



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

**Case reference** : **CAM/11UF/LSC/2022/0062**

**HMCTS code  
(paper, video,  
audio)** : **P: PAPERREMOTE**

**Property** : **1 – 12 and 14 – 37, Birches Rise, High  
Wycombe, Bucks HP12 3AQ**

**Applicant** : **Chiltern Gardens Management Limited**

**Representative** : **Neil Douglas Block Management**

**Respondent** : **The leaseholders at the Property**

**Representative** : **None**

**Type of application** : **Liability to pay service charges**

**Tribunal member** : **Judge Dutton**

**Venue** : **Paper determination**

**Date of decision** : **21 March 2023**

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**DECISION**

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This has been a determination on the papers which has been consented to by the parties. A face-to-face hearing was not held because no-one requested the same, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 119 pages, the contents of which have been noted.

## DECISION

**The tribunal makes the determination set out below agreeing that the costs of the installation of a suitable door entry phone and door lock are matters for which a service charge can be recovered by the Applicant, subject as provided for below.**

## **BACKGROUND**

1. This application was made by Chiltern Gardens Management Limited, (CGM) which is the management company for the development at 1 – 12 and 14 – 37, Birches Rise, High Wycombe, Bucks HP12 3AQ (the Property), under the provisions of s27A(3) of the Landlord and Tenant Act 1985 (the Act). CGM is also the residents' management company.
2. It is said in the application that the main entrance doors to the Property are not secured and access to the common parts can simply be obtained by pushing open the door. There have been recent reports of anti-social behaviour by third parties, including possible drug offences and threatening behaviour. In addition, it is said that a modern system would not only allow access relevant to modern day life, such as delivery, carers and visitors but reduce the upkeep to the common parts.
3. Although, save for one block, I think 7 – 12, there is presently no entry phone facility, the lease does appear to provide for the maintenance of one. One block has installed its own system, which appears to have been effective in respect of alleged anti-social issues.
4. The new system, I am told, would be secured by magnetic locks, less easily forced and more easily dealt with if fobs are lost, than keys. Feedback from the residents was sought and a questionnaire sent to all. A number have responded, and their replies are included within the bundle. The questionnaires say *"I, named above, hereby enclose my vote below as leaseholder of No. [insert flat number] Birches Rise and a member of the management company (Chiltern Gardens Management Limited) for the proposed installation of a door entry phone system on the communal doors to each block at the expense of the service charge"* The form then goes on to provide a box to be ticked indicating agreement or opposition and gives a date by which they should be returned. I note from the bundle that there were several occasions when CGM wrote to leaseholders after the cut off date asking for their response. I was told that 78% of the residents supported the intention to install the entry phone system and lock, one person opposed and 7 did not respond. There are 36 flats in the 6 blocks.

5. The concern from CGM's point of view is whether the installation of the door entry phone system would be recoverable under the terms of the lease, there being no clear provisions for improvements.
6. Within the bundle were quotes from DJB, at the moment the preferred option at £1,824 plus VAT per entrance, and JTS containing three options the cheapest being £1,990, inclusive of VAT.
7. I was told that subject to my findings concerning the payability of the costs of installation of the door entry phone, CGM would undertake consultation under the provisions of s20 of the Act before proceeding further.

## **THE LEASE**

8. I was provided with a sample lease. The relevant wording for this matter can be found as follows:
  - 'Service Media' includes entry phone installations and all necessary easements relating thereto which are necessary for the lessee's use and enjoyment of the Premises...
  - 'Insured risks' includes Common Parts windows and third party property owner's liability in the Common Parts and such other risks or insurance as may from time to time be reasonably required by the Lessor and the Company (CGM) for the occupiers of the Building
  - At clause 3 the Lessee covenants to observe the obligations in the Third Schedule to the Lease.
  - The Lessors obligations re contained in the Fourth Schedule and the obligations of CGM are set out in the Fifth Schedule.
  - The First Schedule to the lease includes the rights and easements granted in favour of the Lessee, which at paragraph 2 includes the entry phone to and from the Premises through the Service media which may now pass through or over the Building or to be constructed during the Perpetuity Period, which is defined at 80 years from 1 June 1985.
  - At paragraph 4 of the First Schedule there is reference to "the installation of any new Service Media".
  - In the Second Schedule the exceptions and reservations in favour of, amongst others, CGM, reference entry phone and the right to make connections to the Service Media or to maintain repair and alter the same.
  - The Third Schedule contains the obligations on the part of the lessee to pay the Service Charge.....
  - The Fifth Schedule requires CGM to "manage Maintain and repair the Building including the Service Media and Common Parts" and to indemnify the Lessor.
  - At paragraph 15 of this schedule the following wording is included "To include in the Service Charge any other expenses necessary for the proper carrying out of the maintenance duties

by the Company which shall have been approved at its Annual General Meeting.”

