



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

Case reference : **LON/OOAQ/LSC/2023/0031**

Property : **Brooksbury House,2 Blackbrook Lane,
BR28AY**

Applicant : **Eileen McGovern
Frederick Wallis
Louise King
Ben Coles
Satyajeet Roy
Sukanya Roy
Kim Moore
David Jenkinson**

Representative : **In person**

Respondents : **Assethold Ltd**

Representative : **N/A**

Type of application : **Determination of payability and
reasonableness of service charges pursuant
to s27A LTA 1985**

Tribunal : **Judge Shepherd
Marina Krisko FRICS**

Date of Decision : **21st August 2023**

Decision

1. This case was heard on the papers on 21st August 2023 . The Tribunal is grateful to the Lessees (The Applicants) for preparing the bundle and Scott Schedule. The Respondents failed to take any active part in the proceedings as they were debarred from taking part.
2. The Applicants are all leaseholders at Brooksbury House,2 Blackbrook Lane, BR28AY (“The premises”). The premises were built about 2017. They consist of a detached brick purpose built small block of six flats . The premises are located on a corner plot with a block paved car park for six cars in front, edged by hedges, and a small paved and grassed area to rear. Timber panel fencing surrounds the rear garden. The building comprises a ground floor, first floor and second floor. The main roof is pitched with a tile covering and some velux windows. There appears to be a flat roof area to the rear. There is a wide narrow pitched roof over the front door.
3. The issues between the parties were helpfully summarized by the Applicants in a Scott schedule. Service charges were challenged for the period 2020- 2022 – which covers the period that the Respondents have owned the freehold. The Respondents use managing agents Eagerstates. The Respondents chose not to properly engage with these proceedings.
4. Judge Martynski made an order on 11th April 2023 warning the Respondents that they would be debarred from taking any part in the proceedings if they failed to attend the Case Management Hearing listed on 17th April 2023. The Respondents failed to attend and were therefore debarred. They sought permission to appeal the debarring order which was refused by Judge Shepherd on 24th April 2023. On 9th May 2023 the Respondents sought to have a second bite of the cherry by applying to be reinstated under Rule 9(5) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. This application has no merit. It contains no grounds other than claiming it is in the interests of justice to allow the Respondents to take part. In any event as I have

indicated permission to appeal had already been refused. Accordingly, the Respondents' application dated 9th May 2023 is dismissed.

5. The Applicants obtained the Right to Manage in January 2023. Their application to the Tribunal was limited to the period between 2020-2022 and there was no application to amend this although the Applicants included items after December 2022 in their Scott Schedule. These are estimates and in light of the RTM commencement they are largely superfluous. Accordingly, this decision deals solely with the period 2020-2022.

The relevant law

6. The law applicable in the present case was limited. It was essentially a challenge to the reasonableness of the costs. There was no challenge in relation to payability under the lease, an alleged failure to consult or limitation.
7. The Landlord and Tenant Act 1985, s.19 states the following:

19.— Limitation of service charges: reasonableness.

(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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant

costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

....

8. The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

27A Liability to pay service charges: jurisdiction

(1) An application may be made to [the appropriate tribunal]² for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to [the appropriate tribunal]² for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on [the appropriate tribunal]² in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Determination

9. Taking each of the issues in the Scott Schedule in turn:

Year ending Dec 2020

Insurance and brokers fee - £2119.76

There were no comparable costs put forward by the Applicants. We consider the costs to be reasonably incurred.

Additional insurance costs - £113.02

This sum is relatively small and we consider it is reasonably incurred.

Surveyor to prepare insurance reinstatement -£1380

This is a necessary cost and it is reasonably incurred. It is good practice to revalue the building reinstatement value when acquiring a property.

Common parts cleaning - £1472,40

Although an increase on the previous year the costs are reasonable. The Applicants provided no comparables.

Gardening - £1224

Although the garden areas are limited they include a paved area which would need to be weeded and a grass area at the rear. The costs are reasonably incurred.

Window cleaning - £480

The Tribunal accepts that the pandemic affected the amount of visits. No invoices were evident. We allow £60.

Fire tests - £216

Quarterly fire tests are excessive. We allow £108.

Fire H&S services 6 monthly - £481.80

There is no explanation or basis for this charge particularly when here are already fire safety tests every quarter. The sums are disallowed.

Installation of coded keysafe - £483.17

Notice was not required for this cost and it is considered a prudent measure. This sum is allowed in full.

