FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/LSC/2023/0302**
Property	**:**	**75 and 76 Eton Hall, Eton College Road, Nw3 2DH**
Applicant	**:**	**Shellpoint Trustees Ltd**
Representative	**:**	**Dale and Dale Solicitors**
Respondent	**:**	**Constatine John Zographos** **Katherine Zographos**
Representative	**:**	**Dale & Dale Solicitors**
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 Niamh O'Brien** **Tribunal Member Richard Waterhouse FIRCS.**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**19th February 2024**

DECISION

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Decisions of the Tribunal

(1) The Tribunal determines that the sums charged to the Respondents as 'Planned Maintenance Charge' are in principal recoverable under the terms of the lease.

(2) The Tribunal determines that the following sums are reasonable and payable by the Respondents in respect of the planned maintenance charge;

(i)	2017	£2650.72
(ii)	2018	£2982.08
(iii)	2019	£3147.72
(iv)	2020	£2816.40
(v)	2021	£2816.40
(vi)	2022	£1656.72
(vii)	2023 (est.)	£1676.72

(3) If the Respondents wish the Tribunal to consider either making 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), and/or an order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act (to reduce or extinguish any liability to pay an administration charge in respect of the Respondent's legal costs), they must file and serve their written submissions by 11th March 2024

(4) The Applicant must file and serve any written submissions in response by 25th March 2025

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents in respect of the service charge years 2017 to 2023. Initially the Application also sought a determination in relation to the year 2024 however this was not pursued in the hearing and the Applicant confirmed that we were considering the last 6 years included in the Schedule completed by both parties; i.e. from 2017 to 2023.

The hearing

2. The Applicant was represented by Mr Comport of Dale and Dale Solicitors at the hearing. The First Respondent was not present and was

represented by his sister Miss V Zagrophos. The Second Respondent appeared in person.

The background

3. In addition to the documents included in the 3 bundles submitted to the tribunal for the hearing, the Applicant relied on the written and oral evidence of Mr Daniel Weil, a director of Parkgate Aspen Ltd, the Respondent's managing agents. Mr Weil told the Tribunal that he been engaged in the management of this estate since the mid 2010's

4. The property which is the subject of this application is a flat in a purpose-built block in an estate consisting of three blocks located in Camden. There are about 120 flats in each block. The estate was constructed in the 1930's and has the benefit of communal gardens and 6 car parks. There are 4 members of full-time staff including a head porter who lives on the estate.

5. 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.

6. The Respondents hold 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. Unusually there are two leasehold title entries in the Land Registry in relation to this flat annexing two separate leases dated 11 November 1978 and 18th December 1984 respectively. Mr Comport clarified for the Tribunal that the 1984 lease is the relevant lease being the headlease between the freeholder and the Respondents, and that the leasehold interest with title number NGL340812 has been extinguished and should have been removed from the Register. The Respondents agreed that the lease dated 18th December 1984 was the relevant lease. The specific provisions of the lease will be referred to below, where appropriate.

The issues

7. During the course of the hearing it became clear that the issue between the parties centred on a charge which appears on the Respondents' service charge demands as 'planned maintenance charge'. This charge has been used to build up a fund which is operated by the Landlord's agents as both a reserve and sinking fund. The Respondents agree that the lease provided for a reserve fund, and that the money which the landlord has paid from fund in the relevant years are in principal for items which are chargeable under the terms of the lease. They also accept that it was reasonable for the Landlord to build up a reserve fund. What remained in issue was whether the sums charged for the years 2017 to 2023 were reasonable in amount.

8. 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.

The Planned Maintenance Charge

9. Clause 2(2) of the lease obliges the leaseholder to pay a proportionate amount of the expenses and outgoings incurred by the landlord in the repair maintenance renewal and insurance of the building and the provision of services. Clause 2(2)(f) additionally provides;

> *"The expression "the expenses and outgoings incurred by the Landlord as herein before used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which have been actually disbursed incurred or made by the landlord during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring by regular or irregular periods whenever disbursed incurred or made and whether prior to the commencement of the said term or otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the landlord or its accountants or managing agents (as the case may be) may in their discretion allocate to the year in question as being far and reasonable in the circumstances"*

Paragraph 12 of the 5th Schedule provides that the Landlord's expenses and outgoings includes;

> "*Such reasonable sum or sums from time to time as the landlord's managing agents shall consider desirable to be retained as a Reserve Fund as a reasonable provision for the prospective costs expenses outgoings and other matters mentioned or referred to in this Schedule or any of them"*

In short Paragraph 12 of the 5th Schedule the lease permits the landlord to maintain a reserve fund for future expenses. Paragraph 2(2)(f) permits the landlord to maintain a fund for periodically recurring anticipated expenditure i.e. a sinking fund.

