



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

Case Reference : **BIR/00CN/LSC/2022/0010**

Property : **93 Rupert Street, Nechells, Birmingham,
B7 5DS**

Applicant : **Sycamore Management (Nechells) No.1
Ltd**

Respondent : **Mr Foziur Raza**

Type of Application : **Application under Section 27A of The
Landlord and Tenant Act 1985 for the
determination of the payability and
reasonableness of service charges to be
incurred in respect of the subject
property.**

Tribunal Members : **Judge C Kelly (Chairman)
Mr Graham Freckelton FRICS (Surveyor)**

Date of Decision : **20 April 2023**

DECISION

DECISION

Background

1. This is the decision pursuant to the application made by Sycamore Management (Nechells) No.1 Limited in respect of the payability and reasonableness of service charge concerning 93 Rupert Street, Nechells, Birmingham, B7 5DS (“the property”). The Respondent is the leaseholder of the property.
2. The Applicant is both owner and managing agent of the property, together with other properties at Rupert Street, comprising overall thirteen such properties within the relevant development.
3. The Applicant seeks a determination as to the reasonableness of service charges to be incurred, in respect of the service charge year ending 30 September 2023. The application follows a form similar to that made previously before the Tribunal, in respect of previous service years, with a number of types of costs to be incurred having previously been subject to determinations at or around the levels now proposed to be incurred in previous years.
4. In its application notice, the Applicant identified that the Respondent had failed to pay service charges in respect of sums said to be due on 1 October 2022, but that the nature of the application would by definition affect twelve other properties within the estate. All leases for the properties were said to be identical save that the relevant percentage of the service charge of the overall relevant costs would differ by reference to the property itself.
5. The Applicant sought a determination on the papers. The Respondent did not object to the matter being dealt with on the papers and did not request a hearing.
6. The Tribunal issued Directions on 14 November 2022. They provided for provision of the Applicant’s statement of case, the Respondent’s statement of case and the Applicant’s reply. It is noteworthy that the Directions did not require the statements of case to be sent to any of the other twelve leaseholders at the development, such that it should be assumed, that they are unaware of the proceedings, or the substance of them, such that any determination made by this Tribunal cannot fairly be said to bind those other leaseholders. Any conclusions reached therefore at this stage are potentially the subject of further challenge by other leaseholders.
7. The Tribunal, within the directions of 14 November 2022, deemed an inspection of the property to be unnecessary. No subsequent directions appear to have been given prior to the listing of the matter for determination on 7 March 2023.

The Parties’ Respective Positions

8. Similarly to the applications made in respect of previous service charge years, the Applicant sought a determination, that costs estimated to be incurred for the service charge year ending 30 September 2023 were both payable and reasonable.

The Applicant referred the Tribunal to a previous determination, in case number BIR/ooCN/LIS/2021/0041-44 in respect of four of the properties at the development, in respect of which both payability and reasonableness of intended charges were determined. To the extent, therefore, that the Tribunal has identified various sums as being payable pursuant to the lease, in the sense of the lease providing authority to recover certain heads of expenditure, then this Tribunal considers itself bound by issue estoppel in that regard, but notes that it would not have come to a different conclusion in any event to the findings set out in that previous decision.

9. The principal issues, therefore, were the reasonableness of the various heads of expense to be incurred, and the following were identified by the Applicant as sums which it sought to be assessed as reasonable for the development as a whole (per annum):

Cleaning and rubbish removal	£2,500
Mowing lawns and gardening	£2,500
Painting and decorating	£1,000
Repair/replace damaged ceilings (99 and 101)	£1,200
Replace lighting to communal staircase	£2,000
Hammer/rebound test, carbonisation test etc. to balconies	£2,000
Urgent repairs to concrete balconies (98 and 104)	£3,000
Roof maintenance and repairs	£2,000
Building maintenance and repairs – general works	£1,500
External management fees (10% of service charge)	£4,500
Legal expenses	£3,000
Health and safety inspection	£600
Full building survey	£3,000
General administrative costs	£6,000
Accounts (accountancy fees)	£600
Buildings insurance	£3,000
Directors' and officers' indemnity	£1,250
Replacement roof	£12,000
General	£3,000

10. Additionally, the Applicant foreshadowed a potential basis of resistance from the Respondent, namely in relation to the position of Mr Strangward, who appears to have been responsible for making this application, on behalf of the applicant company. It was foreshadowed that it may be suggested that he had resigned as a director of that company, and therefore had no authority to bring these proceedings on behalf of the applicant company.

