



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

Case reference : **MAN/00CH/LSC/2019/0037**

Property : **24 Goldstone, Pimlico Court, Kells Lane,
Gateshead NE9 5HW**

Applicants : **JH Watson Property Investment Limited
JH Ground Rent Investments Limited**

**Applicant's
Representative** : **Knights plc**

Respondent : **Mr Raymond Wadey**

**Type of
Application** : **Landlord and Tenant Act 1985 - s27A
Commonhold and Leasehold Reform Act 2002
Schedule 11 paragraph 5**

**Tribunal
Members** : **Tribunal Judge S Moorhouse LLB
Mr IR Harris BSc FRICS
Mr J Gallagher MRICS**

**Date of Paper
Determination** : **21st March 2023**

DECISION

DECISION

Service Charge

1. The service charge payable by the Respondent for the service charge year ended 31 May 2018 is £5,276.28. The total service charge contribution was £5,295.52. The sum of £7.32 was conceded by the Applicants for Annual Maintenance Contracts and the sum of £11.92 deducted by the tribunal in relation to garage and street lighting. The tribunal makes no determination as to the amounts paid or owing.

Administration Charges

2. The sum of £442.20 described as variable administration charges within the County Court Particulars of Claim is not payable under the terms of the Lease.

Costs

3. The tribunal makes no Order under section 20C of the Landlord and Tenant Act 1985 and makes no Order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
4. In relation to the Respondent's application for an Order for Costs, the tribunal makes no Order under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

County Court

5. Having determined the service charge and administration charge issues, along with the cost issues in the tribunal proceedings, the tribunal directs HMCTS to submit the tribunal's decision to the County Court. The outstanding claim issues remain and are outside the tribunal's jurisdiction.

REASONS

The Proceedings

6. These proceedings were commenced for the Applicants in the County Court as a precursor to proceedings under the Law of Property Act 1925. The case was referred to the First-tier Tribunal on 13 May 2019.
7. The present tribunal has been constituted to (1) determine pursuant to section 27A of the Landlord and Tenant Act 1985 whether the service charges referred to in the County Court claim are payable; and (2) determine pursuant to paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 whether the variable administration charges referred to in the County Court claim are payable. Prior to the present tribunal being constituted there had already been two Case Management Conferences and four sets of written Directions in these First-tier Tribunal proceedings. An application under section 27A of the Landlord and Tenant Act 1985 had also been made to the First-tier Tribunal (reference MAN/00CH/LIS/2020/0003) by the Respondent in relation to other service charge years. This was subsequently withdrawn.
8. There has been a history of first-tier Tribunal cases relating to service charges and/or administration charges concerning the Property, between the same parties.

These include those dated 19 November 2009 (MAN/ooCH/LSC/2009/0005), 16 October 2013 (MAN/ooCH/LSC/2013/0007), 29 October 2014 (MAN/ooCH/LSC/2014/0051 & MAN/ooCH/LAC/2014/0003) and 5 April 2017 (MAN/ooCH/LSC/2016/0061). There have been numerous other previous decisions, for example on procedural issues or costs.

