent. In other years the challenge is to the want of work done by the agents for the benefit of the Respondents' property. Although the Respondents doubt there was work done by the agents, the existence of other charges indicates that agents were engaged in discharging managing responsibilities.
46. The Respondents asserted the restaurant was not paying a fair proportion for the services it received but was unable to provide evidence of what the proper proportion should be. The Applicant produced a schedule showing allocation of costs. Part 1 charges are divided 50-50 between the mews residences and the remainder of the development. The restaurant paid 35% of one half of the charges.
47. There was a dispute over whether there was duplication of charges because a caretaker is retained and he undertakes many routine tasks. The Respondents challenged the costs related to Health and Safety and routine maintenance charges which appear each year. A fee for audit is charged each year but the lease does not require auditing of service charges.

48. In summary he contended that all charges relating to Part 1 works should be properly itemised and apportioned between the restaurant, the building the flats and the mews houses so that he could see what he is paying for. He did not complain that service charge invoices were excessive only that they had not been properly apportioned.

Decision

49. The Respondent is obliged by the terms of the lease to pay Interim Charges when demanded by the Applicant. Interim Charges are assessed once the budget for the service year is published. Any excess or shortfall is calculated at the end of the accounting period and adjustments made. Excess payments are not refunded but rolled over to the next accounting period in accordance with clause 4, 6th Schedule.

50. The Respondents' liability is for charges incurred in supplying services to the Estate as defined on the development plan annexed to the lease. There is also a liability for charges incurred in connection with services supplied to the garden area west of the mews residences and in front of the residences between the front wall of the residences and the fence marking the northern extent of the Estate.

51. In respect of the maintenance of the covered parking area the Lessee's obligation is to contribute "*to the cost of the Car Parking space and the building of which it forms part including the lighting*" (Part 1 paragraph 1(c) Ninth Schedule).

52. The original claim by the Applicant was for payment of the Interim Service Charges. The terms of the lease are unequivocal. The Lessee has an obligation to pay those charges.

53. However, the apportionment of service charges is a complex task as it involves an element of judgment when deciding what portion of charges relate to different parts of the entire development. It appears to the Tribunal that the task of fairly apportioning payment of all charges including the management charges themselves was not always carefully undertaken.

54. The management charges were allocated each year to Part 1. The Tribunal accepts that the Respondents did not benefit from the managing agents and that they and other mews house owners substantially looked after themselves. In the year when a planned programme of maintenance of the building was undertaken only £900.00 of £4800.00

was allocated to Part 1. The apportionment of management charges at 20% applied for 2018 should have been applied for earlier years.

55. Applying the Tribunal's determination to the years in respect of which the final charges are known for Part 1 after deduction of 80% management charge

Year	Claim	Allowed	7.53 Share
2015	£5,825.27	£2625.27	£197.68
2016	£5489.00	£2289.78	£172.42
Sum payable in respect of 2015 and 2016			£316.10

56. The claim the subject of these proceedings for 2017 and 2018 is based on an Interim Demand based on a budget. As the terms of the lease are clear the Respondents are obliged to make payments in accordance with the demand. However for the sake of calculating the actual sum payable the Tribunal determines that for 2017 and 2018 the management to be allocated to Respondents is 7.53% of £960.00.

57. The lease provides that the determination of the surveyor of the service charge is absolute. Therefore, the claim for an accounts fee in year 2017 is not allowed against these Respondents. There are claims for health and safety external repairs and maintenance which are also reduced by 100% in the absence of specific allocation of benefits to the Respondents. The electricity charge in both years is reasonable and the Respondents were unable to put forward an alternative method of fair apportionment. The Respondents accepted the caretaker charge as part of their submission that he is capable of conducting minor works which are being charged at a higher price in the repairs and maintenance charge.

Costs

58. The Respondents issued a cross application for orders under S20C 1985 Act and Paragraph 5A Schedule 11 CLRA 2002 Act.

S20C Costs

59. The Tribunal has decided that the Applicant has not properly apportioned management charges between the various classes of tenants occupying the development and in particular that the Respondents have been charged a disproportionate amount of those charges. Further the sums claimed for legal costs are substantially related to the dispute with the Respondent. The Tribunal determines that in the circumstances it is just and

equitable to order that the costs incurred by the Applicant are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.

Administration Charges and Court Costs

60. The lease provides in relation to costs at paragraph 14 4th Schedule (Lessees covenants) that the Lessee will pay all expenses (including solicitors costs and surveyors fees) reasonably incurred by the Lessor for the purposes of or incidental to the preparation and service of any notice under ss146 & 147 of the Law of Property Act 1925.
61. At paragraph 18 of the 4th Schedule the Lessee will pay “*all fees expenses and costs in connection with any application hereunder whether or not proceeded with granted subject to conditions or refused.*”
62. These proceedings were allocated to the small claims track and by Part 27 rule 14 Civil Procedure Rules “(2) *The court may not order a party to pay a sum to another party in respect of that other party’s costs, fees and expenses, including those relating to an appeal, except –*
(a) the fixed costs attributable to issuing the claim
63. However Miss Verity submitted that the lease created a wide ambit covering fees in particular clause 18 set out above and that the rule relating to costs was displaced if there is a contractual obligation to pay costs. The sum claimed for legal fees including the hearing is £14,892.66 in respect of profit costs and disbursements. In order to calculate the full amount claimed it is necessary to add VAT.
64. The first issue is whether the lease provides that these costs are permissible as administration charges. The second dependent issue is the quantification of such costs as are allowed.
65. The terms of clause 14 restrict the claim for legal expenses to proceedings related to forfeiture of the lease. The Tribunal was not persuaded that the proceedings were in anticipation of forfeiture as the case was presented on the basis that liability for costs arises particularly under paragraph 18.
66. The Tribunal is not satisfied that the terms of paragraph 18 are as wide as Miss Verity contends. The terms of the clause provide for the allocation of costs incurred in connection with management of the entire development not with disputes between these

parties. The second part of the relevant clause specifically refers to the possibility that an “*application hereunder*” may be refused or granted with conditions or refused. The clause follows a typical clause prohibiting any alterations without the consent of the Lessor which shall not be unreasonably withheld. The relevant paragraph in context relates to such applications and not to proceedings of this sort.

67. Accordingly the costs are not to allowable as an administration charge. The Tribunal therefore decides Pursuant to Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 Tribunal and the Tribunal Judge sitting as a Judge of the County Court makes an order extinguishing the Respondents’ liability to pay an administration charge in respect of litigation costs being costs incurred or to be incurred by the Applicant in connection with these proceedings before the First-tier Tribunal and the County Court

County Court Costs.

68. Although the Applicants costs are not relevant service charges nor administration charges they are entitled to costs of the county court proceedings if the lease permits. In view of the Tribunals determination of the meaning of the lease the Applicant cannot rely on it as a basis for a contractual claim. Therefore, the Applicant is entitled to those costs permitted under Part 27 r14 CPR alone.

Appeal

69. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal on a matter of law to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).

Mr. PJ Ellis.
Judge of the First-tier Tribunal