



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

**Case Reference** : BIR/00CN/LSC/2019/0005

**Property** : 106-110 Edmund St. & 29 Newhall St., Birmingham, B3 2ES

**Applicant** : Rochda Ltd.

**Representative** : Pennycuick Collins

**Respondent** : 1 Edmund Homes Ltd.  
Represented by Bennett Clarke Chartered Surveyors

2 Greene King plc  
Unrepresented

**Type of Application** : Application for determination of liability to pay and  
reasonableness of service charges under s.27A Landlord &  
Tenant Act 1985

**Tribunal Members** : I.D. Humphries B.Sc.(Est.Man.) FRICS  
N.J. Wint B.Sc. FRICS ACI Arb

**Decision Type** : Hearing at First-tier Tribunal (Property Chamber), Centre  
City Tower, 5-7 Hill St., Birmingham, B5 4UU

**Date of Hearing** : 29<sup>th</sup> November 2019

**Date of Decision** : 15<sup>th</sup> January 2020

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**DECISION**

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## **Decision**

- 1 The Application is dismissed.

## **Introduction**

- 2 The Applicant requests an Order from the Tribunal that proposed expense of £297,611.42 for repair and improvement could be included in a future service charge under section 27A of the Landlord & Tenant Act 1985.

## **Facts Found**

- 3 The property was inspected by the Tribunal with representatives of the Applicant's agents and Bennett Clarke on the morning of the Hearing, 29<sup>th</sup> November 2019. The Tribunal were shown the building elevations, the roof viewed from the roof of a neighbouring building and the interior of one of the apartments.
- 4 The property is a late Victorian office building dating from 1895. It is on the corner of Edmund Street and Newhall Street in the heart of the professional quarter of Birmingham city centre five minutes walk from St. Philip's Cathedral. It is an imposing building and there are several similar buildings nearby but in the last 25 years there has been significant redevelopment in this part of the city and there are now modern office blocks to either side. It was occupied by Scottish Mutual until the 1990s when it was redeveloped as a public house on the ground floor and 16 self-contained flats above.
- 5 The building is five storey red brick construction with a slate roof. It has stone mullions to the windows, decorative wrought iron railings and balconies at each floor level to both frontages and a feature turret on the street corner capped by a conical slate roof.
- 6 These architectural features are typical of the era and led to its status as a Listed Building, but they also increase the costs of maintenance as seen on site. There are now problems with water ingress from balconies causing damp ingress inside, the exposed wrought iron railings are corroding and slates have slipped from the roof. Even minor roof repairs would be expensive due to the access machinery required and safety requirements of protecting the public on pavements below. The Managing agent's Building Surveyors have proposed a list of works and obtained tenders from five contractors of which the lowest was provided by Calztec Construction Limited, in the sum of £297,611.42 including VAT. The Tribunal have not read every item in the tenders but could see from their own inspection that repairs were required, some of which were more urgent than others.

## **Relevant Law**

- 7 The Tribunal's powers derive from statute.
- 8 Section 27A(3) of the Landlord & Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal (LVT), now the First-tier Tribunal in the Property Chamber (Residential Property), for determination of whether a service charge would be payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.

- 9 Section 18 of the Act defines 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 10 Section 19 of the Act provides that relevant costs shall be taken into account in determining the 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 carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.
- 11 These are the statutory criteria for the Tribunal's jurisdiction but it is also bound to take account of precedents set by the Courts for interpretation of the standards to be applied.

## **Submissions**

- 12 Applicant  
The Applicant's agent provided a bundle that included schedules of work and contractors' tenders. They asked the Tribunal to approve planned expenditure of around £150,000 (inc. VAT) to repair the fabric of the building to be paid by all the tenants (in different proportions), and around £148,000 (inc.VAT) for which only the lessee of the upper floors would be liable. The works have yet to commence.
- 13 Respondents  
The parties identified by the Tribunal as Respondents, Edmund Homes and Greene King plc, had not replied by the deadline of 25<sup>th</sup> October 2019 as required by the Directions. The deadline was extended to 8<sup>th</sup> November 2019 but as no replies had been received by that date they were both barred from taking any further part in proceedings.

## **Decision**

- 14 At the Hearing, the Tribunal were concerned by various aspects of the proposal summarised as follows:
  - 1 The Applicant was stated as 'Rochda Limited', the Freeholder, but no documentary evidence of title was produced.
  - 2 The Respondents were shown on the application form as the sub-leaseholders of each flat, some of whom were resident and others non-resident. However, there was no apparent privity of contract between the freeholder and sub-leaseholders and no evidence that the sub-leaseholders were liable for the cost.
  - 3 The whole position of the chain of title was confusing and the Applicant's agents were unable to provide any clarification at the Hearing.