The Respondent's Position

11. The vast majority of the Respondent's arguments were directed at the position of Mr Strangward with the applicant company. It was said that he was removed as a director of the Applicant following a poll vote being made on 20 August 2021 and

20 January 2022. Copies of the various poll cards were provided suggesting that there were votes in favour of the removal of Mr Strangward made on 20 January 2022 and 20 August 2021.

12. The Respondent said that he was seeking a declaration from the High Court that Mr Strangward was removed as a director of the Applicant.
13. The Respondent's statement of case went on to further identify issues of potential conflicts of interest, it being suggested that Mr Strangward had a second company, in some way connected to his position with the Applicant, and that it was in his interest for further works to be undertaken on instruction from the Applicant to further his own financial interest. There were further issues raised in respect of the position, but no arguments specifically were raised in relation to the payability or reasonableness of the various charges which the Applicant seeks to have determined, save for suggesting that funds must not be used for illegitimate purposes and against the interests of various leaseholders. The Respondent did, however, acknowledge that there is no dispute that there are sums which are payable under the terms of the lease, and he set out the relevant provisions of Clause 4 of the lease, in recognition of the fact that sums were in fact payable pursuant to its terms.
14. The Respondent further notes that there appears to have been a long standing dispute between himself and Mr Strangward, which is being pursued through the applicant company in the form of this application, particularly given, he notes, that the application is made solely against him and not against the other twelve properties within the development.

The Law

15. The first point to note, is that this Tribunal has no jurisdiction to determine issues in relation to the directorship position, or indeed the scope of authority of Mr Strangward in relation to the Applicant, or the Applicant generally, in bringing these proceedings. Those are matters which are within the purview of the High Court (or potentially, the County Court) alone. Nor is it for this Tribunal to seek to determine whether there is a conflict of interest in any position that Mr Strangward may hold as a director of any other company.
16. This Tribunal's jurisdiction is limited to a determination of reasonableness of the sums intended to be incurred, pursuant to the provisions of Section 27A of the Landlord and Tenant Act 1985.
17. The above said, it is far from clear as to what Mr Strangward's authority within the Applicant is, but what is known, is that he is authorised to act as the company secretary. That position does not appear challenged. It would seem that Mr Strangward clearly has some day to day caretaking role, and some form of authority with the Respondent, although the scope of that may well be in doubt (as indeed is the directorship position). As such, this Tribunal is the same as any other third person, with no obligation to identify the scope of authority of the individual pursuing matters for the Respondent, so long as some authority appears to be exist.

18. The Tribunal is not in a position, and does not have jurisdiction, to determine the issues raised regarding Mr Srangward's directorship. Nevertheless, the Tribunal does take some comfort, from the provisions of Section 161 of The Companies Act 2006, which states as follows:

"(1) The acts of a person acting as a director are valid notwithstanding that it is afterwards discovered: -

- (a) That there was a defect in his appointment;*
- (b) That he was disqualified from holding office;*
- (c) That he had ceased to hold office;*
- (d) That he was not entitled to vote on the matter in question."*

19. Accordingly, we consider it appropriate to proceed to determine the application made by the Applicant, acting as it does, by Mr Strangward.

20. As then to the service charge issues, sections 18 and 19 of the 1985 Act provide as follows:

"18(1) In the following provisions of this act 'service charge' means an annual account payable by a tenant of the dwelling as part of or in addition to rent: -

- (a) Which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management; and*
 - (b) The whole or part of which varies or may vary according to the relevant costs.*
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

(3) For this purpose: -

- (a) Costs include overheads,*
- (b) Costs or relevant costs in relation to a service charge whether they are incurred, or to be incurred in the period for which the service charge is payable or in an earlier or later period.*

19 (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

- (a) only to the extent that they are reasonably incurred, and*
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.*

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.”

