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| Crest |  | FIRST-TIER TRIBUNAL**PROPERTY CHAMBER** **(RESIDENTIAL PROPERTY)** |
| **Case reference** | **:** | **LON/00AB/LSC/2020/0100 P** |
| **HMCTS code**  | **:** | **P: PAPERREMOTE**  |
| **Properties** | **:** | **Flats 13, 19, 27, 29 & 35 Ashdown Court, Harts Lane, IG11 8LE** |
| **Applicant** | **:** | **Oreker Homes Ltd** |
| **Representative** | **:** |  |
| **Respondent** | **:** | 1. **Mr M Hart**
2. **Mrs J Hart**
3. **Barnett Waddingham Trustees (1984) Ltd**
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| **Representative** | **:** | **Pauline Jones Residential Estate Management** |
| **Type of application** | **:** | **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985** |
| **Tribunal members** | **:** | **Judge Pittaway****Ms F Macleod MCIEH** |
| **Date of decision** | **:** | **10 May 2021** |

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| **DECISION** |

**Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has been consented to by the applicant and not objected to by the respondent. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested the same and all issues could be determined on paper.

The documents to which the tribunal were referred are in a bundle of 102 pages, which included

* The application
* The tribunal directions (as amended) (the ‘**directions**’)
* Service charge accounts and estimates for 2019 and 2020
* The applicant’s statement of case of 8 February 2021 with appendices (including a copy of the lease of Flat 13)
* The respondent’s statement of case of 21 February 2021
* The applicant’s supplemental reply of 5 March 2021

the contents of which the tribunal noted.

The tribunal decision and reasons are set out below.

**Decisions of the tribunal**

1. The applicant is liable to pay the estimated cost of redecoration of £1,055 per flat even though the redecoration has been delayed, has not yet been started and no start date has been given.
2. The applicant is not liable to pay interest of £84.40 per flat on the arrears of service charge.
3. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord’s costs of the tribunal proceedings may be passed to the lessees through any service charge.

**The background**

1. The building in which the properties are located is described in the application as a single block of 36 purpose-built flats, each with parking.
2. No party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

**The issues**

1. The issues before the tribunal, as identified in the directions, are
* whether the applicant is liable to pay £1,055 per flat for decoration works, which sums were demanded in 2019, when the works had not yet been undertaken;
* Whether the applicant is liable to pay interest arrears of £84 per flat on the sums of £1,055 per flat which sums were treated as arrears in the service charge demands for 2020; and
* whether an order under secton 20C of the 1985 Act should be made restricting the respondent from passing the costs of the proceedings through the service charge, assuming that it has the power to do so.
1. The application also made reference to requiring the repair of the lifts but this issue was not pursued.
2. In the application the applicant stated that it did not dispute the actual amount or the cost of the works.

**Evidence and submissions**

The applicant’s case

1. The applicant states that it does not dispute the liability to pay service charge, nor the anticipated cost of redecoration. It challenges the timing of the demand to pay the decoration costs (£1,055 per flat), first demanded in January 2019, because the work has not yet been undertaken and there is no known start date for the works. The applicant challenges the charge to interest on the unpaid sum (384.40 per flat) submitting that it should not be charged interest on an unpaid sum when the work has not been undertaken.
2. The applicant’s statement explains its belief that the work has not been undertaken pending the landlord obtaining planning permission for an extension, and having obtained permission because the landlord is reluctant to commence the work before the extension has been built. The applicant understands that the redecoration is now not likely to be undertaken before 2022.
3. The applicant asks the tribunal to determine whether it is reasonable for it to withhold the sums demanded until it is given a clear start date for the works.
4. The applicant’s statement had attached to it
* An undated letter from Pauline Jones (p82 of the bundle) refers to £26,000 being put into the budget to help with external decorations and £6,000 to help with internal decorations.
* A letter dated 13 November 2019 from Pauline Jones giving notice of the intended external redecoration works including quotes from Chatfield & Sons Limited (£30,480) and Bagnalls (£22,987). By letter dated 13 November 2019 Pauline Jones gave notice of the intended internal redecoration works including quotes from Chatfield & Sons Limited (£5,400) and Bagnalls (£13,454). The officers of the residents company recommended the quote of Bagnalls for the external redecoration and Chatfield &Sons for the internal decoration.

The respondent’s case

1. The respondent’s case confirmed why the redecoration had been delayed and further put the delay down to the pandemic. It stated that ‘As at 30 December 2019 there was £69,530 in the reserve fund to cover [redecoration works].’
2. The respondent submitted that as the money in dispute was service charge interest is payable.
3. The respondent submitted that it was fair on the owners to ask for some of the cost of redecorating upfront, payable with their service charge in ten instalments during the year.

**The tribunal’s decision and reasons**

1. Having considered the statements of case and witness statements and the other documents contained in the bundle before it the tribunal makes the following determinations.

Liability to pay the estimated redecorating charges

1. The tribunal has been provided with a copy of the agreement of 26 July 1990 under which L J Hart Limited granted Clintons Limited 1990 Fund Public Limited Company leases of the properties, attached to which is the draft of the lease of flat 13. The tribunal have assumed that this represents the actual leases of the flats that were completed.

Clause 3(25)(a) provides for the tenant to contribute one thirty sixth part of the costs expenses outgoings and matters mentioned in the Fourth Schedule. Clause 3(25)(b) provides for the tenant to pay such contributions annually on 1 January based on an estimate of the costs estimated by the landlord or its managing agents.

The costs set out in the Fourth Schedule include, at paragraph 1, the costs of redecorating the main structure of the building, and, at paragraph 3 the cost of redecorating the hallways and staircases forming part of the common parts. Paragraph 16 of the Fourth Schedule includes

‘Such sum or sums as the Landlord Company or its managing agents shall consider desirable to be paid for the purposes of accumulating a reserve fund as a reasonable provision against the prospective costs expenses and outgoings mentioned in this Schedule or any of them.’

1. The terms of the lease are clear that the landlord/its managing agent may request sums to be accumulated in a reserve fund and the respondent’s statement confirms that it is putting aside a reserve for the redecoration.
2. The tribunal appreciates the frustration that the applicant feels at the redecoration budget not having been spent but, given paragraph 16 of the Fourth Schedule, it finds that it is possible for the landlord to demand sums for estimated redecorating charges, and that the applicant is liable to pay these subject to the same being placed in the reserve fund, as it appears is being done.
3. The tribunal invites the respondent to consider, given that it may be some time before the works are undertaken, spreading the cost demanded over a number of service charge years.

Liability to pay interest

1. The lease contains no provision entitling the landlord or its managing agent to charge interest on arrears of service charge. The tribunal therefore finds that the respondent is not entitled to charge interest on arrears of service charge and the applicant is not liable for the interest demanded.

 Application under s.20C

1. In the application form the applicant applied for an order under section 20C of the 1985 Act. Noting that the respondent invited the applicant to apply to the tribunal to have these issues settled the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

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| **Name:** | Judge Pittaway | **Date:** | 10 May 2021 |

**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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).