Bin hire - £122.93

This sum is reasonable.

Surveyor to prepare planned maintenance schedule - £690

This is a prudent measure even in new buildings. The sums are reasonably incurred.

Year ending December 2021

Common parts electricity - £569.99

The costs appear excessive. The bills are all based on estimated charges. We will allow £285

Window cleaning - £528

We note the issues raised by the Applicants in their witness statement but still consider the sums reasonably incurred.

Fire alarm etc tests

Monthly tests are excessive. We will allow £134.56.

Fire H and S services 6 monthly - £552.60

Again these tests are excessive in frequency. We will allow £276

Leak investigation - £240

It is unclear what this charge was for and no invoice in evidence. The sum is disallowed.

H&S report - £483

This sum is disallowed. It appears excessive and no report was provided.

Adjustment of electric cupboard doors - £540

This cost appears excessive. We allow £200.

Maintenance works section 20 - £2340.65

This sum is disallowed as it appears to relate to duplicate works – see “Roof vent works” below.

Plumber with CCTV investigate leak - £450

It is not clear why this was necessary in a new building. The sum is disallowed.

Fire risk assessment - £432

Its not clear why this was necessary in a new building. The sum is disallowed.

Replacement of lock with FB lock- £195.

This cost is reasonable and is allowed.

Fire door inspection - £596.80

This was not necessary in a new building. We will allow £400.

EICR report and remedial works - £1587

This sum is excessive. The report was not provided. We allow £816

Drain excavation - £1464

There is no apparent basis for such an excavation in a new building. We allow £ 600

Drain cleaning - £178.50

There is no basis for this charge in a new property. The sum is disallowed.

Bin cleaning - £177.60

We note the comments in the Applicants' statement but the Respondents have been invoiced for the work and the sum is reasonable. It is allowed in full.

Year ending Dec 2022

Building Insurance- £3913.64

The cost is high but there are no comparables provided. The cost is allowed in full.

CP Electricity - £847.69

The electricity bills are all estimated. The sum appears excessive. We allow £500

Garden maintenance - £1326.72

This sum is allowed in full.

Window cleaning - £360

This sum is allowed in full.

Bin Cleaning - £417.36

The sum appears excessive. We will allow £250

Fire H&S tests - £1920.77

Monthly tests are excessive. We allow £320

Fire door inspection - £224.20

The need for this in a new building is questionable. We allow £99.46

Manhole cover frame - £690

This cost is excessive for the work involved. We allow £528

Engineer to inspect pipe with CCTV - £816

It is unclear why this was carried out. It is disallowed.

Post leak repairs - £1164

The repairs carried out were within a flat and not in the common areas. The sums should have been recovered from the individual lessee. The sum is disallowed.

Fire boarding in ground floor cupboard - £990

This cost is reasonable and is allowed in full.

Gutter cleaning - £288

This sum is reasonable and is allowed in full.

Supply and fit fence posts - £780

Fence panel replacement - £990

These two items should have been accounted together making a total of £1770. If no consultation was carried out the amount recoverable is only £1500 and this is the sum allowed as it is a reasonable sum.

Roof vent works - £4318.80

The invoices in the bundle appear to relate to this work. The sums appear reasonable and are allowed in full. The s.20 process is not challenged.

Surveyor to prepare insurance reinstatement- £690

This task was carried out in 2020. Its not clear why it was needed again. The sum is disallowed in full.

Smell in utility cupboards - £354

A tenant reported the smell and it was investigated and diagnosed. The cost is reasonable.

Electrical standard audit- £1488

Its not clear why this was needed in a new building. The sum is disallowed in full.

Cleaning pathways etc - £850

There is an invoice for this work but the cost appears excessive for the work involved. We will allow £425.

Cleaning stone cills- £700

The cost of the work appears excessive. We will allow £350.

Roof inspection - £1250

It is not clear why an inspection was necessary or if it was done. The sum is disallowed.

Urgent electrical works- £999

These works are evidenced by an invoice. They are allowed in full.

Checking timber fence- £1100

The cost is unjustifiable and is disallowed in full.

Intercom system works - £475

This sum is allowed as reasonable.

s.20C Landlord and Tenant Act 1985

The Tribunal will exercise its discretion and make an order under s.20C preventing the Respondents from claiming their legal fees through the service charge. The Applicants' challenge was validly brought and they won on a number of challenges. The Respondents are also ordered to reimburse the Applicants with their application and hearing fees totalling £300.

Judge Shepherd

22nd August 2023

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.