FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BF/LSC/2022/0392**
Property	**:**	**Flats 1 – 4, 14 St James Road, Sutton, Surrey SM1 2TP**
Applicants	**:**	**Paul Basson (flat 2)** **Mr D Chinnaswamy and Mrs V Doraisanker (flat 1)** **Mr A and Mrs D Pitt (flat 3)** **Mr P Carter (flat 4)**
Representative	**:**	**Paul Basson**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Mr R Granby of Tanfield Chambers**
Type of application	**:**	**For the determination of the liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge H. Lumby** **Mr R Waterhouse FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**5 June 2023**
Date of decision	**:**	**20 June 2023**

DECISION

Description of hearing

This has been a face-to-face person hearing. The documents that we were referred to are in a bundle of 233 pages together with a supplementary bundle of 48 pages provided by the Respondent, the contents of both of which the tribunal have noted.

Decisions of the tribunal

(1) The tribunal determines that the following sums are payable by the leaseholders of the Property in respect of the 2021 service charge year:

a. Bin cleaning - £192.00

b. Common parts cleaning - £666.45

c. Front driveway works - £996.00

d. Fire door inspection - £397.63

e. Management fee - £1,176.00.

(2) The tribunal determines that the following sums are payable by the leaseholders of the Property in respect of the 2022 service charge year:

a. Bin cleaning - £172.80

b. Common parts cleaning - £681.24

c. Brickwork repair – no charge

d. Rubbish removal and investigation of missing bricks - £300.00

e. Moss and vegetation removal from rainwater goods - £500.00

f. Pathway works – no charge

g. Driveway paving stones repair - £900.00

h. Wall reinstatement - £2,183.00

i. Manhole cover and frame replacement - £810.00

j. External decorating - £20,829.60

k. Moss and vegetation removal from pathway - £900.00

l. Downpipe cleaning and some minor gutter repair – no charge

m. Window and door service – replace silicone etc - £810.00

n. Management fees - £1,190.40.

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that no more than 25% of the landlord's costs of the tribunal proceedings may be passed to the Applicants as lessees through any service charge.

(4) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Applicants that no more than 25% of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under the Applicants' Leases.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2021 and 2022. The total amount stated to be in dispute is £37,461.60.

The hearing

2. Mr Basson and Mr Carter appeared on behalf of the Applicants at the hearing. The Respondent was represented by Mr Granby of Counsel.

3. In addition to the bundle and supplemental bundle, a skeleton argument and two authorities were received in advance from the Respondent's representative. No witness statements were received.

4. The Respondent raised a question as to the identity of the Applicants on the basis that only Mr Basson has signed the application. Mr Carter attended the hearing and confirmed he was a party. Emails were received from the other tenants confirming their involvement. The tribunal were satisfied that these were, on balance, sufficient confirmations that they all formed part of the Applicants. In addition, and for the avoidance of doubt, on the basis of the confirmations given, the Tribunal exercises its power at Rule 10(1) of its Rules to add Mr D Chinnaswamy and Mrs V Doraisankar, Mr A and Mrs D Pitt and Mr P Carter as applicants.

The background

5. The Property is a detached 1930's built, pitched roof building, converted into four separate flats, numbered 1 to 4. The Applicants are all leaseholders of the Property with the reversion currently vested in the Respondent. The Property is managed by Eagerstates Limited on behalf of the Respondent; the managing agent is a related company of the Respondent.

6. Each of the leaseholders holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease of Flat 2 will be referred to below, where appropriate. It is understood that the leases are all in the same form.

7. The flats are held as follows:

   (a) Flat 1 – Mr Doraishankar Chinnaswamy and Mrs Vijayalakshmi Doraisankar

   (b) Flat 2 – Mr Paul Basson

   (c) Flat 3 - Mr Anthony Pitt and Mrs Anthony Pitt

   (d) Flat 4 – Mr Philip Carter

8. The leaseholders have applied to take over the management of the Property from the freeholder but this is not relevant to this case.