21. Section 27A of the 1985 Act, insofar as material, provides:

“(1) An application may be made to the appropriate tribunal for a determination of whether a service 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,*
- (e) The manner in which it is payable.*

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate Tribunal for a determination whether, if costs were included for services, repairs, maintenance, improvements, insurance or management of any description, a service charge would be payable for the costs, 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,*
- (e) The manner in which it would be payable.*

22. The “appropriate tribunal” is the First-tier Tribunal, Property Chamber, this Tribunal.

23. Therefore, given that this is an assessment of reasonableness, in respect of the costs to be incurred, the Tribunal must consider a two stage approach, based upon the evidence presented to it essentially being: is the decision to undertake the works/incur the expenditure reasonable, and is the sum sought reasonable in light of the available evidence. That is the approach adopted when considering the various items of intended expenditure separately below.

Consideration of the Submissions in Relation to the Various Headings

Cleaning and rubbish removal - £2,500

24. The Tribunal had determined, in the previous proceedings, that this element of service charge was reasonable for the year ending 30 September 2022. We agree that this sum is reasonable for the year ending September 2023 too.

Mowing lawns and gardening - £2,500.

25. The Tribunal had determined, in the previous proceedings, that this element of service charge was reasonable for the year ending 30 September 2022. We agree that this sum is reasonable for the year ending September 2023 too.

Painting and decorating - £1,000.

26. The Tribunal had determined, in previous proceedings, that this sum was reasonable for the service charge year ending 30 September 2022. We agree that this sum is reasonable for the year ending September 2023 too.

Repair/replace damaged ceilings (99 and 101) - £1,200.

27. The owners of properties and 99 and 101 have not been parties to these proceedings, as noted above, but this Tribunal is still required to make a determination given that the costs in respect of the works proposed, are likely to be recoverable pursuant to the service charge against all properties.

28. However, on the evidence produced by way of the papers in these proceedings, whilst it may well be so that there are leaks within bedrooms in flat numbers 100, 102, 103 and 104, and that the ceilings in bedrooms 99 and 101 need to be repaired, and that of 99 being replaced, it is far from clear as to whether those works are covered within the terms of an insurance policy, as the Tribunal would expect. Further, reference is made within the Applicant's statement of case to a quotation for the works being obtained, and which had not been provided at the point of making the application to the Tribunal, or the Tribunal considering its determination on the issues raised.

29. Accordingly, the Tribunal is not content at this stage to conclude that the proposed costs are reasonable to incur, given the absence of clarification on (a) the insurance position, and (b) the likely level of costs to be incurred, given the outstanding quotations. It may well be that the level of sums to be incurred would ultimately exceed the Section 20 consultation thresholds, limiting the amount of recoverability in any event. At this stage, the Tribunal is simply not in a position to determine reasonableness in relation to this element.

Replace lighting to communal staircase - £2,000.

30. The Applicant says that the bulbs at the upper section of the staircase are failing frequently, the installation being circa 34 years old and requiring upgrading. Two quotes have been provided, namely £2,770, and £3,436 respectively.

31. The Tribunal is content to conclude that, given there is no dispute in relation to the specific item, the sum of £2,000 in relation to the replacement works, given the indicated quote of £2,770, is reasonable in the circumstances. The Tribunal notes that, if the quotation of £3,436 were accepted by the Applicant, and the contract awarded, then any recovery of costs would be limited to £250, given that the threshold of £250 would be exceeded, the costs of the works attributable to each flat being £264, if the higher quote were to be accepted. The Tribunal cannot therefore, determine that the higher sum would be reasonable, given the absence of evidence complying with the Section 20 process.

Hammer/rebound test, carbonisation test etc. to balconies - £2,000.

32. The Applicant indicated that the relevant test works had been completed, at a cost of £1,874. These are works that appear to have been instructed as a consequence of various reports being provided in connection with the issues in these proceedings, whereupon it has been suggested that substantial works need to be undertaken to a number of the balconies, although cosmetic works are to be undertaken to some of them.
33. The Tribunal has no difficulty in determining that these works were reasonably required, and that the sum incurred is reasonable in the circumstances.

