



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

Case reference No : **LON/00BG/LSC/2021/0244**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **Flat 26 Andersens Wharf, 20
Copenhagen Place, London E14 7DX**

Applicant : **Mr Mark Upton**

Representative : **In person**

Respondent : **Denmark Wharf Management Company**

Representative : **Mr Wiles- Prime Property Management
(management company)**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

**Tribunal members
In the County court** : **Mr Richard Waterhouse FRICS
Judge Daley**

Venue : **Heard remotely on 30 November 2021
by video link**

Date of decision : **8 December 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: SKYPEREMOTE . A face-to-face hearing was not held and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of [101] pages, plus an appendix the contents of which I have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal determines that the service charges, including the sums payable by way of reserve are reasonable, subject to the provision of additional information which is suggested below.
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) In respect of the application and hearing fee, the Tribunal orders that the Respondent reimburse 50% of the charge (£150.00).

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”)] as to the amount of service charges payable for the periods 2019/20, and 2020/21 and the service charges for 2021/22 .
2. Directions were given on 27 July 2021. In the Directions the Tribunal identified the following issues Whether the landlord is entitled to charge additional costs over the budget for cyclical maintenance is reasonable. The budget for repainting has increased. Whether the cost to repair fencing was reasonable, given that there is no fencing on the development. Whether the proposed gate project is reasonable, given that there are no gates and any amount for the work could be classified as an improvement. (ii) 2019/2020; Whether the landlord is entitled to transfer, any excess funds to the reserve/sinking fund or if they should be recredited to the applicant? Whether the amount sought in respect if the reserve/sinking fund is reasonable? Service charge year 20/21 Whether the landlord is entitled to transfer any excess funds to the reserve/sinking found or if they should be recredited to the applicant? Whether the amount sought in respect if the reserve/sinking fund is reasonable? Whether any costs (if any) attributable to the maintenance of the common areas and intercom were reasonable?

3. The hearing

4. The hearing was held by video link, and all the parties attended by video. There were no issues raised during the course of the hearing about the quality of the link. The hearing was attended by the Applicant Mr Upton, and Mr Wiles, (of the managing prime property management on behalf of the respondent.

The background

5. The property which is the subject of this application is a 3- bedroom flat on the third floor, in a development of approximately 3–40 flats which are built on the bank of a canal.
6. The premises is subject to a lease the original lease which has subsequently been assigned was dated 30 April 2004. The terms of the lease require the respondent management company a (tenants owned management company to provide services, and the applicant to contribute to the costs of those services. Where the specific terms are relevant, they will be referred to below.
7. Neither party had any preliminary matters to raise.

The issues

8. The issues were as identified by the Tribunal at the directions hearing on 27 July 2021. The Tribunal noted that they concerned the reserves for the years in issue and the payability of planned items which did not currently form part of the demise. The Tribunal asked Mr Wiles to provide an overview of the reserve fund and what it was for, and then the Tribunal went through the Scott Schedule for 2019/20.
9. Mr Upton agreed that there was no need to go through the charges forensically for each of the years in issue as the other years raised similar issues.
10. The Tribunal also considered the Section 20 C application and the costs of the hearing and application fees.
11. The planned expenditure and the reserve fund

12. Mr Wiles explained that prior to 2017, the premises had been managed by Ringleys, a property managing agent, as such the budget which had been put in place, had been put in place by them. The current managing agent had made its projection of the sums needed in the reserve based on its knowledge and experience of property management. This explained the increase as against the 2016/17 budget.
13. He informed the Tribunal that there were 4 major works projects which had been planned one of which was on-going and involved the roof terrace. The communal roof terrace was suffering from leaks which were affecting the flats below. It had also been unusable for parts of that time and closed for because of the condition. The plan had involved taking up the terrace and re-placing the surface. The work was in progress although Mr Wiles was unable to tell the Tribunal how far the work had progressed. The cost of the work was £80,000. Mr Wiles stated that the work had become urgent and the landlord had carried out Section 20C consultation.
14. The next area of work was internal redecoration, this had originally been planned for 2021. However it was now planned for 2022, although consultation had yet to take place. In respect of External decoration this was now scheduled for 2024.
15. In respect of the other item of work, this was to provide gating for the external area. Mr Wiles explained that the estate had an issue with anti-social behaviour and drug taking from external parties, and the gate was planned as additional security. This work had not been consulted on although it had been agreed with the tenant's management company.
16. Mr Wiles stated that the roof repairs had pushed the company schedule out which had delayed the planned work. The Tribunal were informed that the estimated cost of the internal decoration was £60,000, the external decoration was budgeted at £100,000, and the gating of the estate estimated to cost £150,000, this was also anticipated for 2024. The Respondent was also obliged to budget for the boundary wall, this was the wall between the flats and the canal. Part of the obligation which had been adopted by the respondent for the development was responsibility for the boundary wall down to the canal bed.
17. During the course of his evidence, Mr Wiles informed us that although the original sink fund had items ring fenced, for example such as for the pump, this had been changed by the Prime Property Management as the sums were now available for any item of planned maintenance.
18. The Tribunal then considered the service charges for 2019/2020. Mr Upton informed us that the service charges were divided into Apartment Charges and the Estate Charges. He informed that he was querying the Apartment charges surplus in the sum of £9403 the estimated charges