9. The present tribunal received from HMCTS various sets of papers for this case, the first few sets being found to be incomplete. The tribunal convened on 28 September 2022 to review the case, and then again on 9 November 2022 with the benefit of the latest (and most complete) set of papers. The tribunal noted that there were apparent omissions even in this latest set of papers and that there was no indexed and paginated hearing bundle despite earlier Directions in this respect, the latest such Direction having been issued on 13 January 2022.
10. Directions were therefore issued on 18 November 2022 requiring the submission of fully indexed and paginated bundles containing all of the papers the parties wished the tribunal to take into consideration, and raising various points with the parties on which the tribunal sought clarification. Having noted references by the Respondent to his ill health and the possibility of a paper hearing, the tribunal advised the parties that it was prepared to determine the case on the papers but that either party was entitled to require a hearing. The parties were also invited to comment on whether they considered an inspection to be necessary and if so, why.
11. In response to these Directions each party made further submissions. The Applicant's submission included the Scott Schedule prepared by the Applicant, annotated by the Respondent and referred to in earlier Directions as being definitive as to the service charge items in issue between the parties. The Respondent's submission included an application to strike out the Applicant's case and a request for a hearing. The Applicant did not require a hearing.
12. On 25 January 2023 the tribunal issued a final set of Directions requiring that HMCTS list the case for face-to-face hearing, with no inspection at that stage. The tribunal directed that the Respondent's application for strike-out would be heard first. If this was unsuccessful then the hearing would progress to the challenges raised in the Scott Schedule to the service charges claimed by the Applicants, namely that the lease of the Property ('the Lease') does not provide for the recovery of the following service charge items relating to the year ended 31 May 2018:-

Fire alarm maintenance (£15);

Health & safety (£24);

Accountancy fee (£16.50);

Management fee (£207.10);

The sum of £4,569.02 categorised as 'major works and professional fees';

Street and garage lighting within the £35.77 sum for 'Common parts electricity' - this item was not included in the Respondent's annotations to the Scott Schedule however there had been some ambiguity and it had been clarified to the tribunal's satisfaction that the item had been intended to be included.

13. It was confirmed by the tribunal that no service charges were in issue beyond those listed above, and that the Respondent's case was limited to issues concerning the interpretation of the Lease. One other service charge item (Annual Maintenance

Contracts - £7.32) had been challenged by the Respondent but conceded by the Applicants in the light of the First-tier Tribunal decision dated 16 October 2013. This service charge item was no longer in issue between the parties, it was common ground that it was not payable under the terms of the Lease and it was not therefore considered by the tribunal.

14. The Directions of 25 January 2023 provided further that the administration charges included in the County Court referral would be considered at the hearing, and that various cost related matters would be reviewed.
15. Prior to the hearing details being confirmed by HMCTS the Respondent wrote to the tribunal stating, inter alia, that he no longer required a hearing and was content for the issues to be determined on the papers. Having considered Rules 2 and 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Procedure Rules') the tribunal decided that it was appropriate to determine the case on the papers having regard to (1) the voluminous documents and submissions before it, (2) the nature of the issues to be determined and (3) the fact that both parties had had the opportunity to attend a hearing and did not wish to do so. Further, the tribunal decided that, having regard to the issues in this case and the provisions of Rule 2, it would be disproportionate to arrange and attend an inspection of the Property.

The Property and the Lease

16. The Property comprises a second-floor apartment situated within Goldstone, a block of 12 apartments within the Pimlico Court development in Gateshead. The development comprises 4 blocks, with a total of 56 apartments, together with an access road, two garage blocks, surface car parking and landscaped areas.
17. The Respondent leaseholder holds the Property under the terms of the Lease dated 14 April 1978, for a term of 999 years calculated from 1 January 1974. The Respondent has been a leaseholder since 2001. The freehold is owned by the Applicants. The development is managed for the freeholder by Watson.
18. The Lease sets out, at clause 3, various covenants on the part of the leaseholder. On the issue of service charges, sub-clause (xvi)(a) of the Lease provides for payment to the landlord in relation to the 'contribution' of the lessee. The 'contribution' is to be calculated in accordance with sub-clause (b) which, taken together with sub-clause (a), provides for a service charge payment on account and a balancing payment if required. The contribution is to be one sixteenth of the cost for the block, however it is common ground between the parties that this fraction has been amended to one twelfth.
19. The 'contribution' is expressed in sub-clause (xvi)(a) to relate to '*the cost of providing the services and maintenance specified in the Fourth Schedule hereto and of any Value Added Tax payable whether by the Landlord or its Surveyors or Chartered Accountant in respect of the provision of such services and maintenance and of the computation and collection of the payments therefor*'.
20. Clause 4 of the Lease includes the following covenant on the part of the landlord:- '*(ii) at all times throughout the said term to provide and carry out with reasonable diligence the several obligations as to maintenance and services specified in the Fourth Schedule hereto*'.