They provided three leases:

- 3.1 Scottish Mutual Assurance (1) and Whitbread (2) dated 26.6.97 for demise of most of the ground floor;
- 3.2 Unique Management Limited (1) and City Properties (Birmingham) Limited (2) dated 2.8.99 for the remainder of the ground floor and upper floors. The Lease referred to a 'superior landlord' Suresh Pabari and

Vibha Pabari but there was no other documentary evidence provided to show their position in the chain and it was not clear whether whether the Applicant's agents had made contact with them or whether they still had an interest in the property.

3.3 Edmund Homes Limited (1) and Mr C. Doyle (2) dated 21.6.02. The occupational lease for Flat 7.

The agent's submission also referred to 'Chamberlain Court Management Co.Ltd.' as a headleaseholder but gave no more information about them and there was no copy lease provided identifying them as a party.

Nothing was provided to show any connection between Whitbread plc and Greene King plc. It is not clear whether Greene King had taken assignment of the Whitbread lease or whether they were sub-leaseholders. They had not replied to correspondence and there was no evidence that correspondence had been sent to their correct registered address such as recorded delivery slips.

4 If the Tribunal are being asked to provide an Order, it is essential to know *by whom* and *to whom* a charge should be paid as set out in section 27A.

5 With regard to the *amount* of service charge, the proposed costs related to only one element of the proposed charge. There was no reference to any of the other normal items included in service charges such as managing agent's fees, lighting and heating of common parts, accountancy etc., and any Order could at best have only covered one element of the service charge.

6 The agents advised on the application form that Bennett Clarke supported the proposal, (application page 10) *'They support this application as the enclosed letter demonstrates.'* There was no letter with the form. The only comment from Bennett Clarke was an email from David Clarke B.Sc. FRICS on behalf of the firm on 22<sup>nd</sup> May 2019 where he said the exact opposite, *'I remain concerned at the overall cost of the works and particularly the affordability from the leaseholders' perspective.'* ... *'This is untenable.'*

7 It is assumed there are two leaseholders, each of whom are responsible for part of the service charge (i.e. the lessee of the public house on the ground floor and the residential developer for the upper floors), but the ratio of costs apportioned between them is arbitrary and at the discretion of the landlord's surveyor (Whitbread lease 4.C.3).

8 The developer's share can presumably be re-claimed from the sub-lessees of the flats, but if they are to be joined in the application as interested parties, it would be impossible to know how much they would be asked to contribute without agreement on the division of costs between the head leaseholders. For example, in the sublease of Flat 7, the sub-leaseholder is liable for 4.8026 % of the costs, but what costs?

9 The Tribunal issued Directions on 19<sup>th</sup> August 2019 for the sub-leaseholders to be given an opportunity of joining the application. None replied which we found odd, bearing in mind that Bennett Clarke had estimated their liability at between £5,700 and £15,800 each. The Applicant's agents advised that they had written to them but the only correspondence provided was a series of what may have been emails or letters, it was not clear, addressed to the sub-leaseholders showing a date of 13<sup>th</sup> June 2019 with the Tribunal case reference. However, the Tribunal only assigned a case reference number on 8<sup>th</sup> August on receipt of the papers, some eight weeks later. We therefore question whether the subleaseholders were invited to join or not and on what date? As interested

parties they would have needed full details of the application and the cost implications to them to decide whether or not to request to join and make submissions.

- 10 Even if the Tribunal had been advised of the identities of the Applicant, Respondents and joined parties, it would have been essential to know how much to order each party to pay which would have been impossible without knowing the agreed percentages of costs for which each party would be liable, as required by section 27A of the Act.
- 15 For all these reasons, the Tribunal had no alternative but to dismiss the Application at the Hearing.
- 16 If the Applicant wishes to make a new application providing all necessary paperwork and information regarding the chain of title, the parties' liabilities, legal argument to reasonableness and payability, tenders, confirmation that appropriate consultation had taken place, information on other items of service charge proposed to be requested from those liable and any other necessary documents, the Tribunal would be pleased to consider it afresh but unfortunately there was insufficient information in this application for it to proceed.

I.D. Humphries B.Sc.(Est.Man.) FRICS

Date: 15 January 2020

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) within 28 days of the date of this Decision. Any such request should identify the decision to which the appeal relates, stating the grounds on which the party intends to rely in the appeal and the result sought by the party making the application.

The Upper Tribunal (Lands Chamber) may be contacted at 5<sup>th</sup> Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL (tel: 020 7612 9710) or by email to: [lands@hmcts.gsi.gov.uk](mailto:lands@hmcts.gsi.gov.uk).