FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/16UG/LSC/2023/0021**
Property	**:**	**SEDGWICK HOUSE, KENDAL**
Applicants	**:**	**DUNCAN PARKES and ALLISON PARKES**
Respondent	**:**	**SEDGWICK HOUSE MANAGEMENT COMPANY (1993) LIMITED**
Type of Application	**:**	**Application for determination of service charges under sections 27A**
Tribunal Members	**:**	**Tribunal Judge A M Davies** **Tribunal Member J Faulkner, FRICS**
Date of Decision	**:**	**26 October 2023**
Date of Determination	**:**	**1 November 2023**

DECISION

The Applicants' service charges relating to the lift at Sedgwick House for the years ending 31 July 2017 – 2023 are payable in accordance with the accounts issued by the Respondent and the budget for lift maintenance for the year ending 31 July 2024 is payable as demanded subject to any appropriate end of year adjustment.

REASONS

1. The Applicants hold a long lease of Apartment 4 on the ground floor of Sedgwick House, a mansion house in Kendal that was divided into 19 apartments in or about 1993. The Respondent owns Sedgwick House, the company being owned by the 19 leaseholders in equal shares. The Respondent manages the house and grounds without the help of a managing agent, and the leaseholders have an arrangement whereby the directors are appointed to the board of the Respondent ("the Board") from among themselves on a rotating basis.

2. In 2009 the Board had a lift installed in the house. At the time the Applicants registered an objection to the installation, but in view of the small annual cost of lift maintenance they paid without further protest until 2019, when the service charge account included the cost of "lift service" which had jumped from under £400 in previous years to £3,133.36. In response to the Applicants' representations at that time, the Board chose not to charge costs associated with the lift in the years ending 31 July 2020, 2021 and 2022. In 2023 the Board included lift costs in the service charge account for 2022/23 and in the budget for 2023/24. The Applicants paid under protest. Attempts to settle their differences with the Board broke down and in February 2023 the Applicants filed a request for the Tribunal to determine whether service charges are payable in relation to the lift and if so by whom, pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act"). The amount of the relevant costs is not in dispute, the issue being limited to payability. The Applicants seek a determination for the years ending 31st July 2017, 2018, 2019 and 2023 together with the service charge budget for 2023/2024.

THE LAW

3. Section 18 (1) of the Act defines a service charge as

"18(1) …… 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……

4. 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."

5. Section 27A(1) of the Act enables the Tribunal, on application, to determine whether a service charge is payable, and if it is, by whom it is payable. In considering the payability of service charges, the Tribunal first examines the wording of the lease which sets out the contractual obligations entered into by the landlord and tenant. If the lease permits the service charge, the Tribunal assesses the reasonableness of charge in the year(s) to which the application relates, also determining where necessary whether the service or goods for which leaseholders are asked to pay have been of a reasonable standard.

6. It is worth mentioning that the Tribunal is created by statute, and has no jurisdiction other than that specifically granted by the statutory provision under which a particular application is made to it.

THE LEASE

7. The Applicants' lease is dated 14 December 1993 and creates a term of 999 years from 29 July 1988 at an annual ground rent of £10. It is in similar terms to the leases of the other 18 apartments in the house. Paragraph (15) of Schedule 7 requires the leaseholder to pay an annual contribution to the landlord (the Respondent) in respect of the costs incurred in carrying out the landlord's obligations which are set out in Schedule 8 to the lease. The contribution is to be one nineteenth of the whole.

8. Schedule 8 requires the landlord, among other obligations, "*to keep the Reserved Property and all fixture* [sic] *and fittings in and additional to it …. in a good and tenantable state of repair decoration and condition including the renewal and replacement of all worn or damaged parts ….".* Paragraph 6 of the Schedule provides "*the Lessor shall keep the …. common parts of the building forming part of the Reserved Property properly cleaned and in good order….".* Reserved Property is defined in the lease as "*that part of the Development* [ie Sedgwick House and grounds] *not included in the Apartments …..".*

9. Schedule 8 in itself does not permit the landlord to carry out improvements or to make additions to the property but paragraph 12 of Schedule 7 provides: "*Any reasonable costs or expense incurred by the Lessor in …. doing works for the improvement of the Development or in providing services to the Lessee and other Owners of Apartments shall be deemed to have been properly incurred by the Lessor in pursuance of its obligations under the Eighth Schedule notwithstanding the absence of any specific covenant by the Lessor to incur them and the Lessee shall keep the Lessor indemnified from any against* [sic] *his due proportion thereof under Clause (15) of the Schedule accordingly".*

THE PROPERTY

10. The Tribunal did not visit Sedgwick House but had the benefit of the lease plans and some photographs of the relevant areas. These were clarified and explained by Mr Parkes at the hearing as follows.

11. A wide carpeted staircase leads from the main entrance hall to the upper floors of the building. The occupiers of all apartments can access this staircase.

