



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

Case reference : **LON/00BG/LSC/2023/0020**

Property : **193-197 Bow Road, London E3 2TD**

Applicant : **Link House – Bow Limited (A Resident’s Management Company)**

Representative : **Hugh Rowan, Counsel**

Respondent : **Various leaseholders**

Representative :

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 Brandler
Mr K Ridgeway MRICS**

Date of hearing : **20 November 2023**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **12 December 2023**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £216,981 is reasonable and payable by the Respondents in respect of the Interim service charges for the year 2023
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985

The application

1. The Applicant seeks a determination pursuant to s.27A(3) of the Landlord and Tenant Act 1985 (“the 1985 Act”) to determine the reasonableness and payability of various service charges. The Application is a precautionary application to ensure that the Applicant is able to make appropriate demands to recover substantial sums in relation to proposed major works. The sum in dispute is £216,981.
2. Only one leaseholder objected to the application in accordance with the Directions given on 8 June 2023 [42]. Mr Krum Yankov provided a statement dated 16 August 2023 [158] and completed the document with a schedule of issues [201] in accordance with those directions
3. Neither 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 hearing – preliminary issue

4. The Applicant was represented by Hugh Rowan, Counsel, at the hearing. Of the Respondent leaseholders the only objector to this application was Krum Yankov and he appeared in person. However, Ms Niakamal, one of the leaseholders, attended the hearing and told the Tribunal that she too was objecting to the application. She had however not complied with the Tribunal’s directions, and it was not until the start of the hearing that it became apparent that she was an objector. Ms Niakamal asked the Tribunal to allow her to make oral representations at the hearing. She said that she had been too unwell to make any representations until the hearing.
5. The hearing was originally listed to be heard on 08/11/2023. By an application dated 12/07/2023 Ms Niakamal requested that the hearing be postponed because she would be away from 2/11/2023 until 8/11/2023 on a retreat to assist with her with recovery from her medical

condition. The ground on which the application was made was that “*It is quite important to me to be at the tribunal to put over my case*” [228]. The postponement was granted and the hearing relisted for 20/11/2023. At the date the application was made, the hearing bundles had not been finalised such that the Judge granting the postponement would not have been aware that Ms Niakamal had taken no part in the proceedings in accordance with the Directions Order.

6. Directions were issued on 08/06/2023 [44]. By direction (3) the tenants were directed to send to the landlord by post and email written evidence in the form of a schedule, copies of alternative quotations, a statement of case and any signed witness statement. Ms Niakamal had provided no written evidence.
7. The Tribunal considered Ms Niakamal’s request to make oral representations at the hearing, however, determined that this would be unfair to the applicant who were not on notice of what points she was going to raise, or even that she was an objector. Her request to address the tribunal was refused
8. The Tribunal had the benefit of the Applicant’s bundle of [228] pages. This includes Mr Yankov’s evidence. Reference to any pages will appear in square brackets.
9. On 16 November 2023 the Applicant’s skeleton argument was sent to the Tribunal and to the Respondent.

The background

10. The Applicant is the Residents’ Management Company and the freeholder of 193-197 Bow Road, London E3 2TD (“the property”), which is the subject of this application. The property is a Victorian warehouse comprising two blocks with 29 units in total numbering 1 to 30 (there is no Flat 13).
11. The Respondents are the various leaseholders of the Property. The only respondent lessee to give notice of his objection to the application is the lessee of Flat 29, Krum Yankov (“the tenant”).
12. This application is described by Counsel for the Applicant as a belt and braces precautionary application to ensure that the Applicant is able to make appropriate demands to recover substantial sums in relation to proposed major works. After issuing this application, the Applicant carried out a s.20 Consultation. This included a notice of intention dated 17/01/2023 [134-137] and a statement of estimates dated 08/08/2023 [138-139]. The works are detailed below.

13. In 2022 various works were undertaken to remove asbestos at the property. This process revealed corrosive damage to the structure of the property. The Applicant instructed Corrosion Engineering Solutions (“CES”) who provided a report dated 05/12/2022 which reported that the corrosion was worst in the north-east corner of the property where it is said that “*near constant supply of water flowing onto the steel through the slab above*” [131-133]
14. The CES report concludes that “*It is probable that the details of the landscaping and build up in the north-east courtyard is retaining water and allowing it to penetrate the slab. It is recommended that the landscaping be thoroughly reinstalled to ensure the upper surface of the slab is water-proof and the water runoff is managed.*

If the water ingress can be stopped, and the north-east slab/basement allowed to dry, then the corrosion will halt” [132]
15. The recommendation was included within the Applicant’s surveyor’s Planned Maintenance program 2023 dated 30/12/2022 and a subsequent budget for the service charge year ending 31/12/2023 [140-151] and the Applicant subsequently produced a budget for the service charge year ending 31/12/2023 [13], [100]. The Budget was discussed and shared at a meeting of leaseholders on 14/01/2023 [154] and again on 29/01/2023 [155].

