



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

Case Reference	:	BIR/00GA/LSC/2021/0011
Property	:	Serendipity Mews and Serendipity House Greytrees Road Ross on Wye HR9 7DQ
Applicants	:	(1) Marie Louise Dennehy (2) Kate and David Dowling (3) Kirstin Powell (4) Pat Nernon
Respondent	:	Alan Porter Limited
Representative	:	Jacklyn Dawson Solicitors
Type of Application	:	(1) Under section 27A Landlord and Tenant Act 1985 for determination of the reasonableness and payability of service charges in respect of the subject properties. (2) Under section 20C Landlord and Tenant Act 1985 for an order for the limitation of costs. (3) Under paragraph 5 Schedule 5A Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing liability to pay administration charges in respect of litigation costs.
Tribunal Members	:	I.D. Humphries B.Sc.(Est.Man.) FRICS, Chairman Judge D.R. Salter Professor N.P. Gravells, Deputy Regional Judge
Determination	:	Paper decision without Hearing at the offices of the First-tier Tribunal (Property Chamber), Centre City Tower, 5-7 Hill St., Birmingham, B5 4UU on 8 June 2022.
Date of Decision	:	06 July 2022

DECISION

1 **Application under section 27A Landlord and Tenant Act 1985 for determination of the reasonableness and payability of service charges in respect of the subject properties.**

2 **Background**

The Applicants hold long leases in residential properties in a development known as Serendipity Mews and Serendipity House, Greytrees Road, Ross on Wye, Herefordshire, HR9 7DQ. There are 14 units in the scheme and the Applicants each hold 99 year leases subject to service charges.

3 On 8 June 2020 the Managing Agents, HLM Ltd., acting on behalf of the Respondent landlord, served Notices of Intention to Carry Out Works under section 20 of the Landlord and Tenant Act 1985 ('the Act'). Estimates were obtained from six contractors and HLM proposed to appoint DES Build Ltd., the firm providing the lowest tender, to carry out the work in the sum of £110,585.94 to include the costs of construction, professional fees and VAT.

4 HLM sent invoices to the lessees based on their respective shares of the service charge in their leases to build a sinking fund to cover the cost which was charged over different service charge years.

5 HLM later sent further invoices demanding further contributions which the Applicants questioned and having not reached a satisfactory conclusion, the Applicants eventually applied to the First-tier Tribunal for the demands to be determined under section 27A of the Act. The Applicants did not question the cost of the works but did question the invoices and whether the amounts demanded had been 'reasonably incurred'. The Applicants only challenged the amount demanded in the service charge year 2021/2022.

6 The application was made on 17 November 2021 in respect of the service charge year 1.4.21 – 31.3.22 and at the same time the Applicants made applications under section 20C of the Act to prevent the costs of the application being added to the service charge, and paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 to contest the landlord's proposed administration charges.

7 The Tribunal issued Directions on 24 November 2021.

8 The parties responded but unfortunately the issues and evidence were unclear and the Tribunal convened a case management conference ('CMC') on 25 March 2022, as a result of which, the Tribunal issued further Directions ('Directions 2') on 28 March 2022.

9 On receipt of the replies, the Tribunal determined the case on the papers submitted on 8 June 2022.

10 The works have yet to be carried out although some professional fees were incurred in August and September 2021.

11 **Facts Found**

Based on the evidence presented to the Tribunal, the credit balance in the tenants' reserve fund on 31.3.21 at the end of service charge year was £83,975. However this included provision for professional fees of £12,869 leaving a notional balance of £71,036. 'Notional', because the Accounts indicated that some tenants had not paid their contributions and the actual account balance at that date was only around £45,000. There were at that stage unpaid service charges of £25,005 noted in the Accounts.

12 According to the Account summary, the Respondent then sent a second tranche of service charge demands to the tenants requesting a further £68,300 to increase the reserve fund of £45,000 to the level required to cover the full cost of the work.

13 **Issues**

The Tribunal summarised the issues in Directions 2 following the CMC in the following terms:

'9 Against that background, the Tribunal examined the Scott Schedule completed by the parties and, with the assistance of the parties, identified the following issues for determination –

(i) Whether the costs of £68,300 demanded by way of contribution to the reserve fund in 2021/2022 were reasonably incurred.

In relation to this issue the Tribunal notes –

(a) that that figure of £68,300 appears to have been calculated to take the actual credit balance in the reserve fund to an amount approximately equal to the costs of the proposed works;

(b) that in working from the actual balance in the reserve fund (£45,000) rather than the notional balance (£71,036), the contribution demanded appears to include a sum to cover the unpaid contributions from earlier years (£25,005);

(c) that the Respondent therefore appears to requiring all the leaseholders to make up the shortfall in the reserve fund (if only temporarily) rather than pursuing the debtors for the unpaid contributions.

(ii) Whether the costs of £12,869 in respect of surveyor's fees, other professional fees and planning permission fees have been properly taken into account in determining the contribution to the reserve fund in 2021/2022.

(iii) Whether it would be reasonable for the Respondent to impose administration charges for late payment of service charge instalments where the demands for payment are late.'

14 **Relevant Law**

15 The Tribunal's powers derive from statute.

16 Section 27A(1) of the Landlord and Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal ('LVT'), now the First-tier Tribunal (Property Chamber), to determine whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and the manner of payment. The subsection applies whether or not payment has been made.

