



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

Case reference : **LON/00AR/LSC/2022/0162**

HMCTS Code : **V: CVPREMOTE**

Property : **Verve Apartments, Mercury Gardens,
Romford, Essex, RM1 3FD**

Applicants : **Alexander Stilwell (Flat 37)
Michael Televantou & Nicollette Kabat
(Flat 12)
Folusho Falegan (Flat 19)
Samantha Burke (Flat 44)
Hafed Burgess (Flat 51)
Eugeniu Ciobanu (Flat 56)
Duc Duong (Flat 60)
Victoria Pocsi (Flat 63)
Christopher Webb (Flat 67)
Kyle-James Condon (Flat 82)
Janita Haley (Flat 90)**

Representative : **Alexander Stilwell**

Respondent : **Smith Homes 6 Limited**

Representative : **Gisby Harrison Solicitors (Louise
Prentice)**

Type of application : **Determination of liability and
reasonableness of service charges-
Section 27A Landlord and Tenant Act
1985**

Tribunal : **Judge Robert Latham**

**Date of Venue of
Hearing** : **19 July 2023 at
10 Alfred Place, WC1E 7LR**

Date of Decision : **25 July 2023**

DECISION

Summary of Decision

On 16 May 2022, the Applicants issued an application seeking a determination of their liability to pay and the reasonableness of service charges. On 21 December 2022, the Tribunal issued an Interim Decision. A Case Management Hearing ("CMH") was held this morning to identify any outstanding issues that need to be determined.

The Tribunal has concluded that all issues raised in the application have now been determined. Looking to the future, it may be open to the Respondent to (i) invoice the leaseholders for the cost of supplying electricity to their flats pursuant to paragraph 6 of Schedule 4 of their leases; (ii) adjust the service charge accounts to accurately record the cost of the communal electricity supply. Should any lessee seek to challenge these charges, it will be necessary for them to issue a fresh application.

Attendance at the Case Management Hearing

1. Mr Alexander Stilwel appeared on behalf of the eleven leaseholders who are parties to this application. He is the lessee of 37 Verve Apartments. He is a software programmer.
2. Ms Lousie Prentice, a solicitor advocate for Gisby Harrison Solicitors, appeared for the Respondent. She was accompanied by Ms Carly Smith (the sole director of the Respondent company) and Mr Neil Mickleburgh (the Respondent's accountant). Two representatives attended from Warwick Estates, the managing agents: Mr Robert Goodge (the former property manager) and Ms Caroline Robertson (the current property manager).

Verve Apartments

3. Verve Apartments is a mixture of studio, one bedroom and two bedroom flats in an office conversion. Phase one, which was completed at the end of 2016, consists of 90 flats on the lower ground, upper ground floor, first and second floor. It was always intended that there should be an individual supply of electricity to each flat. However, separate meters were only provided for the individual flats in March 2021.
4. The second phase of the development consisted of three additional floors which contain 47 flats, 22 of which are described as "penthouses".

The Lease

5. The Tribunal has been provided with a copy of the lease for 37 Verve Apartments. The Respondent granted Mr Stilwell a term of 125 years from 1 January 2016. The lease is undated, but Mr Stilwell's interest was registered with the Land Registry on 23 January 2017.
6. The "Building" is defined as "the land and building known as 24-30 Western Road Romford registered at HM Land Registry with title number BGL121995 shown edged in red on the Plan under 'location

plan". The development had not been completed when the lease was granted.

7. The "Service Charge Year" was initially the calendar year. However, the lease gives the landlord the discretion to change this date. Since 2018, the landlord has operated a service charge year which runs from 25 March to 24 March. The tenant's contribution towards the service charge is defined as "a fair and reasonable proportion determined by the Landlord of the Service Costs". The landlord has elected to divide the service charge equally between the leaseholders. These were divided between the 90 leaseholders of Phase 1. Since 25 March 2020, these have been divided between 137 leaseholders.

8. The tenant's covenants are specified in Schedule 4. The tenant covenants:

"6.1 To pay all costs in connection with the supply and removal of electricity gas water sewage telecommunications data and other services and utilities to or from the Property.

6.2 To comply with all laws and with any recommendations of the relevant suppliers relating to the use of those services and utilities and the Service Media at or serving the Property."

9. Schedule 6 provides for the landlord's covenants. The following provisions are relevant:

"4.2 Before or as soon as possible after the start of each Service Charge Year the Landlord shall prepare and send the Tenant an estimate of the Service Costs for that Service Charge Year and a statement of the estimated Service Charge for that Service Charge Year.