The lease

16. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
17. The Applicant’s counsel took the Tribunal to the relevant sections of the lease. The Tribunal adopts the summary as set out in this skeleton argument as not being contentious
 - i. In 2021 the leases of the Flats were varied following an application to the First-tier Tribunal under s.35 of the Landlord & Tenant Act 1987. The lease was varied so that there is no longer a ‘Building Proportion’ or ‘Common Parts Proportion’ but a ‘Service Charge Proportion’ being 1/29th of the costs for each flat [69]-[70].
 - ii. The Tenant covenants to comply with the Fourth Schedule at Clause 3 [77] of the Lease. At paragraph 31 of the Fourth Schedule, the Tenant covenants to pay an Interim Service Charge and Service Charge as provided in the Seventh Schedule [88]

- iii. The items falling within the service charge are set out at the Sixth Schedule (which includes Part II of the Firth Schedule) [89]-[92]. Under paragraph 1.2.2 of the Seventh Schedule the landlord can also charge for a reserve fund.
- iv. The Seventh Schedule makes detailed provision [92-95] for an Interim Charge to paid on account of the Service Charge in respect of an accounting period paid in advance by equal instalments on 25 March and 29 September each year (para.2). There is provision for balancing charges to be made (para 3 & 4)

The issues

18. The issues for the Tribunal were identified in the directions of 8 June 2023. The issues for determination are therefore:
- (i) Is the service charge amount for 2023 as set out in the budget attached to the application to the Tribunal reasonable under section 19(2) of the 1985 Act and therefore payable by way of two equal interim charges on 25 March 2023 and 29 September 2023 (total amount £216,981)
 - (ii) Whether the budgeted works are within the landlord's obligations under the lease and whether the cost of the works are payable by the leaseholder under the lease
 - (iii) Whether the costs of the works are reasonable, in particular in relation to the nature of the works, any contract price and any supervision and management fee

The hearing

19. The Tribunal heard from Ms Moore, a Director of the Applicant Company. Her witness statement stood as her evidence and Mr Yankov asked her some questions.
20. In oral evidence Mr Yankov confirmed that he accepts that the work is necessary. His objections are primarily that the managing agent obtained both the quotations and no alternatives to the works had been suggested. He also complained that the Applicant had not collected outstanding service charges and that minutes of meetings had not been circulated. Further in his witness statement he criticised the lawfulness of the Applicant's decision making and complained about the service charges prior to 2023 and how they had dramatically increased. He also criticised the Applicant for a lack of transparency and a failure to respond to his requests for information [156-158]

21. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Issue 2 - Payability

22. In relation to the second question posed in the Directions, the answer is that the works are within the landlord's obligations and are payable by the leaseholders
23. This was not disputed by Mr Yankov and in the Schedule he answered the charges were "*Chargeable under the lease*". [201] The Tribunal are satisfied that the summary set out in paragraph 17 above establishes that the service charges are payable and this includes levying interim payments. This includes all the charges within the 2023 budget of £216,981.00

Issue 1 - Reasonableness and two equal payments

24. The tribunal determines that the interim service charge for 2023 in the total sum of £216,981.00 is reasonable and payable by way of two equal interim charges on 25/03/2023 and 29/09/2023
25. Mr Yankov concedes that the works for which the charges are made must be carried out but objects on the basis that the managing agent has obtained both quotations. Mr Yankov has not provided an alternative quotation, nor has he provided a reason for doubting the validity of the quotations obtained by the managing agent.
26. Of the £216,981.00 in the budget for 2023, the major item of works is £132,000 for "repairs to the terrace deck". No-one has been contracted to carry out this work and the Applicant sought three estimates from independent companies [138]. Two estimates were received: one for £138,684.00 and the other for £142,414.80.
27. Putting aside the major works the remaining service charge of £84,981 consists of £42,790 for services and maintenance, £18,107 for insurance and £24,084 for professional fees.
28. Mr Yankov objected to professional fees from 2019 and legal costs from an earlier year. He also objected to the increase in repair and maintenance charges having increased since 2019 [157]. He however did not provide or challenge any specific service charge costs in the 2023 budget.
29. Counsel for the Applicant referred the Tribunal to paragraph 11 of *Wynne v Yates* [2021] UKUT 278 (LC)

11. Equally, it is well established (see for example *Schilling v Canary Riverside Development Ptd Limited* [2005] EWLands LRX_26_2005) that a tenant's challenge to the reasonableness of a service charge must be based on some evidence that the charge is unreasonable. Of course, the burden is on the landlord to prove reasonableness, but the tenant cannot simply put the landlord to proof; he or she must produce some evidence of unreasonableness before the landlord can be required to prove reasonableness
30. The Tribunal was also referred to *Yorkbrook Investments Ltd v Batten* (1986) 18 HLR 25 cited in *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC).
31. While appreciating that Mr Yankov has expressed his concern over the transparency of charges, his challenge is so generalised and unspecific that the Tribunal is not satisfied that there is a *prima facie* case of unreasonableness especially as there was evidence of expenditure in the bundle. The tribunal is not required to be sceptical in the circumstances where the service charges appear not to be unreasonable and there is only very limited evidence of alternative costings. There is no evidence of alternative costs in this case and the Tribunal finds that the service charges for 2023 are reasonable for the purposes of section 19(2) of the 1985 Act.

Issue 3 – major works

32. As stated in paragraph 26 above there is an interim charge for 1/29th of £132,000 for 2023. This is payable on 25/03/2023 and 29/09/2023.
33. Mr Yankov asserts this is unreasonable in amount and dependent on two estimates sourced by the Applicant. The fact they were sourced by the Applicant is not a point that the Tribunal considered relevant. It was of course the Applicant who sought the estimates.
34. There is nothing specific challenging the estimates beyond that the Applicant sought them. There is no alternative or even specific questioning of the items in the estimate for works.
35. The Applicant went through a consultation process as evidenced in the bundle [134]. There was no challenge to that process or alternatives suggested by the leaseholders. There has been no challenge to the nature of the works, the contract price or supervision and management fee other than a generalised statement that it is excessive.

36. For the reasons above and those in paragraph 31 above, the Tribunal has no evidence or suspicion to go behind the estimates received and the consequent interim charge of £132,000, the Tribunal finds reasonable.

Name: Judge Brandler

Date: 12 December 2023

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).