FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	**CAM/22UC/LIS/2022/0011**
Property:	**38 Randall Close, Witham,Essex,CM81FP**
Applicant:	**Andrew Wilsher and Jackie Wilsher**
Representative:	**In person**
Respondent:	**BDW Trading Limited**
Representative:	**Mr Castle of Counsel**
Type of Application:	**Determination under s.27A Landlord and Tenant Act 1985**
Tribunal Members :	**Judge Shepherd**
	Roland Thomas FRICS
Date and venue of hearing:	**1st February 2023 on line**
Date of Decision:	**2nd February 2023**

DECISION

---

1. In this case the Applicants, Andrew Wilsher and Jackie Wilshire ("The Applicants") seek a determination as to the reasonableness and payability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985. They are the leaseholders of 38 Randall Close, Withem, Essex CM8 1FP ("The premises"). The freeholders of this premises are BDW Trading Limited. The managing agents are First Port Property Services. The challenge brought by the Applicants is a general challenge to service charges for the period 2017 to

date. Pausing here it is noted that in their application the Applicants sought to challenge service charges up to 2027 but the Tribunal did not have information to deal with service charges beyond the current date. In the Scott Schedule the Applicants made general challenges to service charges without giving any particulars. It was therefore difficult to identify why exactly the challenges were being brought other than there appeared to be a challenge on the basis of unfairness because the Applicants were having to contribute to items from which they derived no benefit.

2. The Applicants bought the premises in 2005. They consist of a coach house which is part of an estate which mainly consists of flats in blocks. The Applicants' lease requires payment of 1.61% of the cost of the services in respect of the decoration and repair of structure and maintenance of grounds (head of charge one). They are also required to contribute to the management costs namely they must pay 1.45% of these costs which are referred to as head of charge 3. They are not required to pay anything in respect of the decoration and repair of the common parts which relate to the internal areas of the flats (Head of Charge 2).

3. Mr Wilsher was aware of the maintenance charge but had become increasingly dissatisfied with payment in respect of services for which he received no benefit. He told Judge Wayte at a directions hearing on the 15th of September 2022 that the final straw came when he received a bill for £559 .60 for external decoration of the flats. He said he told the agents he would not pay that sum although he continued to make payments of £70 per month towards the service charge. The Applicants told Judge Wayte that their primary wish was to renegotiate the terms of their lease so they no longer had to pay for service charges from which they saw no benefit. The directions of Judge Wayte record that the Applicants understood that this was not something that the Tribunal could order but both parties had agreed to hold discussions to see whether at least an agreement could be reached in relation to the alleged arrears. In the event it appears that some agreement was reached albeit at a

late stage. In particular, the Respondent agreed to waive the charge for the major works of £559.60 and additional admin fees of £210. These matters therefore were no longer at issue at the date of the hearing.

4. At the hearing the Applicants maintained their dissatisfaction with the fact that they were required under their lease to pay for things from which they believed they obtained no practical benefit. The Tribunal had some sympathy for this stance but the fact remains that any rectification of this issue fell outside our jurisdiction under s 27A Landlord and Tenant Act 1985.

5. The jurisdiction of the Tribunal is clearly set out in Section 19 of the 1985 Act, which sets out that service charges are limited only by their reasonableness as set out therein. The said remit of reasonableness is:

- The extent to which they were reasonably incurred: Section 19(1)(a); and
- Whether any works done were to a reasonable standard: Section 19(1)(b).

6. The authors of Service Charges and Management (5th ed. 2022) at 12-25 state:

"It is not uncommon for parties to seek to adjust the apportionment between properties as part of the s.19(1) process. Where there is a fixed percentage, this figure is binding on the parties and courts and tribunals have no jurisdiction to re-write the contract."

7. As well as the fairness issue the Applicants raised an issue in relation to payment mechanism. They maintained that they had reached an agreement which allowed them to pay by direct debit on a monthly basis even though the lease required bi-annual payments. More recently they had started paying monthly by standing order. The Respondents objected to this and sought a renewal of the bi-annual payments. In

the event at the hearing the matter was resolved because the |Applicants agreed that they would pay by direct debit on a monthly basis now that the Respondents had conceded the major works issue.

8. As already indicated above the Applicants failed to particularise their general service challenge for the years 2017 to date. This meant that to some extent the Respondents were “shadowboxing” in their response to the challenge. Mr Castle their Counsel prepared a useful skeleton argument nonetheless. At the hearing the Applicants raised a number of specific issues which ought to have either been included in the Scott Schedule or at least been raised prior to the hearing. They were all valid issues and they were entitled to raise them the problem was that they had not raised them before. Mr Castle dealt with this inadvertent ambush admirably as did his witness Ms Stewart who gave evidence on behalf of Firstport. She is the Property Manager and was best positioned to answer questions in relation to the specific issues raised. She wasn't able to answer all of the questions but did her best without proper notice. In

9. Whilst the tribunal was tested by the Applicants’ decision to only raise these issues at the hearing it is not considered that there was any intention to ambush the Respondents. The Applicants’ arguments in relation to these specific issues only really crystallised once they had received invoices for specific costs. They only received these invoices two weeks before the hearing. In addition, the Tribunal takes note of the fact that the Applicants were litigants in person who had never been to court before. They were plainly unaware of the intricacies of procedure and in any event the late running of these arguments did not cause any delay in the proceedings and the matter was completed within a day.