The issues

9. The parties had prior to the hearing each completed a Scott Schedule identifying the items in dispute. This identified the relevant issues for determination as follows:

   (ii) 2021

   a. Bin cleaning - £384.00

   b. Common parts cleaning - £666.45

   c. Front driveway works - £996.00

   d. Fire door inspection - £397.63

   e. Management fee - £1,176.00.

(iii) 2022

a. Bin cleaning - £1,094.40

b. Common parts cleaning - £681.24

c. Brickwork repair - £550.00

d. Rubbish removal and investigation of missing bricks - £600.00

e. Moss and vegetation removal from rainwater goods - £500.00

f. Pathway works - £780.00

g. Driveway paving stones repair - £900.00

h. Wall reinstatement - £2,183.00

i. Manhole cover and frame replacement - £810.00

j. External decorating - £22,344.48

k. Moss and vegetation removal from pathway - £900.00

l. Downpipe cleaning and some minor gutter repair - £498.00

m. Window and door service – replace silicone etc - £810.00

n. Management fees - £1,190.40

10. None of the issues had been conceded by either side ahead of the hearing. However, as it progressed and having received the relevant invoices, the Applicants agreed the quantums for the common parts cleaning, the fire door inspection and the management fee for 2021 (listed at (i) b., d. and e. in the paragraph above). It also agreed for 2022 the quantums for common parts cleaning, the manhole cover and frame replacement, the window and door service and the management fee (listed at (ii) b., i., m. and n. in the paragraph above). These have not been considered further in the reasons for the tribunal's decisions.

Tribunal analysis

11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the remaining issues as follows.

Lease provisions

12. The lease of Flat 2 is dated 7th December 1992 and is for a term of 99 years from 24th June 1992. The lease provides for interim and final service charge to be payable, calculated in accordance with the Fifth Schedule of the lease. Although the lease provides for a service charge year ending on 30th June, in practice the parties have worked to a service charge year ending on 31st December. This is not an issue in this case.

13. Clause 5(5) of the lease requires the landlord to comply with various covenants including:

"(a) To maintain and keep in good and substantial repair and condition

(i) the main structure of the Building including the principal internal timbers and the exterior walls and the foundations and the roof thereof with its main water tanks main drains gutters and rain water pipes (other than those included in this demise or in the case of any other flat in the Building or separately hereinafter referred to)

(ii) …

(iii) the boundary walls and fences of the Building (if any) insofar as these are not the responsibility of any other person or persons

(iv) all other parts of the Building not included in the foregoing sub-paragraphs (i) to (iv) and not included in this demise or the demise of any other flat or part of the Building

(b) As and when the Lessor shall deem necessary but at least once in every seven years to paint the whole of the outside wood iron and other parts of the Building heretofore or usually painted and grain and varnish such external parts as have been heretofore or are usually grained and varnished

(c) Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as may be necessary or advisable for the proper maintenance safety amenity or administration of the Building"

14. The Service Charge payable comprises the applicable percentage of the Total Expenditure; this is defined in the Fifth Schedule of the lease as:

"the total expenditure incurred by the Lessor in any Accounting Period in carrying out its obligations under Clause 5(5) of this Lease but excluding any payments under clause 5(5)(e)(ii) and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing (a) the cost of employing Managing Agents (b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable hereunder…"

15. These provisions allow for the landlord to charge for the items in dispute pursuant to the leases.

Law

16. It is clear from a reading of the relevant sections of the 1985 Act that the service charge provisions contained in a residential lease must be read subject to the effect of those sections. Section 18 of the 1985 Act defines "*relevant costs*" as including payments for services and management, and under section 19 of the 1985 Act "*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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard*".

17. Any service charge sum certified as payable under the Lease is therefore still subject to section 19 of the 1985 Act and is only payable to the extent that it has been reasonably incurred and the service in question is of a reasonable standard.