21. The Fourth Schedule to the Lease sets out at paragraphs (a) to (f) various obligations on the part of the landlord which will be examined later in the context of the particular issues raised by the Respondent.

Application to strike out the proceedings

22. In a written submission sent to HMCTS dated 26 December 2022 the Respondent states: ‘I submit that the commencement of the County Court action against me is an Abuse of Process and was commenced by the Applicant with the previous knowledge of and in complete disregard for Section 168 Commonhold and Leasehold Reform Act 2002. I ask the Tribunal to consider that this case is struck out (applicant has also failed to include in the submitted bundle a copy of audited and certified accounts)...’
23. As has been stated at the outset, this case has been remitted to the First-tier Tribunal by the County Court for a determination as to whether the service charge and administration charge elements of the County Court claim are payable. Section 168 of the Commonhold and Leasehold Reform Act 2002 requires that such a determination be made before the requisite notice may be served in respect of forfeiture.
24. The County Court claim particulars are as follows:- ‘As a precursor to proceedings under section 146 of the Law of Property Act 1925, and in order to obtain a determination pursuant to section 81 of the Housing Act 1996, the claimant claims arrears of ground rent, service charge and variable administration charges due under the terms of the lease’.
25. Section 81 of the Housing Act 1996, referred to in the claim particulars, requires that a landlord cannot exercise a right of re-entry for failure to pay service charge unless the amount of service charge is determined by a tribunal (or one of the other criteria is satisfied instead).
26. The Respondent has not established to the satisfaction of the tribunal that the County Court referral is invalid, or that the tribunal does not have the jurisdiction to make the determination required. The reference by the Respondent to section 168 and the wording of the claim particulars support the County Court’s approach of referring the claim for First-tier Tribunal determination on the service charge and administration charge issues.
27. The audited and certified accounts referred to by the Respondent were a requirement of the first set of Directions issued in the First-tier Tribunal, dated 5 June 2019. They are not required by the present tribunal in order to determine the matters in issue between the parties.
28. Rule 2 of the Procedure Rules states that the overriding objective of the Rules is to enable the Tribunal to deal with cases fairly and justly. This includes dealing with cases in ways that are proportionate to the importance of the case, the complexity of the issues etc. The tribunal must seek to give effect to the overriding objective when it exercises any power under the Procedure Rules, including strike-out.
29. The tribunal considers that it would be disproportionate in the circumstances described to strike out the proceedings for failure to provide audited accounts.
30. For all of these reasons the tribunal refuses the Respondent’s application to strike out the proceedings.

Service Charge items in dispute

31. The tribunal is required to make a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the service charges forming part of the claim are payable. The disputed items are taken in turn. They all relate to the service charge year ended 31 May 2018 and the amounts referred to in the sub-headings below represent the charge to the Respondent, being 1/12 of the charge for the block. In general the Respondent offers no analysis as to why he considers the items to be irrecoverable under the terms of the Lease although he has referred to previous First-tier Tribunal decisions. The Applicants, in their submission, indicate the Lease provisions they believe to apply, but offer no detailed analysis. The tribunal has taken into consideration the limited submissions on lease interpretation, considered in each case whether the Lease allows for recovery of the item as service charge, and reviewed earlier First-tier Tribunal decisions where these address the same or similar issues in relation to earlier years.