10. Taking each issue in turn**:**

Monitoring service

11. The Applicants wanted to know why they were paying for a monitoring service to an organisation called Apello. This was a monthly charge of £253.40 per annum. Ms Stewart said that this was a head one charge and everyone was contributing to it. Apello took calls out of hours for example in relation to disrepair issues. The number used to reach the out of hours organisation was the same as the duty manager's number. The Applicants said they were not aware of this service and it needed to be flagged up with residents and the Tribunal agrees with this. Nonetheless there is no real basis to challenge the cost of the call out charges in relation to the monitoring service and these sums are considered payable and reasonable.

For sale signs

12. The Applicants objected to paying for the removal of for sale signs. They estimated that £936 had been spent on this since 2017. They said they did not know why they were having to pay for the removal of for sale signs when estate agents would do it for free. Ms Stewart said that she carried out site inspections and would ring the agents asking them to remove the for sale signs. The agents subcontracted out the work of removing the boards and often it would take some time for the boards to be removed. The lease does not allow for sale signs to be exhibited and therefore it was important that they were removed as quickly as possible. Again, the Tribunal finds that there is no real basis for challenging these costs and the costs are considered reasonable and payable.

Water and sewerage

13. The Applicants said that they did not understand why they were paying for water and sewerage as there was no external use of water on the estate. They also questioned why the bills were in the name of the Mattings Lodge Sales Cabin. Ms Stewart said there were communal taps by the bin store which were used and also that the sales cabin address probably related to when the scheme was first built. Again, the Tribunal considers that these are reasonable explanations in the

circumstances and the costs of water and sewage for a relatively large estate is reasonable and payable.

Electricity

14. These costs were considered in relation to the car park lights and were recoverable under the lease and reasonable.

Fly tipping

15. The Applicants complained that they were having to pay through the service charges for removal of fly tipping on the estate. They said that they had received a letter from the Respondents telling them to contact them if they saw somebody fly tipping. They expected therefore the Respondents would take enforcement action. They considered that the perpetrators should be charged and not the whole estate.

16. There were a number of charges for fly tipping and removal of rubbish from the bin stores. In the course of assessing these costs it was discovered that one of the charges for a repair to a stair tread had been wrongly charged to head one instead of head two. Ms Stewart said that this would amount to about £20. This will need to be amended in the service charge accounts.

17. Mr Castle said that the charges were recoverable under the lease and the Tribunal accepts this. He said it was often impossible to work out who had fly tipped. If the landlord enforced against a particular leaseholder then the cost of this enforcement would be recovered through the service charges. Therefore, there was no real gain in enforcement for the leaseholders. The question really was whether it was

proportionate to start enforcement proceedings when the fly tipping had to be removed as soon as possible in order to ensure that it did not continue. The Tribunal accepts this explanation. It does sympathise with the Applicants in relation to this issue but the costs are payable and reasonable.

TV aerials/door entry

18. The Applicants queried why they were having to contribute towards TV aerials when they had their own TV aerial. Similarly they challenged why they were being charged for intercom systems that served the flats. The Respondents accepted that a number of these charges had been wrongly allocated to head one of the charges under the lease and should have been allocated to head two which relates solely to the flats. The extent of the sums that were wrongly allocated was £2316 in relation to the aerials and £864.89 in relation to the intercom systems. The Applicants' contribution to these sums amounted to £37.29 in relation to the aerials and £13.92 in relation to the intercoms. It is regrettable that these sums were wrongly allocated and indeed it may raise questions about other accounting not identified in this case. The Respondents would be well advised to ensure that in future all sums are allocated to the correct head of charge otherwise leaseholders could find themselves on the wrong end of a debt claim which is incorrectly calculated. In the interim the Applicants will need to be credited the sum of £51.21.

Roof repair

19. The Applicants questioned why sums had been charged to the service charge for the cost of a roof repair to their roof which had been claimed on the insurance. Ms Stewart confirmed that they had paid an excess of £250 therefore it seems clear that they had received the insurance payment for the roof repair. She confirmed to the Tribunal that any sums that had been recovered from an insurance payment would

be reimbursed to the service charge. She committed to make inquiries after the Tribunal hearing to ensure that this is done.

Section 20C

20. The tribunal had considerable sympathy with Mr and Mrs Wilsher in this case. They had clearly had a very stressful time in dealing with what they perceived to be injustice in relation to their service charge payments. They now understand that the Tribunal did not have jurisdiction to amend their apportionment or the lease itself in terms of ensuring that they were not making contributions to works that did not benefit them. It is the Tribunal's view that section 20c whilst being an open discretion should be based not only on outcome but also on process. In the present case the Respondents chose to concede the issue of major works at a very late stage indeed on the day before the hearing. Potentially this would have been the principal issue the Tribunal would have had to deal with. Other leaseholders on the estate were plainly dissatisfied with the major works that had taken place. This was evident from the statements submitted in support of the Applicants' case. Many of these grievances could not be dealt with. This is in the Tribunal's view conduct which sounds under section 20C. It is the tribunal's view that many of the arguments brought by Mr and Mrs Wilsher were reasonable arguments albeit they were brought at a late stage. They clearly didn't win on all of their arguments however viewing the proceedings as a whole they were successful in getting the Applicants to concede the cost of the major works and in focusing on accounting errors which had taken place in relation to the mis- allocation of service charges. In all the circumstances the tribunal considers that the fairest outcome would be for us to exercise our discretion and allow the section 20C application which means that the Respondents are not entitled to seek to recover their legal costs from the service charge account.

21. The Tribunal understands that the Applicants had assistance with their hearing fees and therefore no reimbursement is due. In relation to the application fee it is not considered that reimbursement of that sum namely £100 is appropriate in this case.

Judge Shepherd

2nd February 2023

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.