had been higher than the actual and that the leaseholders should have received a credit.

19. Mr Wiles informed the Tribunal that a credit had been given against the estate and apartment charge, and the leaseholders had received an email concerning this, given this for various charges in relation to the estate and the apartment charges, the actual credit paid to Mr Upton was £52.42 for the estate and the apartment charge was £914.14. Mr Wiles was not able to give us a breakdown for the two years, however he could provide that information to Mr Upton.
20. In respect of the next item which was for Estate charges building in the sum of £9630, Mr Upton stated that this item contained repairs for the roof, however the roof had also been taken from the reserve. Given this he was querying this item.
21. Mr Wiles explained that this was for preliminary work on the roof terrace such as such as removing the covering and scaffolding, a breakdown of the work which was undertaken, and the cost was provided as an appendix to the Scott Schedule . This work had been carried out in the financial year 2019/20, accordingly the Respondent had just paid for the items of work from the Estate Budget.
22. In respect of the next item which related to the reserve fund for the pumps. Mr Upton was querying why the costs for this had exceeded the budget which was £2,875. Mr Wiles explained that there were two booster pumps one for fresh water and the other for foul. Originally the budget had been for the maintenance contract, and a sum was set aside in the sinking fund for replacement. The Scott Schedule set out that the pump had required repairs short of replacement, the costs of the repair had come from the annual budget rather than the reserve as it was not a replacement. Mr Wiles had also explained that the reserve fund budget no longer held “pockets” for various items. However, the assumption was that the item would be replaced during a 10–15-year cycle.
23. The Tribunal asked about how the assumptions had been arrived at. Mr Wiles stated that it was based on the managing agents’ knowledge and experience from the management of other similar buildings, and had based its demand in accordance with its calculation of when the item might fail
24. The Tribunal was then referred to smaller items £331.00 for a repair to the car park barrier which Mr Upton accepted as payable and the surveyors’ fees for the roof survey, a copy of the invoice was included within the bundle.
25. The other items for 2019/20 related to the reserves. The first item was the external painting reserve, in the sum of £10,000. Mr Upton was

concerned about this, as there was, very little painted surfaces to the exterior of the premises, he had provided the Tribunal with photographs, Mr Wiles explained that a proportion of the costs would be for scaffolding, the building was an unusual shape. There would also be costs for repairs such as rendering.

26. The last item was in respect of roof repairs, in the sum of £16,000 as repairs were on-going on the roof. Mr Wiles explained that the roof terrace which was being repaired was separate from the main roof. The main roof was forecast for upgrading in 2030, with an estimated cost of £180,000. Mr Wiles was concerned that as the previous reserves had been low the Respondent was on the “back foot” and eventually things would level off. He also stated that the next item which Mr Upton had described as Gating Project was for general renovations to be building.
27. The Tribunal asked Mr Wiles about the provision in the lease which related to the reserves, and the landlord’s ability to carry out improvements.
28. The relevant terms of the lease in part C & D are set out below.
29. The Tribunal heard from Mr Upton, there was a high degree of frustration that the Tenant’s Management Company was not responsive to his queries. He stated that they had taken the view that the decisions on what to spend on the building and estate was a matter for them. He referred to the fact that the intercom was not working at the building, which meant that, during the pandemic and in general it had been very difficult to get parcels and other items delivered, and this expenditure had been put off, over future expenditure. He accepted that there was a balance to be struck between providing for future costly cyclical work against maintaining the building as matters occurred, such as the intercom.
30. Mr Upton also stated that the other items in the Scott Schedule concerned very similar issues, the Tribunal asked whether there was anything else he wanted to bring to the Tribunal’s attention or whether he was content for us to consider the general principle of the reasonableness and payability of the sums for the reserve, and whether they were payable under the lease. He agreed that he was happy for us to reach our determination on the principal items, rather than the specifics for each item in the Scott Schedule.
31. Mr Upton renewed his request for a Section 20 C, order. As he stated that the management company had been unwilling to engage, and he was disappointed that no one from the company had attended the hearing, to respond directly to the issues raised.