Fire alarm maintenance (£15)

32. The Applicants refer to paragraphs (c) and (f) of the Fourth Schedule to the Lease. The tribunal considered first paragraph (f). This states *'to carry out such works of maintenance, repair.....of the building.....as the Landlord may from time to time deem necessary or desirable'*. *'The building'* is defined in the First Schedule to the Lease and refers to the individual block, Goldstone. As stated earlier, clause 3(xvi)(a) of the Lease allows the recovery by way of service charge of the *'cost of providing the services and the maintenance specified in the Fourth Schedule...'*
33. In the light of these provisions the tribunal considered that the cost of maintenance of the fire alarm system, being part of the building, was recoverable through the service charge. It was unnecessary to go on to consider whether paragraph (c) of the Fourth Schedule applied.

Health & Safety (£24)

34. Supporting evidence shows that the health & safety charge relates to building inspection. The Applicants again refer to paragraphs (c) and (f) of the Fourth Schedule to the Lease. The tribunal considered that health & safety inspection formed a necessary part of the maintenance of the building and as such came within paragraph (f). It also came within paragraph (c) which requires the landlord to *'keep in good and substantial repair order and condition the main walls timbers roof drains and the common passageways and staircases of the building'*.
35. The First-tier Tribunal decision of 5 April 2017 (at paragraphs 67-68) reaches the same conclusion on this issue in the context of the tri-annual health and safety reports before that tribunal - the present tribunal's determination is consistent with that of the earlier tribunal.
36. The £24 charge to the Respondent is recoverable as service charge under the terms of the Lease.

Accountancy fee (£16.50)

37. The Applicants contend that this fee is recoverable under the provisions of clause 3(xvi)(a). This clause, set out earlier, includes *'the cost....of the computation and collection of the payments'* in relation to the provision of the services and

maintenance in the Fourth Schedule. The tribunal was satisfied that this encompassed the cost of the accountancy services relating to the service charge calculations and accounts.

38. Similar issues were addressed by the 2017 tribunal which determined annual certification costs to be payable (see 'Determination' and paragraphs 70-71). The tribunal therefore determined the accountancy fee of £16.50 to be recoverable as service charge under the terms of the Lease.

Management fee (£207.10)

39. Again the Applicants contend that this is covered by clause 3(xvi)(a). This clause allows for the cost of providing the services and maintenance specified in the Fourth Schedule and includes the cost of computation and collection of payments. The tribunal was satisfied that management fees form part of the cost of providing the services and maintenance and/or computation and collection of payments. All of the fee was encompassed within the clause 3(xvi)(a) wording.
40. This conclusion is consistent with the decision of the 2017 tribunal (paragraph 73).
41. The tribunal therefore considered the management fee of £207.10 to be recoverable as service charge under the terms of the Lease.

Major works and professional fees (£4,569.02)

42. These fees are calculated as a 1/12 share of the total of (1) the roof works to the building (£49,170 inc VAT), (2) Watsons' professional fees in this respect (£5,010) and (3) the consultation notice fee for the building (£648). The Applicants contend that these are covered by paragraphs (b) and (f) of the Fourth Schedule to the Lease. The tribunal assumed the reference to paragraph (b) (relating to painting and decoration) was in error and that paragraph (c) was intended.
43. Paragraph (c) requires the landlord to '*keep in good and substantial repair order and condition the.....roof.....of the building.*' Paragraph (f) requires the landlord '*to carry out such works of maintenance repair.....of the building.....as the Landlord may from time to time deem necessary or desirable.*' The tribunal was satisfied that both of those clauses provided for the landlord to carry out necessary repairs to the roof.
44. In response to the present tribunal's Directions the Applicants submitted a copy of a report dated 16 February 2017 in relation to the roof covering to the building written by Keith J Laverick of Keith James, Chartered Building Surveyors, following an inspection. The report noted that the building has a flat roof of concrete (considered to be 'sound') with a covering of rock asphalt fitted over this. It was advised that the asphalt was approaching the end of its useful life and that it was beyond the point where patch repairs were viable. It was recommended that the asphalt be removed and replaced with a new overlay and that this would need to include insulation to satisfy Building Regulation requirements. In this respect, the replacement felt system proposed by Watson was described as 'entirely satisfactory'.
45. The tribunal was satisfied in the light of the report that the replacement of the asphalt with a new overlay, to current regulatory standards, was necessary - patch repairs were not viable. It was clear from the report that the roof structure was concrete, with an overlay, and that only the overlay was being replaced. The tribunal

was satisfied therefore that this constituted 'repair' within the meaning of paragraphs (c) and (f) of the Fourth Schedule to the Lease.