12. Prior to 2009, a side door which had formerly been a servants' entrance led to a side staircase providing access to the upper floors of the house. The condition of this side staircase was said by the Respondent to have deteriorated to the point where it required expensive repair or replacement. This is denied by the Applicants, who refer to it as "perfectly serviceable". The state of the replaced staircase is not an issue that the Tribunal needs to decide.

13. In 2009 this side staircase was replaced by a lift from the ground floor to the first and second floors of the house. From the first to the second floor the lift is accompanied by an open-tread wooden staircase. There is no longer a staircase from the side entrance on the ground floor to the first floor – for lack of space the original stairs were replaced only by the lift. Four first and second floor apartments have entrances directly on to the landings where the lift stops – apartments 17, 18, 19, and 20. Although they have further to walk to it, all occupants of apartments on the upper floors of the house are able to access the lift and its surrounding staircase.

THE DECISION TO INSTALL A LIFT

14. In 2009 it appears that one or more of the leaseholders of apartments 17, 18, 19 and 20 were serving on the Board. Three of these leaseholders offered to pay for installation of the lift and new staircase themselves, with voluntary contributions invited from the owners of the remaining apartments. The Tribunal does not have information about the amounts of such contributions, but no doubt the value of all the upper apartments was somewhat enhanced by the provision of lift access.

15. Because there would be no capital outlay on the part of the Respondent, the Board agreed to the lift installation without holding a general meeting of the shareholder/leaseholders which would have enabled them to consider ongoing costs and to vote on the proposal. Listed building consent was obtained and the lift was installed before the end of 2009. The leaseholders were formally notified of the plan in April 2009 by an "Update to apartment owners", which included the following statement: "*The lift will require an annual service and this will move into the service charge and be incorporated into the current maintenance budgets. We are advised it will be in the region of £300 per annum and we can absorb that into existing budgets with no impact on the service charge.*" The Applicants promptly

asked for more detail and an opportunity to make representations but by that time the project was already past the point of no return. By letter dated 15 May 2009 the Applicants raised questions about the process by which the lift project had been approved by the Board on behalf of the leaseholders. However, as indicated above, until more recently they did not pursue the matter in view of the low annual cost of the lift following installation.

THE HEARING

16. The application was heard by video link. Mr Parkes spoke for the Applicants, and the Respondents were represented by Mr David Gilchrist of counsel. The discussion was limited to legal representations, and no oral evidence was heard. The Tribunal had the benefit of an agreed bundle and the parties' skeleton arguments and authorities.

LIFT COSTS AS SERVICE CHARGES

17. Mr Parkes argued that the Tribunal was permitted to look back to the events of 2009 in order to determine whether the cost of lift maintenance should be included in the service charges where the installation had been decided upon without full leaseholder consultation. He referred to the decision of the Upper Tribunal in *Christopher Moran Holdings Limited v Laura Carrara-Cagni [2016] UKUT 152 (LC)* in which the landlord had charged leaseholders for costs relating to conservatories which had been erected many years earlier in breach of covenant. Mr Parkes relied on this as authority for the proposition that the Tribunal could assess whether the lift installation that originated the service charges was legitimate. Mr Gilchrist drew the attention of the Tribunal to the conclusion of Deputy President Martin Rodger QC at paragraphs 53 and 54 of his decision: "*there is simply no reason for the historic lawfulness of the addition to the Reserved Property to make any difference to the analysis of the continuing rights and obligations of different parties. … even if the FTT was correct to assume … that the conservatories were erected in breach of covenant, it was wrong to rewrite the clear and practical language of the underleases.*"

18. Mr Parkes told the Tribunal that it was unfair and unreasonable that a landlord was entitled to alter a property at his own expense without leaseholder consent and thus unilaterally create a new financial burden via the service charge account. There may be instances where this could occur, for example by the landlord adding upper storeys to his building, but generally as here the alteration to the property would tend to increase the value of the leaseholders' apartments and thus justify an increase in service charges. In any event, the Applicants' lease specifically authorises the Respondent to make such an alteration where it is an improvement to the property.

19. Mr Parkes also argued that since consultation was required under Section 20 of the Act, increased service charges must be considered unreasonable where consultation had not taken place even in circumstances where, as here, a formal consultation procedure was not a statutory requirement.

CONCLUSION

20. The Tribunal finds that the addition of a lift was an improvement and that on installation the lift became a fixture in the property. The Respondent is authorised by the terms of the lease to include costs relating to the lift in the service charge account.

21. The Tribunal considers that the Board's decision to instal a lift was adopted without sufficient discussion with all leaseholders, and has considerable sympathy with Mr and Mrs Parkes regarding this. However the lack of consultation in 2009, although regrettable, does not impact on the reasonableness of the current annual service charges relating to maintenance of the lift. Section 20 of the Act is not relevant to the matters under consideration in this application.

22. It follows that, as the amount of the service charges is not in issue, their collection by the Respondent for the years ending 31 July 2017 – 19 and 2023 – 24 is authorised by the lease, and the charges are payable by the Applicants.

Tribunal Judge A Davies
1 November 2023