Urgent repairs to concrete balconies (98 and 104) - £3,000.

34. The Applicant produced a report from Birmingham City Laboratories, which is presently being considered, it is said, by two contractors, and their detailed responses awaited. The Respondent indicated that there is an ongoing Section 20 process in relation to the balconies themselves, and the rectification works required, and it seems that the overall costs are likely to exceed a sum of £3,000. In that respect, the sum now sought to be determined as reasonable, of £3,000, is accepted by the Tribunal as being reasonable to request on account at this stage. Again, however, the Tribunal makes the observation that, absent a properly compliant Section 20 process, any recovery in relation to those works will be limited to £250 in respect of each property.

Roof maintenance and repairs - £2,000.

35. The Applicant's position is that there are insufficient funds to enable a full replacement of the roof to be undertaken at this stage. It may be three years before the roof is therefore replaced. The Applicant seeks to recover a sum of £2,000 at this stage in respect of ongoing and repair works to the roof, which the Tribunal considers to be both a sensibly prudent measure to take and a reasonable sum and amount to request. Accordingly, the Tribunal determines that sum to be reasonable.

Building maintenance and repairs – general works - £1,500.

36. The Applicant says the building must be kept in a good state of repair, with funds being set aside for that purpose. Specifically, cracks in the upper footpath are noted to require filling, where plaster has come loose from an area of the ceiling to the communal staircase, and where mortar has come loose from the edge of the upper footpath by the refuse bins. No specific observation as to the intended expense was made by the Respondent, and the Tribunal has no hesitation in concluding that it is a reasonable provision to be made, and that the sum requested is reasonable in amount. Accordingly, the Tribunal determines that that sum sought is reasonable at this stage.

External management (10% of service charge) - £4,500.

37. The Applicant is the owner and manager of the development. The Applicant seeks 10% of the service charge to be collected, as being a reasonable sum, and seeks to

justify that in particular based upon the increased number of disputes with leaseholders and shareholders of the development.

38. The Applicant highlights the fact that the Tribunal had determined, in previous proceedings, a sum of £3,000 for service charges for the year ending 30 September 2022 to be reasonable.
39. This Tribunal concludes that it is inappropriate to seek a percentage of service charge, as a general rule, and notes the specific guidance given in this respect at Paragraph 3.3 of the RICS Service Charge Residential Management Code (Third Edition). Typically, costs are a fixed figure, and not a percentage of service charge, so as to permit leaseholders greater certainty in ascertaining the costs they are likely to incur, and to therefore budget accordingly.
40. The Tribunal, taking account of its own expertise and experience in such matters, concludes that a figure of £250 per property is reasonable, which given that there are thirteen properties, equates to a sum of £3,250.
41. The Tribunal therefore determines that a sum of £3,250 is a reasonable sum in respect of external management of the development.

Legal expenses - £3,000.

42. The Applicant seeks a determination that £3,000 is a reasonable sum to incur on account at this stage, given that there are a number of challenges, with eight of the thirteen leaseholders still withholding payments of their service charge. That is said to include service charges due from the previous year, ending 30 September 2022.
43. The Tribunal accepts that costs to recover outstanding service charge costs are likely to be reasonably incurred in principle, subject to an assessment of the overall sums, but the figure sought at this stage does not seem unreasonable.
44. Accordingly, the Tribunal is content to determine that the sum of £3,000 in respect of legal fees at this stage, is a reasonable sum.

Health and Safety Inspection - £600.

45. The Applicant says that it has taken out a subscription with “Bright HR”, which is software to assist in the completion of health and safety reports and risk assessments. A copy of the relevant contract was provided, showing that a sum of £11.60 is payable per month, for a minimum period of twelve months. That equates to an annual sum of £139.20.
46. The Tribunal recognises that health and safety inspections will need to be carried out, such are typically carried out every three years save where something material will change within the development that may alter the health and safety risk profile. There is no clear evidence as to what that profile change may be at this stage, although clearly, with new works to be implemented in due course, both in respect of the balconies and potentially the roof (although potentially a longer term project), the Tribunal concludes that the subscription is a reasonable one, and that

the annual cost of £139.20 ought to be determined as reasonable. It is far from clear what the balance of the £600 sum sought was, and the Tribunal's determination is therefore limited to the sum of £139.20.