46. The tribunal went on to consider whether all of the costs related to the 'repair', determining that not only the cost of the works but the related professional fees and cost of necessary consultation came within the 'cost of providing the services' of 'repair' within the meaning of clause 3(xvi)(a) and paragraphs (c) and (f) of the Fourth Schedule.
47. Accordingly the tribunal considered the contribution of £4,569.02 for major works and professional fees to be recoverable as service charge under the terms of the Lease.

Common parts electricity (£35.77)

48. The Respondent contends that there is no provision in the Lease relating to garage lighting and street lighting. The Applicants contend that the costs for common parts electricity are covered by paragraph (a) of the Fourth Schedule.
49. Paragraph (a) requires the landlord to '*sweep and clean the common passages and staircases of the building and to keep the same sufficiently lighted*'.
50. The tribunal accepted the Respondent's contention that this paragraph does not capture garage lighting and street lighting - neither can be described as common passages or staircases of the building. No other paragraph within the Fourth Schedule refers to the cost of electricity and the Applicants do not contend that any other paragraph is applicable.
51. Issues around street lighting were referred to in the 2013 First-tier Tribunal decision (e.g. paragraphs 22 and 31). However the issues concerned the allocation of costs between blocks and apartments and whether the costs themselves were reasonable or reasonably incurred. The 2014 First-tier Tribunal decision refers to the issue of street and garage lights also (paragraph 37), referring back to the 2013 decision. Neither decision addresses the issue of lease interpretation.
52. Again in the 2017 First-tier Tribunal decision the issue of common parts electricity is considered (paragraphs 53-56), however the issues concern the apportionment of costs, not specifically the interpretation of the Lease.
53. Accordingly the tribunal determined that the costs of external lighting to garages and private street lighting are not recoverable as service charge under the provisions of the Lease. As a consequence it was necessary to consider which part of the £35.77 charge relates to those costs.
54. Rule 3 of the Procedure rules sets out the tribunal's overriding objective and refers, as noted earlier, to the issue of proportionality. The service charges remitted to the First-tier Tribunal by the County Court exceed £5,000. In determining what proportion of the £35.77 fell outside the wording of paragraph (a) of the Fourth Schedule, the tribunal considered that it would be disproportionate to seek further submissions or conduct an inspection on this issue alone.
55. The tribunal took into consideration that the building was served by a small number of street lights and benefited from external lighting to the relevant garages. The tribunal considered it reasonable to apportion the costs in a 2:1 ratio, the smaller element being for the external lighting outside the terms of the Lease.

56. Accordingly the sum of £11.92 is disallowed, the contribution of the Respondent to common parts electricity being adjusted to £23.85.

Overall determination on service charges

57. The County Court Claim includes the sum of £5,288.20 stated to represent arrears of service charge. It is not the tribunal's remit to determine what has or has not been paid. The tribunal must declare which elements of the service charge are payable for the service charge year in issue, namely the year ended 31 May 2018.
58. The tribunal papers suggest that the total service charge allocated to the Respondent for the year in issue was £5,295.52. This figure can be reached by taking the £5,288.20 figure from the Particulars of Claim, and adding back in the £7.32 sum for Annual Maintenance contracts conceded by the Applicants. The same sum can be reached by taking the figure of £5,270.52 for 'Excess service charge re 31 May 2018' in the Watson's statement of 7 January 2019 and adding back the £25 credited as having been paid on 10 January 2019, as per the original statement of case submitted by the Applicants. The tribunal's conclusion as to the total service charge contribution claimed from the Respondent is consistent with the Applicants' original statement of case.
59. There are 2 deductions to make to calculate the total service charge payable by the Respondent for the year ended 31 May 2018, namely the £7.32 concession for Annual Maintenance Contracts and the £11.92 deduction determined by the tribunal in relation to Common Parts Electricity. The total service charge for the year in question therefore comes to **£5,276.28** (i.e. £5,295.52 less £7.32 and less £11.92).