## **FINDINGS**

9. I bear in mind that the majority of leaseholders have supported the intentions of CGM, which is, of course, a lessee owned and controlled company. Indeed, given the current indication of support an application to vary the lease under the provisions of s37 of the Landlord and Tenant Act 1987 could be successful. This is, however, a somewhat expensive way of solving the problem, requiring the variation of 36 leases with all that entails.
10. I have considered the problems that the lack of security has already posed and the possibility of damage to the common parts by third parties and potential ease of access to flats within the block without a properly controlled main entrance.
11. The lease clearly envisaged that there would be a door entry phone system and accordingly I can see no problem in the ongoing maintenance of same. I note that one block has already installed their own system at their expense and assume that the costs associated with the installation of the system as set out on the two quotes included in the bundle does not include works to that block. That however is another matter.
12. The lease provides that the lessees shall have peaceful and quite enjoyment of their flat. The insurance for the Building includes the Common Parts and I would suspect that the insurers would want to ensure that adequate steps were taken to safeguard the common parts from uninvited persons and any damage that might be occasioned as a result as well as added security to the individual flats. Further there are two provisions within the lease that persuade me that it would be within the rights of CGM to install an entry phone system.
13. The first is to be found at the First Schedule paragraph 2 which includes the entry phone *“to and from the Premises through the Service media which may now pass through or over the Building or to be constructed during the Perpetuity Period,”* which is defined at 80 years from 1 June 1985. Further at paragraph 4 reference is made to new Service Media, which in my finding would include a new entry phone system. This is to an extent mirrored by the Second Schedule to the lease which provides CGM the right to enter the premises to examine test repair replace add to or alter and maintain the Building and the Service Media. I accept, that in so far as I can tell the works would be confined to the exterior or the common parts, nonetheless the inclusion of this wording lends support to my finding that the installation of the entry phone was anticipated under the terms of the lease. I do not know why it was not installed in blocks of this nature and age.

14. The second element of the lease that I find supports my conclusion that the costs of installing the system would be recoverable as a service charge is that contained at paragraph 15 *“To include in the Service Charge any other expenses necessary for the proper carrying out of the maintenance duties by the Company which shall have been approved at its Annual General Meeting.”*
15. Those maintenance duties include the management, maintenance and repair of the Building, including Service Media. I do not think it is a quantum leap to extend that duty to include the safeguarding of the Common Parts and thus the lessees’ flats, which the installation of the entry phone system will undoubtedly assist.
16. I also consider that ours is a ‘problem solving jurisdiction’. There have been no statements lodged by any opponent to the scheme although I have seen an exchange of emails which seemed to more directed to time scales than objections. I do not understand the questionnaire to have been sent out under the auspice of an AGM but it is clear that there is majority support for this installation. Consideration may be given to referring this to the AGM for confirmation, should any objection continue.
17. As I have indicated above the lease clearly intended there to be a door entry phone system in place as it provides for the upkeep thereof. It would be strange if compliance with what seems to have been intended by the lease led to any difficulty in the recovery of the installation costs, especially as if it were already fitted, the upgrade would not appear to be problematic. In those circumstances and on balance I conclude that the lease allows the recovery of the costs of installation and the ongoing maintenance of a door entry phone system and appropriate lock at a price to be determined following the conclusion of the s20 process.

Judge Dutton

21 March 2023

The Relevant Law

### **27A Liability to pay service charges: jurisdiction**

( 3 )An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a)the person by whom it would be payable,
- (b)the person to whom it would be payable,
- (c)the amount which would be payable,
- (d)the date at or by which it would be payable, and
- (e)the manner in which it would be payable.

## **ANNEX – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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 identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.