18. The Respondent has referred to two specific cases. First, the case of *Gell v 32 St John's Road (Eastbourne) Management Co Ltd* [2021] EWCA Civ 789; [2021] W.L.R. 6094 where it was held that is for the leaseholder to raise a prima facie case as to why the Service Charges in question are not payable. Secondly, the tribunal was referred to *ASP Independent Living Limited v Godfrey* [2021] UKUT 0213 (LC) where the Upper Tribunal (per HHJ Cooke) held at paragraph 7:

"It is well established that where a lessee seeks to challenge the reasonableness of a service charge they must put forward some evidence that the charges are unreasonable; they cannot simply put the landlord to proof of reasonableness."

2021 and 2022 Bin cleaning

19. The issue here relates to both 2021 and 2022. The Applicants are being charged for the regular cleaning of 12 bins; they argue that they are being cleaned unnecessarily, too often and there are issues to do with quality of workmanship and timing of works, the Applicants arguing for example that this was done on occasions when the bins were not empty; these last two issues were not evidenced.

    The Respondent argues that its responsibility to clean the Property extends to the bins and that this is therefore a legitimate expense, in accordance with clause 5(5)(1) of the leases. It contends that cleaning bins is in the ordinary course of housing management and so the costs are reasonably incurred.

    There was a question as to the numbers of bins, although the tribunal was satisfied that there were at least 12 (of varying sizes) from the photographic evidence provided.

20. The tribunal accepts the Respondent's argument that the landlord is entitled to charge for the cost of bin cleaning pursuant to the leases. There is insufficient evidence to question the quality of the workmanship. However, it does consider that cleaning monthly is disproportionate and unnecessary; costs for cleaning more frequently than once per year would not be reasonably incurred. The invoices for 2021 provide for one clean to cost £192 whilst in 2022 one cost £172.80.

21. The tribunal therefore determines that the amount payable in 2021 and 2022 in respect of bin cleaning is £192 and £172.80 respectively.

2021 Front driveway works

22. Photographic evidence of the work carried out was provided by the Respondent with the bundle. The Applicants argued that this shows no more than two damaged tiles. A large area was relaid and a tile at the front could be seen in a later photograph to have failed. There was no grouting between the tiles. Overall, therefore, whilst works were carried out, the cost was not reasonable.

    The Respondent referred the tribunal to the invoice for the works, as evidence of its cost. The area affected formed part of the common parts and the landlord was entitled to recover the cost of works to these. No comparable evidence had been provided on costs and the failed tile referred to was not part of the works anyway. The obligation was to replace on a like for like basis and this is what had been done.

23. The tribunal accepts that this is work for which the cost is recoverable. It finds that the works were done and replicated the quality of the existing.

Evidence of the amount due had been provided and without evidence that this was unreasonable, it had to accept this figure unless manifestly incorrect.

24. The tribunal therefore determines that the £996 charged in 2021 in respect of front driveway works is payable and reasonable.

2022 Brickwork repairs

25. This related to repairs to one crumbling brick. The Applicants argued that the cost of £550 is excessive for the work carried and a poor job was done. Photographic evidence was provided showing it smeared with mortar.

The Respondent argued that the work was recoverable pursuant to the lease and was reasonably incurred to prevent damp ingress to the building. The cost was clearly evidenced by the invoice. Whilst it was conceded it was not the tidiest job, it was necessary to address water penetration.

26. The tribunal accepts that this is work for which the cost is recoverable pursuant to the leases. However, it also considers that a poor job was done with the approach taken not being a suitable solution to the issue. The damaged bricks either side of the crumbling brick should be cut out and new bricks inserted to replace all the damaged ones. The solution adopted would in all likelihood cause problems later and damaged the wall more than simply doing nothing. As a result, the cost of the works was not reasonably incurred and was not to a reasonable standard as a full and more extensive repair would be needed in the future.

27. The tribunal therefore determines that no part of the cost of the brick work repairs incurred in 2022 is payable.

2022 Rubbish removal and investigation of missing bricks

28. The Applicants question what exactly the work related to and the quality of it. An invoice has now been provided by the Respondent and the works appear to relate to the removal of some breeze blocks on top of the front wall. The removed rubble was dumped nearby not properly removed. A photograph of this was provided with the bundle. In addition, there were repair works to the wall, which can be seen from a photograph to be of poor quality.