17 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.

- 18 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 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.
- 19 These are the statutory criteria for the Tribunal's jurisdiction but it is also bound to take account of precedents set by the Courts to interpret the standards to be applied.
- 20 In respect of the subject leases, clause 3(iv)(f) allows the cost of planned expenditure to be claimed from the tenants as part of a service charge before it is incurred, allowing a reserve fund to be built up to pay for planned future expenditure.

21 **Submissions**

22 **In respect of Issue (i)**

23 The Applicants

The Applicants helpfully provided a detailed analysis of the service charge accounts prepared by HLM to date, confirming their view that they had been asked to cover a shortfall caused by the non-payment of others.

- 24 They were not prepared to pay the amounts demanded. They questioned why the managing agents had not pursued the debtors and said they had no faith in the Respondent or their agent's ability to refund the extra amounts demanded at a later date. In their view, the amounts requested had not been 'reasonably incurred' as they had effectively been charged twice.

25 The Respondent

The Respondent submitted that each tenant had been invoiced the proper amount due based on the service charge provisions in their leases.

- 26 However, in its letter to the tenants of 17 September 2021, HLM said:

'As we don't have the remainder of the funds in the bank to move into reserves at this stage, this is why we have had to inflate the reserve contribution for April 2021 – March 2022, so that we know that we will then have the funds to cover the project in its entirety.'

- 27 The Respondent subsequently changed its position and conceded that it was in error by issuing further demands to inflate the reserve fund. In its Response to the application in compliance with Directions(2) of 28 March 2022, the Respondent stated:

'The Respondent avers that it was reliant on its Management Company, HLM, to prepare, advise on and serve the demands relevant to the project. Upon review and having had the benefit of legal advice subsequent to the issue of this application, the Respondent concedes that the manner of billing of the Service Charge demands in the year 2021/2022 was in error. Specifically, that the Respondent ought not to have included the whole of the balance of the project costs as part of the demand for that year.'

28 Tribunal Decision

Having considered the parties' submissions and the Respondent's admission that the service charge demands had been 'inflated' to cover the shortfall due to non-payment by some tenants, the Tribunal finds the demand for a top-up of £68,300 had not been 'reasonably incurred' under the Act and accepts the Respondent's concession. It cannot be

right that tenants are effectively being asked to pay twice, even if any excess may be refunded at some future date on the assumption that the Respondent can recover the outstanding amounts from the debtors, which from the evidence provided, is by no means certain at least in the short term.

29 The amount that should have been demanded was the contract price less the amount that should have been in the reserve fund at the date the invoices were sent.

30 The Tribunal appreciates the practical difficulties for the Respondent in raising sufficient funds for the cost of the works but can only address the issue of the service charge demands for the year ending 31st March 2022 in this application.

31 **In respect of Issue (ii)**

32 The Applicants

The Applicants considered there was a risk that they could be charged twice for professional fees relating to the works and asked the Tribunal to make a determination preventing this.

33 The Respondent

The Respondent submitted that the Accounts were in order as there was provision for recovery from the tenants and future payment in accordance with the leases. The fees had in fact been paid in August and September 2021.

34 Tribunal Decision

The Tribunal accepts that the leases allow the Respondent to accumulate reserve funds for planned expenditure but is unable to determine the point in this Decision as the Accounts for year ending 31.3.22 have yet to be provided.

35 **In respect of Issue (iii)**

36 The Applicants

The Applicants provided evidence that the Respondent had threatened to impose administration charges for late payment on some tenants, even though the demands had been back-dated and the tenants given very limited time to pay.

37 The Respondent

The Respondent accepted that there had been an error in the way the invoices had been sent, and conceded that administration charges would only become payable a month after the actual date of submission of invoices.

38 The Respondent stated that only one late payment charge had been demanded and agreed to withdraw the demand.

39 Tribunal Decision

The Tribunal accepts and confirms the Respondent's concession.

40 **Application under section 20C of the Act for an order for the limitation of costs**

41 The Applicants are invited to provide copies of any Submission they wish to make to the Respondent and the Tribunal (three copies), within 28 days of the date of the date of publication of this Decision:

- 1 a written statement setting out their representations and
 - 2 any evidence on which they rely.
- 42 The Respondent shall, within 14 days of receipt of the Applicants' submission, provide the Applicant and the Tribunal (three copies), with a written response setting out:
- 3 comment on the Applicants' submission and the evidence on which the Applicants rely; and
 - 4 set out the Respondent's representations and the evidence on which the Respondent relies.
- 43 **Application under paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing liability to pay administration charges in respect of litigation costs**
- 44 The Applicants are invited to provide copies of any Submission they wish to make to the Respondent and the Tribunal (three copies), within 28 days of the date of the date of publication of this Decision:
- 1 a written statement setting out their representations and
 - 2 any evidence on which they rely.
- 45 The Respondent shall, within 14 days of receipt of the Applicants' submission, provide the Applicant and the Tribunal (three copies), with a written response setting out:
- 3 comment on the Applicants' submission and the evidence on which the Applicants rely; and
 - 4 set out the Respondent's representations and the evidence on which the Respondent relies.

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

Appeal Procedure

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). Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).