4.3 As soon as reasonably practicable after the end of each Service Charge Year the Landlord shall prepare and send to the Tenant a certificate showing the Service Costs and the Service Charge for that Service Charge Year. The certificate shall be in accordance with the service charge accounts prepared and audited by the Landlord's independent accountants.

4.4 To keep accounts records and receipts relating to the Service Costs incurred by the Landlord and to permit the Tenant on giving at least one week's notice to inspect the accounts records and receipts by appointment with the Landlord (or its accountants or managing agents).

4.5 If any cost is omitted from the calculation of the Service Charge in any Service Charge Year the Landlord shall be entitled to include it in the estimate and certificate of the Service Charge in any following Service Charge Year. Otherwise and except in the case of manifest error the Service Charge certificate shall be conclusive as to all matters of fact to which it refers."

10. Schedule 7 provided for the Services and Service Costs. The services include the lighting and heating of the common parts, maintaining lifts and providing fire prevention facilities.

The Application

11. On 16 May 2022, the Applicants issued their application. They challenge the following service charges:

- (i) Electricity costs charged in the service charge accounts for 2019/2020 and 2021/22, being £204,917 and £176,706 respectively; and

- (ii) The £34,000 costs of proposed fire prevention maintenance and fire safety upgrading works, budgeted for in 2022-2023 (which works were said to be designed to ensure safety over the recently constructed upper floors of the building).

12. On 24 May 2022, the Tribunal issued Directions. On 21 October 2022, the Respondent's Solicitor wrote to the Tribunal in these terms:

“In light of the recent implementation and the effect of the Building Safety Act 2022, the Respondent wishes to concede the application in relation to the fire safety works. The Respondent agrees that the challenged costs, including the electricity costs, are not recoverable under the service charge. As there are no further issues that remain in dispute, we would be grateful if the tribunal would make a paper determination on this matter and vacate the in person hearing due to take place next week.”

13. On 5 December 2022, Judge Powell held a CMH. He decided to issue this Interim Decision on the papers dealing with the fire safety costs and electricity costs as claimed in the general service charge, together with the parties' respective claims for costs incurred to date and the refund of Tribunal fees, and claims for orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act. He decided to leave consideration of any ongoing challenges to individual electricity charges, which were being calculated and had yet to be demanded, until after a further CMH fixed for 6 February 2023.

The Interim Decision

14. On 21 December 2022, Judge Powell made the following determinations:

- (i) The amounts charged by the Respondent for the costs of electricity in 2019/20 and in 2020/21 are not payable by leaseholders. Judge Powell was satisfied that the electricity supplied to individual flats could not be charged as a communal service charge under Schedule 7 of the lease. It was rather a matter to be charged to the individual leaseholders under paragraph 6.1 of Schedule 4. Whilst it would have been open to the landlord to charge the electricity costs relating to the common parts (the supply to lights, lifts and other communal facilities), to the service charge account, this sum had not been computed.

(ii) The amounts proposed to be charged by the Respondent for the costs of fire safety works in the 2022-2023 budget are not payable by leaseholders.

(iii) The lease did not permit the recovery of the Respondent's legal costs of dealing with the application through the service charge and the proposed costs would not be payable by the Applicants, if demanded.

(iv) Insofar as may be necessary, orders were made under section 20C of the Landlord and Tenant Act 1985 and under 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(v) The Respondent was ordered to refund to the Applicants the £300 paid for Tribunal fees within 28 days of the date of this Decision.

Outstanding Issues

15. It may be possible for the landlord to recover the costs of electricity through two routes:

(i) Invoicing the leaseholders in respect of the cost of the supply to their individual flats;

(ii) Charging to the communal service charge account, the cost of the supply to the common parts.

16. On 5 December 2022, Judge Powell gave Directions in respect of these outstanding issues:

(i) By 13 January 2023, the Respondent agreed to issue invoices to the individual leaseholders relating to the consumption of electricity by the individual flats. Where possible, the landlord would use exact meter readings from the "check meters" and/or have regard to the actual use made by leaseholders. The bills would clearly indicate if they are based on actual readings (stating what the readings are), or on estimated consumption (explaining how the estimates were arrived at), or a combination of both.

(ii) The Respondent would send the Tribunal copies of the (adjusted) accounts for 2019/20, 2020/21 and 2021/22 and the (adjusted) budget for 2022/23. These should be adjusted to include the cost of the supply to the common parts.

A further CMH was fixed for 6 February 2023.

17. On 6 February, Judge Powell conducted the further CMH and considered the two outstanding issues:

(i) Whilst the Respondent had issued the leaseholders with "proposed" invoices "for further consideration, no formal demands had been issued.

(ii) No adjusted accounts had been prepared. The Respondent planned to install a new communal electricity meter to record future communal

consumption. After three months, records from the new meter would be averaged and used to calculate past communal consumption (adjusting the figures on a square footage basis to reflect the fact that new flats have been added to the building).