The Respondent argued that the work was recoverable pursuant to the lease and was reasonably incurred to remove rubbish from the site. The landlord had the choice whether to repair or replace the wall and it choose to carry out repairs. The invoice has been provided and no comparable cost has been provided.

29. The tribunal finds that the works were carried out and are works for which the cost is recoverable pursuant to the lease. However, it also considers that a poor job was done with the rubbish simply dumped nearby and the repair work to the wall being of low quality. It therefore finds the works were not done to a reasonable standard and therefore should be discounted by 50%.

30. The tribunal therefore determines that £300 is payable in 2022 in respect of rubbish removal and investigation of missing bricks.

2022 Moss and vegetation removal of rainwater goods

31. Two amounts were charged for this in 2022, £500 and £498. The Applicants argued that this was an excessive level of works, as it was not to remedy any defect, merely carrying out checks.

The Respondent argues that this was a seasonal check, with the first being at the start of the year and the second at the end. The first could have been charged in the previous year as there was no equivalent charge in 2021.

32. The tribunal finds that the works were carried out and are works for which the cost is recoverable pursuant to the lease. However, it considers that doing a yearly check is excessive and so the second set of works (for which £498 was charged) were not reasonably incurred and so are not recoverable.

33. The tribunal therefore determines that £500 is payable in 2022 in respect of moss and vegetation removal of rainwater goods and that the further £498 charged in respect of downpipe cleaning and some minor gutter repair is not payable.

Pathway works

34. The Applicants contend that they are not aware of what works these relate to. The invoice provided (from BML Group Limited) is dated 8th February 2022 (page 173 of the bundle) and refers to "carried out pathways works as per quote and spec requested". The next page shows photographs but no work is identifiable from these. There is then an invoice on page 175 from Superior Facilities Maintenance stating "uneven paving stones were observed on the driveway and pathway: A competent contractor should be instructed to repair the paving stone". This suggests that the work was not done or not done properly.

The Respondent was not able to provide assistance as to what works had been done and agreed that the Superior Facilities Maintenance invoice was unhelpful. It did refer to the invoice though as evidence of work and

expressed the view that it was not for the landlord to evidence all works done.

35. The tribunal finds, based on the evidence before and on the balance of probabilities, that the works referred to in the BML Group invoice (charged at £780) were not carried out and so no amount is payable in respect of this.

36. The tribunal therefore determines that no part of the cost of the pathway works incurred in 2022 is payable.

2022 Driveway Paving Stones Repair

37. The Applicants questioned whether these works had been deliberately separated from other works to avoid the need for consultation. They argued that the quality of the work was poor without any effective levelling off, that there was no evidence as to what work was actually required and contended (without any supporting evidence) that the works should have cost a maximum of £300 (they cost £900).

The Respondent referred to the invoice as evidence that the works had been done, as well as the photographs in the bundle showing this work being done (page 176 to 183 of the bundle). The quality was appropriate for a repair by reference to the existing quality. Although the wording of the invoice suggested that it was merely an inspection, it was clear that the works had been carried out.

38. The tribunal accepts that this is work for which the cost is recoverable. It finds that the works were done and replicated the quality of the existing. There is nothing to suggest that it was carried out in a way to avoid the consultation requirements. Evidence of the amount due had been provided and without evidence that this was unreasonable, it had to accept this figure unless manifestly incorrect.

39. The tribunal therefore determines that £900 is payable in 2022 in respect of driveway paving stones repair.

2022 Wall reinstatement

40. There are two elements to the dispute on these works, the cost of the works themselves and the 15% management fee charged by Eagerstates in relation to it. Mr Carter explained that the works were to the front wall, which was leaning; the contractor removed the wall and then reinstated it in a bed of concrete, this time upright. The Applicants questioned the cost of this (the contractor has charged £1,850 including VAT for the work). They also questioned the management fee, saying that Eagerstates should have done more for their money. No evidence as an appropriate cost was provided.

