FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/45UE/LSC/2023/0010**
Property	**:**	**Wilbury House,Church Street, Crawley, RH117BG**
Applicants	**:**	**Matthew Magee** **Dash Ganeson** **James Thompson** **T. Rajap**
Respondent	**:**	**Bowlwonder Limited**
Type of Application	**:**	**Determination as to payability and reasonableness of service charges – s.27A Landlord and Tenant Act 1985**
Tribunal Member	**:**	**Judge Shepherd** **Michael Ayres FRICS** **Jayam Dalal**
Venue of Hearing	**:**	**On line**
Date of Decision	**:**	**10th August 2023**

DECISION

---

1. In this case the Applicants, Matthew Magee, Dash Ganeson, James Thompson and T. Rajap ("The Applicants") are seeking a determination pursuant to s.27A Landlord and Tenant Act 1985. The Applicants are leaseholders of flats at Wilbury House, Church Street, Crawley West Sussex, RH117BG ("The premises"). The freeholders of the premises are Bowlwonder Limited ("The Respondents").

2. The premises consist of a small purpose built block of flats with four flats in total. The service charges challenged by the Applicants were incurred in 2022 and relate to essential works carried out to rectify issues with the electrical earthing system of the building. The cost of the works was £1285 plus VAT. Initially there was also a challenge to proposed expenditure on fire alarm systems but the case was narrowed down at a previous case management hearing.

3. It was common ground between the parties that electrical works carried out during the construction of the premises were inadequate and the earth bonding was left in a dangerous condition. The Applicants argue that the cost of making the premises safe should be borne by the Respondents and not by them. They say that the cost of the works should be met through the Respondents' insurance policy.

4. The premises were built in 2015 and thereafter converted into flats. In October 2020 one of the Applicants Mr Magee acquired JDS Catering Limited which owns the leasehold of one of the flats. Mr Magee wanted to let the flat out but as is normal arranged for electrical tests to be carried out beforehand. The test failed because there were significant issues with the electrical system in the flat and over the entire building. The Respondents' management

company arranged for the electrical system to be inspected by UK Power Networks. The earthing system was found to be unsafe and rectification works were carried out. It was found that the original electrical works had been defective. It is therefore suspected by the Applicants that safety certificates may have been falsified although there was no conclusive evidence of this. The original contractors could not be contacted.

5. A letter from SRS Electrical Innovations Limited to Matthew Magee dated 28th January 2022 states that the installation in his flat was potentially dangerous as the earth connection was non - compliant for its purpose. This potentially affected the whole building.

6. An email from Geraldine Martin to the leaseholders dated 24th February 2022 states that UKPN had discovered that there was no Protective Multiple Earthing. The developer should have installed an independent local earth and RCD protection to comply with BS 7671 but had not done so.

The relevant lease terms

7. The sample lease provided contains the following clauses:

The service charge expenditure

1. *The expenditure (in this schedule described as "the service charge expenditure" expenditure) means expenditure ….(3) in the provision of service facilities amenities improvements and other works where the management company in its or the landlord in the Landlord's absolute discretion from time to time considers the provision to be for the general benefit of the estate and the tenants*

of the flats and whether or not the Landlord or the Management Company has covenanted to make the provision.

8. In addition at Clause 8.7.1 the management company covenants to keep the estate including fixtures and fitting insured against losses.

The hearing

9. The leaseholders were represented by Sam Magee the son of Matthew Magee and Stephen Clancy represented the Respondents. Mr Magee went through the background to the case as summarized above. He accepted that the definition of service charge expenditure was wide enough to cover the electrical safety works but argued that it was not reasonable to seek to recover the cost from the leaseholders when the works were the consequence of mistakes made by the developer. He repeated his submissions that the works should have been covered by the insurance policy.

10. Mr Clancy said the works would not be covered by the insurance policy because the works were not remedial works. The earthing issue had to be addressed and the lease provisions allowed the sums to be recovered from the leaseholders.

Determination

11. It is a sad fact that neither party in this case were aware of the defect in the building. It was clearly a significant defect which had to be addressed immediately. The Respondents acted prudently in this regard and the costs were reasonably incurred. The lease terms were wide enough to allow recovery from the leaseholders and in our view it was reasonable for those sums to be

recovered in these circumstances. The sums could not be recovered from the insurance policy according to Mr Clancy and we accept that.

12. It does not appear that there was any consultation carried out under s.20 Landlord and Tenant Act 1985 (probably due to the urgency of the work) neither was any dispensation sought accordingly as things stand the Respondents can only recover £250 per leaseholder for the work.

13. The Tribunal will exercise its discretion under s.20C Landlord and Tenant Act 1985 preventing the Respondents from recovering any costs of these proceedings via the service charge. The Applicants did not win the day but the application was well made and Sam Magee can be applauded for his preparation and presentation.

Judge Shepherd

10th August 2023

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.