



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

- Case Reference** : CHI/00HN/LIS/2022/0035
- Property** : Moat Court, 42 Branksome Wood Road,
Bournemouth BH4 9LA
- Applicant** : Synergy Housing Limited
- Representative** : James Fieldsend of Counsel
- Respondent** : Miss L Alcock (Flat 2)
Mrs D A Greenwood (Flat 3)
M J Lee (Flat 4)
Mrs E Moon (Flat 5)
Mr D O'Keefe (Flat 6)
Mr J Murphy (Flat 8)
Mr J S Phillips (Flat 9)
J Lundgren (Flat 11)
Mrs J Davis (Flat 13)
Mr C Newman (Flat 14)
Mr C Morse (Flat 16)
- Type of Application** : Determination of Service Charges
Section 27A of the
Landlord and Tenant Act 1985
- Tribunal
Member(s)** : Judge Tildesley OBE
Mr M Donaldson FRICS
- Date and Place of
Hearing** : Poole Law Courts
22 May 2023
- Date of Decision** : 22 May 2023 (Given Orally)
23 May 2023 (Written reasons)

DECISION

Decision

1. The Applicant seeks a determination of a service charge on account in the year 2022/23 for the costs of major works including an associated administration fee of 15 per cent of those costs.
2. The Applicant is the freeholder of Moat Court (the Property). Moat Court which was built in the 1970s with garages on the ground floor and three storeys of flats above under a flat roof. The walls are mainly finished in fair faced brickwork with areas vertically between windows clad in white UPVC shiplap boarding. Windows to the flats are uPVC double glazed throughout.
3. There are 16 residential flats within the property. 11 of those flats are held on long leases whilst the remaining five flats are retained by the Applicant as part of its general needs housing stock.
4. The Respondents to the proceedings are the 11 long leaseholders who are liable to pay 11/16^{ths} of the costs of the major works. The Applicant will foot the bill of the remaining 5/16^{ths} of the costs. The Respondents hold long leases originally granted under the Right to Buy Scheme by Moat Housing Society Limited. A specimen lease was included in the hearing bundle
5. The Tribunal directed the Application to be heard in person on 22 May 2023 and required the parties to exchange statements of case. One Respondent, Mrs J Davis of Flat 13 submitted a statement case. Two Respondents, Mrs J Davis and Mrs D Greenwood of Flat 3 attended the hearing. The Tribunal inspected the property beforehand.
6. After hearing from Mr C Chapman and Miss H Enderby witnesses for the Applicant, and Mrs J Davis and Mrs D Greenwood, and having considered Mr Fieldsend's submissions as Counsel for the Applicant and the documents submitted in evidence the Tribunal announced its decision at the end of the hearing.
7. **The Tribunal decided that a service charge on account for the year 2022/23 of £300,000 plus VAT of £60,000.00 for the major works and an administration fee of £45,000.00 (15 per cent of the net costs) was reasonable and payable.**
8. **Each Respondent is liable to contribute 1/16th of the total costs, £22,500.00 for the major works and £2,812.50 for the administration fee which makes a total of £25,312.50. The Applicant has applied monies from the sinking fund to reduce the amount payable by each Respondent. This works out at £5,347.87 for each Respondent reducing the liability of each Respondent to £19,964.63 for the on account major works and the administration fee.**

9. The Tribunal records that the on account service charge for 2022/23 also included the costs of the recurring service charge items, such as insurance and gardening, which were not the subject of this application and are payable in addition to the costs of the major works. The costs of the recurring items increased the service charge payable for 2022/23 by each Respondent to £20,929.81 which the Applicant was collecting monthly over a 11 month period (1 May 2022 to 31 March 2023) at £1,902.71 per month .
10. The Tribunal notes that completion of the major works will take place during 2023/24 which will result in the Applicant demanding a balancing charge for the final costs from the Respondents.
11. Mr C Morse of Flat 16 submitted an application on behalf of the 11 Respondents under section 20C of the 1985 Act to prevent the Landlord from recovering the costs of these proceedings through the service charge. Mrs J Davis of Flat 13 submitted a separate application on behalf of eight leaseholders including herself, The Applicant indicated that it had no intention of recovering its costs against the leaseholders. **The Tribunal, therefore, considered it is just and equitable to make an Order under section 20C of the 1985 Act preventing the landlord from recovering the costs of the proceedings through the service charge.**
12. Mr C Morse of Flat 16 and Mrs J Davis of Flat 13 submitted applications under paragraph 5A of the Commonhold and Leasehold Reform Act 2002 to prevent the Landlord from recovering the litigation costs of these proceedings as an administration charge against each leaseholder. Mrs Davis' application named seven other leaseholders. The Applicant undertook not to pursue individual leaseholders for the litigation costs. In view of the Applicant's indication the Tribunal decided it was not necessary to make an order under paragraph 5A of the 2002 Act. The Tribunal records that the Applicant from the outset of these proceedings made it explicit that it had no intention of recovering its legal costs from the leaseholders.

