



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

Case reference : **LON/00BK/LAC/2022/0009**

Property : **Lower Ground Floor Flat, 11 Belgrave
Gardens London NW8 0QY**

Applicant : **Christopher Wright**

Representative : **In person**

Respondent : **Greenbelt Limited**

Representative : **Hitesh Cchanya, Group 2038,
Managing Agent**

Type of application : **Application for an order under
paragraph 5 and paragraph 5A of the
Commonhold and Leasehold Reform
Act 2002**

Tribunal : **Tribunal Judge I Mohabir
Mrs S Phillips MRICS**

Date of Decision : **21 March 2023
13 April 2023 (amended)**

DECISION

Introduction

1. The Applicant has made two applications. These are:
 - (a) under paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“the Act”) as to the reasonableness of administration charge of £5,000 made by the Respondent for granting a retrospective licence to alter the subject premises.
 - (b) under paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 for an order to reduce or extinguish the liability to pay an administration charge in respect of litigation costs incurred by the Respondent in these proceedings.
2. The facts that give rise to this application are largely a matter of common ground.
3. In July 2021, the Applicant’s premises at Lower Ground Floor Flat at 11 Belgrave Gardens NW8 0QY (“the property”) was flooded. It required complete refurbishment and surveyors were instructed to act on his behalf. It became apparent that work previously done in 2009 would require consent. On 9 December 2021 the Applicant’s surveyors, Schofield Surveyors, wrote to the Respondent seeking retrospective consent for the historic alterations carried out in 2009. The Respondent required a payment of £5,000 on account in order for the grant of the consent. This was paid by the Applicant.
4. By paragraph 12 in Part I of the Fifth Schedule to the lease of the property, the lessee covenanted not to structurally alter the premises without first obtaining the lessor’s prior consent in writing. The Applicant concedes that this was not done.
5. In addition, by paragraph 21 in Part I of the Fifth Schedule, the lessee covenanted to pay the lessor’s legal, surveyor and other costs incurred in the granting of any such consent.
6. Subsequently, the Applicant requested a breakdown of the costs incurred by the Respondent, which was not forthcoming. Therefore, the Applicant made this application to the Tribunal.

Relevant Law

7. This is set out in the Appendix annexed hereto.

Decision

8. The determination in this case took place on 21 March 2023. It was based solely on the documentary evidence filed and served by the respective parties. There was no oral hearing.

9. In short, the Applicant's case is that the Respondent's costs of £5,000 for retrospectively granting the licence to alter is excessive. On the basis of an alternative quote obtained from Aspire Block and Estate Management Ltd dated 29 September 2022, the Respondent's costs for granting the consent should not have exceeded £3,264. The Applicant contends for a figure of £1,150 including VAT for the Respondent's surveyor's costs and £600 including VAT in respect of the managing agent's (Group 2038) costs.
10. The Respondent relies on the invoices from its Surveyor, Ark Project Surveying in the sum of £1,250 and an invoice from Group 2038 dated 5 September 2022 in the sum of £3,750 including VAT for the legal and professional services it provided for the grant of consent.
11. The correct statutory test under paragraph 2 in Schedule 11, Part 1 of the Act to be applied to the Respondent's administration charges is whether they are reasonable. Rightly, there is no statutory test of what is reasonable. This is because each case is fact specific.
12. There is no starting presumption here that because the Respondent appears to have actually incurred these costs they are reasonable. Equally, there is no presumption that the lowest costs contended for by the Applicant are reasonable.
13. The Tribunal was not particularly assisted by the quality of the evidence relied on by both parties. It was, therefore, obliged to fall back on its own expert knowledge and experience in this matter.
14. In relation to the Respondent's surveyor's fee of £1,250, having regard to the detailed report prepared by Ark Project Surveying, the Tribunal found this cost to be reasonable. For the avoidance of doubt, this includes the cost of any abortive visit to the property. The Tribunal makes no finding about who may have been responsible for this if it did in fact occur.
15. However, the Tribunal found the combined cost of £3,750 incurred by Group 2038 for the provision of legal and other 'professional services' was unreasonable.
16. The Tribunal was satisfied that the preparation and execution of a Licence for Alterations was not a complex document in this instance. Indeed, neither party has demonstrated the extent, or not, of legal work having been carried out. It, invariably, is a template document that is amended and would have taken, perhaps, a Grade C fee earner no more than 5 hours of work to approve and execute resulting in legal fees of £900 including VAT.
17. As to the professional services provided by Group 2038, it is difficult to imagine what additional administrative services would have been provided at a cost in excess of £2,500 given that the substantive work was being done by the Respondent's surveyor and its legal advisers.

Therefore, the Tribunal found that a cost of £600 including VAT was reasonable for the professional services provided by Group 2038.

18. Accordingly, the Tribunal concluded that £2,750 including VAT was a reasonable amount for the Respondent's costs for retrospectively granting the Applicant a Licence for Alterations. It follows that the Applicant is to be reimbursed the sum of £2,250 by the Respondent within 28 days of this amended decision being issued to the parties.

Schedule 11, Paragraph 5A Costs

19. As the Applicant has succeeded on the substantive point in the application, the Tribunal consider it just and equitable to make an order that the Respondent is not entitled to recover any costs it has incurred in these proceedings against him.

Reimbursement of Fees

20. For the same reasons as above, the Respondent is ordered to reimburse the Applicant the sum of £100, being the fee he has paid to the Tribunal to have the application issued also within 28 days of this amended decision being issued to the parties.

Name: Tribunal Judge I Mohabir **Date:** 21.03.23
13.04.23 (amended)

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), 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).

Appendix of relevant legislation

Liability to pay administration charges

5(1) An application may be made to for a determination whether an administration charge is payable and, if it is, as to—

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

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a) in a particular manner, or
- (b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, Part 1: reasonableness of administration charges

2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Limitation of administration charges: costs of proceedings

5A(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).