The Respondent argued that these costs were chargeable under the leases and no evidence had been provided to challenge either the contractor fee or the management fee. Another quotation had been obtained which was far higher (£11,760 including VAT from Entremark) and the works had been consulted on. This was felt to be a cost effective solution.

41. The tribunal accepts that this is work for which the cost is recoverable. It finds that the works were done and the outcome is satisfactory. There is nothing to suggest that it was carried out in a way to avoid the consultation requirements. Evidence of the amount due had been provided and without evidence that this was unreasonable, it had to accept this figure unless manifestly incorrect. The costs of the works is therefore fully recoverable. In addition, a 15% management fee is within the range of acceptable fees and so is also recoverable in full.

42. The tribunal therefore determines that £2,183 is payable in 2022 in respect of wall reinstatement.

2022 External decorating

43. The Scott Schedule shows that the amount in dispute is £22,344.48. However, the invoice for the decoration (from Entremark) has been provided and the Applicants accept that this is payable in full. The only issue in dispute is the Eagerstates management fee, which has been charged at 20% of the cost of the works. The Applicants accepted the 10% management fee that was referred to in the consultation but do not accept that an additional 10% should be payable without explanation.

The Respondent has not addressed this in the Scott Schedule, simply referring to the invoice for the contractor. It argues that 20% is within the range of reasonable fees but has not provided any justification for the increase from the figure quoted in the consultation or denied the Applicants' objection to it.

44. The tribunal accepts that this is all work that is recoverable, including the management fee. There is no objection to the amount paid to the contractor and so this is all recoverable (amounting to £18,936). The Respondent has not questioned the Applicants' objection to the additional 10% nor has any justification been provided for the increase from the level quoted in the consultation. The tribunal therefore finds that the management fee should be limited to the level referred to at the consultation, being 10%. The fee should therefore be £1,893.60 (including VAT) not the £3,408.48 actually charged.

45. The tribunal therefore determines that £20,829.60 in 2022 is payable in 2022 in respect of external decorating.

2022 Moss and vegetation removal from pathway

46. The Applicants argue that the cost of these works is far too high, especially as there was no replacement of jointing compound as part of the works. However, no comparator was provided to show what the cost should be.

The Respondent refers to the photographs at pages 208 to 210 of the bundle showing the work done. The invoice shows the amount incurred. It is recoverable under the lease, was reasonably incurred to keep the vegetation and the works were to a reasonable standard. The full £900 charged should therefore be recoverable.

47. The tribunal accepts that this is work for which the cost is recoverable. It finds that the works were done and it was reasonable to remove the vegetation. Evidence of the amount due had been provided and without evidence that this was unreasonable, it had to accept this figure unless manifestly incorrect.

48. The tribunal therefore determines that £900 in 2022 is payable in respect of moss and vegetation removal from the pathway.

Applications under s.20C and paragraph 5A

49. The Applicants has applied for cost orders under section 20C of the Landlord and Tenant Act 1985 ("**Section 20C**") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**").

50. The relevant part of Section 20C reads as follows:-

(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant…".

51. The relevant part of Paragraph 5A reads as follows:-

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

52. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge of the Applicants or other parties who have been joined. A Paragraph 5A

application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be charged direct to the Applicants as an administration charge under the Lease.

53. In this case, whilst much has been conceded by the Applicants, this is only as a result of the late production of invoices. Earlier engagement by the Respondent and its managing agents could well have avoided the need for this case to be brought to the tribunal. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The tribunal therefore make an order in favour of the Applicants that no more than 25% of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.

54. For the same reasons as stated above in relation to the Section 20C cost application, the Applicants should not have to pay more than 25% of the Respondent's costs in opposing the application. The tribunal therefore makes an order in favour of the Applicants that, to the extent that the same are chargeable as administration charges pursuant to the lease, no more than 25% of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under the Lease.

Name: Judge H Lumby **Date:** 20 June 2023

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).