The Reasons

13. The Applicant is authorised by the lease to demand service charges on account and to recover through the service charge the costs of the major works.
14. The Respondents by virtue of Clause 3(2) of the Lease are liable to pay interim (on account) service charges. Clause 1(8) specifies that the interim service charge is £23 or such other sum as the Landlord shall determine.
15. Under Clause 4(1)(a) the Landlord covenants to keep the property in repair. Under paragraph 3 of the First Schedule service charge expenditure includes the cost of maintaining the structure of the property in accordance with the Landlord's repairing covenant.

16. The scope for the major works included the following:
 - Main Flat roof renewal;
 - Pointing works;
 - Cavity wall extraction and re install
 - Mechanical ventilation; (to general needs properties only)
 - Insulation including infill panel works;
 - External Drainage Repairs .
 - External decorations;
 - Internal decorations
17. The Applicant decided subsequently not to proceed with the pointing and to postpone the external drainage repairs for further investigation.
18. The Tribunal is satisfied that the major works were necessary. The Applicant had commissioned a survey report from IKO Technical which reported there was a breakdown of the roofing membrane causing the decking to have higher moisture levels than expected with the conclusion that the current roof covering was nearing the end of its reasonable life and delays in replacement would increase the likelihood of leaks and issues to the wider structure of the block. The Tribunal also found that the roof was at the end of its “normal life expectancy” of 20 years.
19. The Applicant had commissioned a report from Dyson Insulation on the cavity wall insulation which concluded that

“Due to the severity and the non-conformance to building regulations identified at Moat Court, A full cavity clean is absolutely essential to remedy all the problems ongoing which are a direct result of failed cavity wall insulation”.
20. The Applicant’s fire risk assessments had identified concerns over the infill panels beneath some windows. The panels were a white plastic shiplap board mounted on timber battens with glass fibre insulation behind. The Applicant could identify no fire integrity information for these products either to provide resistance to fire spread or fire resistance. The internal and external decorations did not form a significant part of the works. The Tribunal was satisfied from its inspection that the decorations were necessary.
21. The Respondents did not challenge that the works were not necessary.
22. The Tribunal is satisfied that the amount claimed on account for the major works is reasonable in accordance with section 19(2) of the 1985 Act: “Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable”.
23. The reasons are:

- The amount was based on an estimate of £300,000 provided by 3Sixty Real Estate which provided the specification on which the subsequent tendering exercise was carried out.
 - The Applicant undertook a competitive tendering exercise which produced two tenders for the works: £399,984 and £480,880. The Applicant chose the lowest tender. The amount claimed on account was conservative when compared with the contract price for the works.
 - The Applicant carried out a statutory consultation with leaseholders and had regard to the leaseholder's views. The Applicant decided against phasing the works because it would ultimately increase the final costs for the leaseholders. The Applicant accepted that the costs of the works imposed a significant financial burden on leaseholders, particularly in the current climate of the "costs of living crisis". The Applicant has attempted to mitigate the burden by the use of reserves to reduce the immediate cost to leaseholders. The Applicant also indicated that it was prepared to consider applications from individual leaseholders for extended payment terms and alternative means of collecting the monies due on the grounds of hardship. The Tribunal explained to the Respondents present in the hearing that where the works of repair are required and there is a reciprocal duty on the leaseholder to contribute to the cost of repair, the lessee's means are usually irrelevant to the issue of reasonableness (*Waaler v Hounslow LBC [2015] UKUT 17 (LC)* & *Garside v BR Maunder Taylor [2011] UKUT 367 (LC)*). The Tribunal noted that the lessee's means may be relevant to the question of whether the works could be phased but in this case the Tribunal agreed with the Applicant that the phasing of works was not practicable and result in increased costs.
 - The Respondents argued that the costs of the works had been increased because of the Applicant's failure to maintain the property. Although the Respondents gave examples of what they considered to be poor standards of repair, the evidence was not sufficient to support a finding that the costs of the works had increased due to the failure to maintain the property. The Tribunal also found that the existing roof and the cavity wall insulation had come to the end of their normal life expectancy which suggested that any failure to maintain had not had a significant impact on the costs of the works.
24. The Tribunal decided that the administration fee of 15 per of the net cost of the major works is reasonable. The Tribunal found that it covered the costs incurred by the Applicant on pre-contract consultancy, producing the specification of works, procurement including tender analysis, contract management, clerk of works, customer liaison including dealing with correspondence and residents'

meetings, carrying out the statutory consultation exercise, preparation and service of the service charges, fortnightly internal project meetings. The Tribunal also established that it included part of the costs of complying with the CDM regulations. The Tribunal was satisfied that 15 per cent was the standard charge made by Housing Associations for managing major works. Finally the Tribunal finds that such costs were recoverable under the lease either under paragraphs 3(a) or 3(f) of the First Schedule.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.