10. The Respondents have not filed any witness statement in accordance with the directions issued by the Tribunal on 31 August 2023. They have supplied a schedule of disputed service charges which appears at page 226 of Bundle 1. The main issue that the Respondents have as regards the planned maintenance charge became clear in the course of the hearing. It stems from an abandoned project to replace the communal hot water and heating supply in the block with individual gas boilers in

each of the 120 flats. It appears that sums were paid annually by leaseholders into a 'pipework replacement reserve' that was kept separate from the 'planned maintenance reserve'. Money for the pipework replacement reserve were collected from the leaseholders from about the mid 2000s onwards.

11. According to the statement of Mr Wiel the plan was abandoned in or about 2016. He stated in his oral evidence that the freeholder in consultation with the residents association for this block, decided to replace and upgrade the existing communal heating system instead. The money which had accrued in the pipework replacement reserve was then transferred into the planned maintenance fund. This is transfer is shown on the certified accounts for the year ending 2019. The cost of replacing and upgrading the communal heating and hot water system was met from the planned maintenance reserve.

12. It emerged in the course of the hearing that the Respondent's primary concern was that the sums collected from the residents towards the heating replacement project had not been properly spent. They also considered that there had been a failure on the part of the Landlord to collect the contributions due to the pipework maintenance fund from all the leaseholders in the block, leaving others to pick up the shortfall. Miss Zographos argues on behalf of both the First and Second Respondent that the sums that they have been asked to contribute towards the planned maintenance fund since 2019 have consequently been higher than they would have been had the sum due to the pipework replacement reserve been properly collected and thereafter properly spent.

13. The difficulty with this is that the matters which concern the Respondents are now rather historic. The Respondents applied to the Tribunal on Form Order 1 on 23 November 2023 for permission to query service charges going back to 2004 . The Tribunal by letter to the parties dated 29 November 2023 permitted the Respondents to query service charges going back to 2017 but no further. The sums spent from the pipework replacement reserve for the years 2017 and 2018, as evinced in the certified accounts for those years, were minimal. It seems that the respondents' arrears have accrued because they have been unwilling to pay the planned maintenance charge until they had received answers to their queries regarding the pipework replacement fund which they consider satisfactory.

14. According to the Respondents' comments on the schedule at page 226, they are also concerned by the fact that the planned maintenance charge is a general charge and not attributed to a specific anticipated expenditure at the point of demand. The Respondents consider that there is 'a lack of transparency of what they are being collected for'.

15. Included in the Applicant's disclosure are the service charge estimates in relation to this block for the years in dispute, and the actual certified

accounts for the block for the years 2017 to 2022. The certified accounts for the years 2023 are not yet available. The sums brought forward, spent and claimed in relation to the planned maintenance charge in the certified accounts for the year ending 6 April 2017 to 2022 are set out in the following table;

Year	Balance brought forward	Sums demanded	Sums spent
2017	£520,362	£160,000	£284006
2018	£379,127	£160,000	£196,113
2019[1]	£683,410	£180,000	£541,556
2020	£309,810	£190,000	£382,734
2021	£129,886	£170,000	£39,102
2022	£260,824	£170,000	£58,727

The tribunal's decision

16. The tribunal determines that the amount payable in respect of the planned maintenance charge are as claimed by the Applicant. They are as follows;

2017	£2650.72
2018	£2982.08
2019	£3147.72
2020	£2816.40
2021	£2816.40
2022	£1656.72
2023 (est.)	£1656.72

[1] Includes £322,382 transferred from the pipework replacement reserve.

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Reasons for the tribunal's decision

17. Clause 2(2)f of the lease permits the landlord to levy a service charge in respect of anticipated future expenditure. There is no requirement in the lease for the landlord to identify specific items of future expenditure prior to levying such a charge; the landlord retains a wide discretion as to how much to charge and in relation to which expenses subject only to a requirement of reasonableness. Similarly Paragraph 12 of the 5th Schedule permits the landlord to retain a reserve fund as a reasonable provision for prospective costs.

18. The Respondents have not sought to challenge any of the individual items of expenditure from the planned maintenance fund for the years 2017 to 2022 as shown on the certified accounts, or the service charge estimate for the year 2023. The tribunal therefore proceeds on the basis that those items of expenditure were permitted under the terms of the lease, were reasonably incurred and reasonable in amount.

19. That can only leave the issue whether the amounts which the Respondents were required to pay towards the planned maintenance fund were reasonable in amount given the level of money in the fund and the annual expenditure shown in the accounts. It does not seem to the Tribunal that the planned maintenance fund has been permitted to become unreasonably large for a block of this nature, or that the contributions towards the fund claimed by the landlord from the leaseholders are unreasonable given the annual levels of expenditure from the fund shown on the accounts.

20. For the above reasons we have assessed the sums due as set out in paragraph 17 above.

Name:	Judge O'Brien	**Date: 19 February 2024**

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).