In reply Mr Wiles, stated that as the Respondent was a tenant's management company the shares and directors were leaseholders, the cost would be payable by the leaseholders in any event.

32. The Tribunal considered the lease terms: Service charges are defined as "...the costs of the items and obligations set out in Schedule C to this Lease (and shall be deemed to include not only those expenses and outgoings which have actually been paid or incurred during the year in question but also such reasonable proportion of expenses and out goings of a periodically recurring nature (whether recurring regularly or irregularly..." Clause C 13. Provides "provision and maintenance of any other service for the comfort or convenience of the occupiers on the Estate (including the Tenant) which may be reasonably necessary from time to time." Clause C 16 Provides; any other works which may be reasonably necessary to the Common Parts of the Estate including a fair and reasonable proportion of all expenditure incurred by the Manager only part of which is referable to the Common Parts or the Estate and which provide a benefit to the Tenant and other occupiers of the Estate."
33. Clause 7 D which states: "...the expenses and outgoings incurred or expected to be incurred by the Manager shall be deemed to include not only those expenses or outgoings and other expenditure which have been or will be actually disbursed... but also a sum or sums of money by way of reasonable provision for anticipated expenditure (including the provision of a sink fund for appropriate items of anticipated expenditure..."
34. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.
35. The Tribunal was satisfied that the terms of the lease provided for a reserve fund to be collected in the manner in which it is currently being administered, and that the Respondent subject to consultation could make improvements such as the "Gating Project" on the estate.
36. The Tribunal accepted Mr Wiles evidence, concerning the need for a sink fund, and the approach which had been adopted by the Respondent. Accordingly the Tribunal has decided that it is not appropriate for it to

interfere with the service charges by reducing any items as it has determined that the service charges are reasonable and payable for the years 2019/20 and for 2020/21 and 2021/22, in which the landlord has followed the same approach.

37. However, the Tribunal fully understood Mr Upton's concerns, and is disappointed with the approach which has thus far been adopted by the Tenants' Management Company.
38. The Tribunal accepts that it is prudent to have a forward-looking sinking fund provision, and that this may be why the landlord has forecast ahead to 2040. The Tribunal considered that there is a tension between this, and the knowledge that for leaseholders such as Mr Upton, he is being asked to tie up sums of money against future expenditure, when in the medium term he may no longer have premises within the building should he decide to sell his interest, and as such is being asked to contribute to the future of a building which may not be his concern.
39. Notwithstanding this, in the short and medium term, the Tribunal accept that it is in his interest that there should be no large fluctuations in the service charge, which occur where a less prudent approach has been adopted.
40. The Tribunal were concerned that the forecast for the reserve, have not been prepared on the basis of a professional survey, such as a ten – 15-year plan, carried out by a building surveyor. This would provide the Respondent and the leaseholders with knowledge and information upon which reasoned assessments could be made concerning capital projects. The Tribunal is also concerned that the headings for the service charge items are very general, and as such this required clarification from Mr Wiles, one example was for the external painting. The Tribunal would expect that the accounts and the budget should more accurately reflect expenditure which has occurred in the actual building.

The tribunal's decision

41. The tribunal determines that the amount payable in respect of service charges for the periods 2019-20, 2020-21, 2021-22 in the total sum of £126,750 are reasonable and payable. The Tribunal would expect the landlord to use reasonable endeavours to carry out short term repairs such as the intercom system or other items which may need repair from time to time.

Application under s.20C and refund of fees

42. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal considers that the Respondent ought to have taken steps to provide Mr Upton with information, and that had this been provided, it would have avoided the need for the hearing. The Tribunal orders the Respondent to refund 50% of any fees paid by the Applicant (£150.00) within 28 days of the date of this decision.
43. In the application form and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines not to make an order under Section 20 C it has taken into account the fact that the reasonableness and payability of the charges were upheld, and that as the Respondent is a Tenants Management Company, the sums will be recouped from the leaseholders in any event.

Name: Judge Daley

Date: 8.12. 21

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),

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

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).