18. The Respondent sought an adjournment of four months to complete the steps for which provision had been made in the previous directions. Mr Stilwell did not oppose the application. A further CMH was fixed for 19 July 2023. In the interim, the determination of the outstanding issues was stayed.

The Case Management Hearing

19. Ms Prentice applied for a further stay of six months to complete the steps for which provision had been made in the Directions made on 5 December 2023. Ms Prentice stated that a new meter was required in respect of the communal electricity supply. Before this could be installed, a new panel was required. Works were to commence on 24 July, but the parts would not be available until after 2 August. The new meter would be installed in 4-6 weeks. The Respondent intended to take readings for six months before estimating the cost of the communal electricity supply for the years 2016 to 2023.
20. The Tribunal was not willing to entertain a further adjournment. The lease requires the landlord to produce service charge accounts "as soon as reasonably practicable" at the end of each service charge year, namely 24 March. The current position is that the Respondent accepts that the service charge accounts for 2019/20 and 2020/21 need to be revised in the light of the Tribunal's Interim Decision. Revised accounts have not been prepared. No service charge accounts have been prepared for 2021/22, and 2022/23. This is not acceptable. The tenants have paid interim service charges based on sums that the Tribunal has found not to be payable. On 6 February 2023, the Tribunal only stayed the outstanding proceedings. It did not stay the implementation of its Interim Decision. **The Respondent agreed to supply the leaseholds with final accounts for these years by 29 September 2023.** The landlord will need to determine what provision to be included for the cost of the communal electricity supply. If any leaseholder considers that this sum is either not payable, or is unreasonable, it will be open to them to issue a further application to this tribunal. Ms Smith stated that the Respondent would bear the cost of installing the new meter.
21. Mr Mickleburgh stated that the Respondent was in the process of finalising the invoices to be issued to the leaseholders in respect of the supply of electricity to their individual flats. The methodology that was to be adopted was set out in a letter which he had sent to Ms Smith, dated 12 July 2023. This was based on a sample of meter readings taken from seven flats. **The Respondent agreed to supply the leaseholders with invoices for their individual supply by 31 July 2023.** The Respondent will provide an explanation as to how the charge has been computed. The Respondent stated that it would be willing to consider

any representations from any leaseholder and review the sum demanded. It was accepted that these would be final demands and that if a charge were to be reduced for one leaseholder, the shortfall could not be met from other leaseholders. If, after this review process, any leaseholder considers that this sum is either not payable, or is unreasonable, it will be open to them to issue a further application to this tribunal. There could not be a "lead" applicant, as any challenge is likely to depend upon the individual circumstances of the leaseholder. A number of different leaseholders could make a joint application, but they would have to plead the facts relevant to their individual cases.

22. The Tribunal inquired how the sums included in for electricity in the service charge accounts for 2019/20 (£204,917) and 2021/22 (£176,706) had been charged to the leaseholders. Mr Mickleburgh stated that there had been a deficit of £170,851 for 2019/20. This had been apportioned equally between the 90 leaseholders under Phase 1, namely £1,898.33 per leaseholder. On 8 March 2022, Warwick Management had issued an invoice for this balancing charge. This deficit related to the sum of £204,917 charged for electricity (£2,276.86 per leaseholder). Judge Powell had found that this sum was not payable. The Respondent accepted that the Applicants were entitled to a credit in respect of this sum.
23. Mr Mickleburgh stated that there had been a deficit of £111,867 for 2020/21. This would be charged equally to all the Phase 1 and 2 leaseholders (a total of 137). However, no demands had been issued. In the light of Judge Powell's decision, lessees will now be entitled to a credit. A sum of £34,000 for "fire equipment and maintenance" appeared in the budget for 2022/23. Judge Powell has found that this sum was not payable. The final accounts for 2022/23 have not yet been prepared. Any expenditure relating to this, should not appear in the final accounts.

Conclusions

24. The Tribunal is satisfied that all matters raised by the Applicants in their application, dated 16 May 2022, have now been determined. The Tribunal will close its file. Whilst it would be open to any leaseholder to challenge either the payability or reasonableness of either (i) the communal electricity charge; or (ii) their individual electricity charge, for which they may be invoiced, this should be challenged by a fresh application to this tribunal. The cost of the communal electricity supply is likely to be modest. The reasonableness of the sum charged for the individual electricity will depend upon the personal circumstances of the leaseholder. This case is yet a further cautionary lesson that any landlord and their managing agent must have due regard to the terms of the lease in managing residential accommodation.

Judge Robert Latham
25 July 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.