Full building survey - £3,000.

47. The Applicant suggests that the age and condition of the building, taking on board observations made in surveys from Structural Surveys and Wiggins Lockett Thompson (WLT) necessitated a full survey to be undertaken. On 26 July 2022, the Applicant obtained a quotation for such works, at £1,850 plus VAT. A senior sales advisor, from Riviera Insurance, the brokers instructed by the Applicant, have identified that a further report will be required in due course, once the balcony repairs have been undertaken. Such costs are likely therefore to bring the overall report requirements in the region of £3,000.
48. The Tribunal therefore concludes that the sum sought in respect of the building survey expenses of £3,000 is reasonable at this stage.

General administrative costs - £600.

49. The Applicant does not identify what specific administrative costs are likely to be caught under this heading. It is far from clear what they may be, and accordingly, the Tribunal is in no position to determine that they are reasonable.

Accounts (accountancy fees) - £600.

50. The Tribunal had determined, in previous proceedings, that the service charge sum of £600 for this head was reasonable for the year ending 30 September 2022. We agree that this sum is reasonable for the year ending September 2023 too.

Electricity supply to communal areas - £250.

51. This was previously a sum of £150, with the increase sought to £250, and whilst there was no indication as to the actual costs which were to be incurred, by reference to electricity quotes, statements, or any other material before the Tribunal. Nevertheless, given the level of the sum proposed, the Tribunal is content to conclude that that is reasonable for the electricity costs in respect of the communal areas for a development of this size.

Building insurance - £3,000.

52. A renewal confirmation letter was provided by the Applicant, dated 12 April 2022, which referenced a sum of £3,127.10 for the policy for the year ahead.
53. Although there is no specific reference to testing the market, within the letter from Riviera Insurance services, of 12 April 2022, the Tribunal infers that such work has been undertaken, given that these are brokers and that their role is to test the market and identify appropriate policies moving forwards. The Tribunal is content therefore to determine the sum of £3,127.10 as being reasonable.

Directors' and officers' indemnity insurance - £1,250.

54. The Tribunal had determined this cost to be reasonable for the service charge year ending 30 September 2022. We agree that this sum is reasonable for the year ending September 2023 too.

Replacement roof - £12,000 per annum.

55. The parties have produced reports, for the Applicant from Structural Surveys, and for the Respondent from WLT. Both reports relate to the condition of the roof, and take different views as to whether a full replacement of the roof is required. Nevertheless, at this stage, the Tribunal concludes that it is impossible to determine whether or not the sum sought of £12,000 per annum is reasonable, on account of the fact that the Applicant recognises that a Section 20 process will be required, but that such process has not yet been undertaken.
56. By definition, the Section 20 process will require engagement with potential contractors, and input into the identification of those from leaseholders. Without that process having been completed, a sum of £250 will be the maximum sum the Applicant is entitled to recover by way of service charge. At this stage, absent evidence of compliance with the Section 20 process, the Tribunal cannot conclude that the sum sought is reasonable.

General - £3,000.

57. The Applicant submits it should have funds in place to deal with unexpected emergencies. Whilst there is no objection in principle to such an approach, it being a reasonable one, it is far from clear what costs are likely to be incurred under this heading, additional to those under the heading of “building maintenance and repairs”, especially given that no detail as to the likely type of costs to be incurred are given by the Applicant in his statement of case.
58. Accordingly, the Tribunal is not in a position in to determine the reasonableness of this element.

APPEALS

If either party is dissatisfied with this decision an application may be made to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be made within 14 days of receipt of this decision refusing permission being sent to you, pursuant to the provisions of Section 11 of the Tribunals, Courts and Enforcement Act 2007 and Rule 21 of the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010. Such applications must be made in writing.

You should send any further application for permission to appeal by email to lands@justice.gov.uk, but the Upper Tribunal may additionally be contacted at Upper Tribunal (Lands Chamber), Fifth Floor, Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL (Tel: 02076129710).

**Tribunal Judge Kelly
20 April 2023**