



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

Case Reference : **MAN/36UG/LSC/2022/0115**

Property : **21 CHAPEL COURT, WEST AVENUE, FILEY,
YO14 9AB**

Applicant : **DONALD KEITH DRISCOLL**

Respondent : **PROXIMA GR PROPERTIES LTD**

Type of Application : **Section 27 A Landlord and Tenant Act 1985:
determination of reasonableness of service
charges**

Tribunal : **A M Davies, LLB
J Jacobs, MRICS**

Date of Order : **17 May 2023**

Date of Decision : **25 May 2023**

ORDER

1. Service charges for the year ending 31 August 2022 shall be payable as demanded by the Respondent SAVE THAT the management fee contribution (one thirty fifth) payable by the Applicant shall be reduced to £300;
2. The management fee contribution (one thirty fifth) payable by the Applicant in the year ending 31 August 2023 shall be reduced to £300. The actual service charges for that year other than the management fee shall be payable subject to the Applicant's statutory rights including the right to make an application under section 27A of the Landlord and Tenant Act 1985.
3. The £80 administration charge added to the Applicant's service charge account is payable.
4. Pursuant to section 20C of the Landlord and Tenant Act 1985 the Respondent's costs of this application shall not be recovered from any of the leaseholders at Chapel Court, Filey.

REASONS

BACKGROUND

1. The Applicant is one of 35 leaseholders occupying flats at Chapel Court, West Avenue, Filey ("the Property") which is owned by the Respondent and managed for them by First Port Retirement Property Services. As required by the leases, First Port prepare audited annual service charge accounts and require each leaseholder to pay in advance the budgeted service charge to the following 31 August. After that date in each year the actual service charge expenditure is ascertained, and each leaseholder receives a credit or pays the balance due on his account.

THE APPLICATION

2. The Applicant lodged this application on 3 December 2022, seeking a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") in respect of 10 items listed in the service charge account for the years ending 31 August 2022 (actual) and 31 August 2023 (anticipated). These items are charges

for telephone, “sundry”, insurance, health and safety, water and sewerage, window cleaning, grounds maintenance, general maintenance, planned maintenance, and laundry. In respect of these 10 items, the Applicant’s ground for disputing them was that they “*appear excessive*” or are “*vague and undocumented*”. The Applicant questions whether alternative price quotations have been obtained in order to keep costs low. In relation to the grounds maintenance, the Applicant refers to the limited areas of garden around Chapel Court. He asks whether the Respondent should account for commission received from the insurers of the property.

3. In addition to these 10 items, the Applicant objects to paying an annual contribution towards the redecoration reserve (£8,000) and the contingency reserve (£8,500) on the ground that each reserve is “*a purely arbitrary figure which repeats yearly*”.
4. The Applicant requests a determination of the management fees payable which he says are “*wholly excessive given the level of service provided. Further the Respondent has been negligent and in breach of covenant regarding the repair of the communal meeting room.*” Details of how this repair was dealt with by the Respondent constitute most of the discussion in the papers provided by the parties.
5. Finally, the Applicant applies under section 20C of the Act on behalf of himself and all the other leaseholders at the Property for an order that the Respondent should not add its costs of this application to the leaseholders’ future service charges.
6. Pending this Tribunal’s determination the Applicant failed to pay his service charges as they became due. After the application was issued, the Respondent applied a £80 administration fee to the Applicant’s service charge account because of the arrears. The Applicant added a request that the Tribunal make a determination as to payability of this administration fee.

THE RESPONSE

7. The Respondent has not produced copy invoices or other documentation to justify the disputed service charges, instead relying on its argument that the Applicant has not provided any evidence to support his claim that the service charges are excessive. No comparable or alternative figures have been produced by Mr Driscoll.