Administration charges

60. The Particulars of Claim in the County Court include the sum of £442.20 by way of variable administration charges. These are identified within the statement by Watsons dated 7 January 2019 as relating to reminders, a notice, a letter of claim, HM Land Registry copy of register of title, lender correspondence and the County Court application.
61. The Applicants have included the administration charges in their statement of case, and have indicated that these charges have increased, however no indication is given as to the provision of the Lease the Applicants might rely on in order to recover the charges. There is reference in the 'reply' to the Respondent's first submission to a management contract. If this is relied on in order to justify recovery of the charges then this falls outside the tribunal's jurisdiction. The Respondent submits that administration charges are not recoverable under the terms of the Lease.
62. Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 confers jurisdiction on a First-tier Tribunal to determine whether an administration charge is payable
63. The tribunal has reviewed the Lease in its entirety and finds no provision that would allow for the recovery of administration charges of the type the Applicants seek to recover. This is consistent with the decision reached by the 2014 First-tier Tribunal (from paragraph 39).

64. Accordingly the tribunal determines that the sum of £442.20 within the County Court Particulars of Claim is not recoverable as a variable administration charge under the terms of the Lease.

Costs

65. The Respondent has requested that an order be made under section 20C of the Landlord and Tenant Act 1985 that costs incurred by the Applicants in connection with these proceedings are not to be regarded as relevant costs in determining the amount of any service charge payable. Similarly the Respondent seeks an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing or reducing his liability to pay administration charges related to the costs of the proceedings.
66. Further, in the submission made in response to the present tribunal's Directions the Respondent seeks an order for costs 'in relation to the effect this claim has had on my health and the many, many hours trying to sort out the contents of the bundle(s) submitted by the Applicant'.
67. The tribunal considered these three applications. The tribunal considered there to be legitimate concerns on the part of the Respondent on aspects of document production by the Applicants and noted that the issue of whether administration charges were payable under the Lease had already been decided in the Respondent's favour by an earlier First-tier Tribunal. Nevertheless, the Respondent himself appeared to have approached the case in a haphazard and unfocused manner, raising matters in the course of the proceedings that were not directly relevant to the issues before the First-tier Tribunal. Whilst the Respondent has succeeded before the tribunal on the issue of administration charges, the service charges were determined to be payable, virtually in their entirety. Furthermore, in relation to the service charge items in dispute, in several cases the issues had already been addressed and determined in the Applicants' favour by previous First-tier Tribunals.
68. In these circumstances the tribunal makes no Order under section 20C of the Landlord and Tenant Act 1985 or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
69. Rule 13 of the Procedure Rules sets out the limited circumstances in which a First-tier Tribunal may make an order for costs. The Respondent has not made out a case for 'wasted costs' under Rule 13(1)(a). Under Rule 13(1)(b) an order might be made if the Applicants had acted unreasonably in bringing or conducting proceedings. Even if this had been the case no 'costs' have been identified. A claim based on detriment to personal health is outside the scope of the tribunal's remit.
70. In the circumstances set out above, in particular the Respondent's own approach to the case and the fact that the tribunal has found so overwhelmingly in the Applicants' favour on the service charge issues, the tribunal does not consider that the Applicants have acted unreasonably in bringing or conducting the proceedings. On the Respondent's costs application therefore, no order under Rule 13 is made.

Tribunal Judge

21st March 2023