THE LAW

8. Section 18(1) of the Act defines a service charge as "*an amount payable by a tenant of a dwelling as part of or in addition to the 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.....
(3) For this purpose –
(a) "costs" includes overheads....."
9. Section 19 of the Act limits service charges as follows:
"*(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."
10. Under section 27A(1) of the Act, the Tribunal may, on application, determine whether a service charge is payable, and, if it is, (among other things) the amount which is payable.
11. The burden of proof applicable to a section 27A application has been restated recently by the Upper Tribunal in *Assethold Ltd v Nelio Patricio Tezeira Franco [2022] UKUT 285 (LC)*. At paragraph 16 of Judge Elizabeth Cooke's judgment she explains "in service and administration charge cases...the leaseholder is not

entitled simply to put the landlord to proof that the charges are reasonable but must first say why they are unreasonable.”

THE LEASE

12. Clause 3(2) of the Applicant’s lease requires him to pay without deduction a proportion (currently agreed at one thirty fifth) of the “expenses and outgoings incurred” by the Respondent in complying with its obligations under the lease, including managing agents’ and other professional fees. There are the usual provisions enabling the Respondent to estimate and obtain payment in advance of the following year’s expenses.
13. Clause 3(7)(c) of the lease also enables the Respondent to recover from the Applicant “all costs charges and expenses which may be incurred by the Lessor or its Managing Agents in connection with the recovery of arrears of the service charge”.

INSPECTION

14. The Tribunal were shown round the interior common parts of Chapel Court by the Applicant in the presence of a representative of First Port. An inspection of the surrounding grounds was also made.
15. Chapel Court is situated in the centre of Filey, the building being surrounded by modest lawned and paved grounds with planted areas, and by a rear car park. The entrance leads into a communal sitting room with a small kitchen area attached. This is the only communal meeting space inside the building. There is a laundry and an interior waste disposal area.
16. Leaseholders at Chapel Court are required to be aged over 60, and any second occupier of a flat must be aged over 55. The Tribunal was told that a manager no longer lives at the property, but visits daily during the week from 10am to 2pm. The employment costs are given in the accounts as £18,367 to 31 August 2022 and £18,963 for the current year. There is also a monitoring service available by telephone.

17. With the agreement of the parties there was no hearing and the Tribunal's decision was made on the basis of the inspection and the documents supplied.

FINDINGS

18. The Applicant has not given sufficient grounds for disputing the 10 items listed at paragraph 2 above, to require the Respondent to justify them. None of them suggest to the Tribunal that the Applicant is being over-charged. While it is good practice to inform leaseholders of the financial arrangements between managing agents and insurers, there is no obligation to account for commissions where they are intended to fund the administration costs of insurance cover.
19. First Port are entitled to establish a sufficient fund to meet future decorating and repair costs. The auditor's note to the service charge account confirms that these funds are being held for that purpose in a designated Barclays Bank account.
20. The Tribunal has carefully considered the parties' explanations of the events between April and November 2022 when a leak occurred in the corner of the lounge ceiling, eventually worsening to the extent that it soaked the carpet and caused considerable damage. Until the cause was established and repair work was completed the lounge remained inaccessible to the leaseholders either partly or, for some months, entirely. The Tribunal notes that this will have had a major effect on the social activities of the leaseholders, and considers that the lounge area in this particular building is of considerable importance for the physical and mental health of the residents. A much greater effort should have been made to ensure that the communal lounge was made fully available to the residents as quickly as possible. This is considered to be a management failure. The management fees are already high (£494 per flat in 2022 and £523 per flat currently) especially in view of the additional salary paid to the part time manager. The management failure should be reflected in a substantial reduction in the Applicant's contribution to the managing agents' fee for the two service charge years affected by the disrepair in the lounge.

21. The lease requires the Applicant to pay service charges without deduction. Payment should not have been withheld pending this determination, and the administration fee is therefore payable.

22. Despite the Applicant's failure to justify a review of the majority of the service charge items, his challenge to the management fees has been successful and on this basis an order is made under section 20C of the Act.

Tribunal Judge A Davies

17 May 2023