



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

**Case Reference** : **MAN/00BN/LSC/2023/0020**

**Property** : **APARTMENTS AT LADYWELL POINT,  
PILGRIM'S WAY, SALFORD M50 1AU**

**Applicants** : **29 LEASEHOLDERS AS SCHEDULE**

**Respondent** : **LADYWELL POINT MANAGEMENT LIMITED**

**Type of Application** : **Section 27A and section 20C Landlord and  
Tenant Act 1985  
Paragraph 5A of Schedule 11, Commonhold and  
Leasehold Reform Act 2002**

**Tribunal Members** : **TRIBUNAL JUDGE A M Davies  
TRIBUNAL MEMBER A Hossain MRICS**

**Date of Decision** : **21 February 2024**

---

**DECISION**

---

- 1) The service charge payable by each of the Applicants for the year ending 31 December 2021 is the amount claimed from him by the Respondent in the service charge account for that year.
- 2) The applications under section 20C of the Landlord and Tenant Act 1985, paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, and paragraph 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 are dismissed.

### **REASONS**

1. The Applicants are long leaseholders of apartments on the Ladywell Point estate in Salford. The estate comprises lawned grounds, access roads, paths and boundary structures, parking areas and three blocks of flats, designated blocks A, B and C. In all there are 261 apartments, the owners of which are required by their leases to become members of the Respondent company. Up to and including 2021 the Respondent engaged Zenith Property Management (“Zenith”) to manage the estate on its behalf.
2. Under the terms of their leases, the leaseholders are required to pay a contribution to the annual cost of managing and maintaining the estate. This service charge is estimated by the management company, the estimated amount is paid by the leaseholders, and a balancing account is prepared at the end of each year. The leases, all of which are in similar terms, provide that the management company may also collect contributions towards a reserve fund intended to meet the cost of occasional major works.
3. When the balancing account for the year ended 31 December 2021 was published a large deficit was indicated, in contrast – the Tribunal was told – to previous years when the expenditure estimates had proved to be more accurate. The Applicants, represented by Mr Brian Tyrer who holds the lease of apartment 66 in Block C, asked Zenith for more information and for sight of supporting documents. Dissatisfied with the limited information supplied by Zenith and the many redactions in the documents copied to them, in February 2023 22 of the Applicants permitted Mr

Tyrer to issue a section 27A application to this Tribunal on their behalf. A further 6 Applicants subsequently joined the proceedings.

## THE LAW

4. Section 18(1) of the Landlord and Tenant Act 1985 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.....
- (3) For this purpose –

(a) “costs” includes overheads.....”

5. Section 19 of the same 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.”

6. In the case of *Schilling v Canary Riverside Development PTD LTD* [2005] EWLands LRX\_26\_2005 the leaseholders appealed against a first-tier tribunal decision which, in respect of some 50 items of service charge costs, stated “*No sufficient evidence was furnished to enable the Tribunal to conclude that the Applicants’ challenge to this item was justified.*” The appellants claimed that the respondent landlord was responsible for explaining and justifying these items on the service charge account. His Honour Judge Michael Rich QC, having considered *Yorkbrook Investments Ltd v Batten* [1985] 2EGLR 100, confirmed at paragraph 14 as follows: “... *if the tenant seeks a declaration [that a service charge is not payable] he must show that either the cost or the standard was unreasonable .... .*” The rule is, that a leaseholder seeking to challenge service charges has the initial responsibility of demonstrating that they appear to be unreasonable. Once this is shown, the burden of proof shifts so that the reasonableness of those service charges must be proved by the landlord.

## THE HEARING

7. A hearing was held by video link on 21 February 2024. Mr Tyrer represented all the Applicants. Mr Worthington of counsel represented the Respondent. No formal witness statements were served by the Applicants. The Respondent's witness was Ms Black, a senior property manager with Zenith. The Tribunal did not visit the estate, but had a comprehensive bundle of documents supplied by the Respondent.
8. Prior to the hearing Mr Tyrer had satisfied himself, on the basis of documents produced by the Respondent, that the suspected duplication of service charges had not taken place. That part of the Applicants' case was withdrawn. The issues before the Tribunal were therefore (a) the service charge items listed in a schedule prepared by the Respondent (b) the section 20C costs claim (c) the claim in respect of any administration charges and (d) the Respondent's costs claim in respect of which a costs schedule had been filed and served.

## THE APPLICANTS' CASE

9. Mr Tyrer objected to 3 entries on Zenith's expenditure spreadsheet, on the basis that the cost of cleaning products and cleaners' supplies posted under "office products" should have been included in the sums paid to cleaning contractors. The total cost of these entries per leaseholder was £3.76 in the year.
10. The Applicants objected to costs of landscaping and grounds maintenance. Mr Tyrer did not object to the hourly rate but queried whether the gardeners supplied by PT Building Developments Ltd attended 26 times per year to cut the grass. No evidence was available from the Applicants as to how often the grass was cut. He pointed out that the caretaker's job description included weeding, the cost of which was included on some of the invoices. He raised the same objection to the many invoices raised by PT Building Developments Ltd for managing the bin areas on the estate from July to the end of 2021.
11. Further objections were raised to the many PT Building Developments Ltd invoices posted under "Internal Repairs and Maintenance". These invoices gave no details as to which block the repairs related to, when the work had been carried out, or what work had been done. Many of them simply state "filling corking sanding painting clean up". Other work descriptions in the invoices are "BH Various", or "PS Walk

around with PTSD”. Mr Tyrer argued that it was wrong to expect the Applicants to agree these “meaningless and confusing” invoices. Further, some of these repair invoices refer to work to doors, and Mr Tyrer pointed out that “adjusting doors” is included in the caretaker’s job description.

12. The service charge account included a sum in the region of £28,000 or £29,000 as an accrual, brought forward from 2020, in respect of potential electricity costs since 2016. The Applicants took the view that this accrual was not permitted by the lease, which contains a provision forbidding the recovery of missed service charge items more than 3 years after they were incurred. Mr Tyrer pointed out that this accrual largely accounted for the £31,052 deficit in the 2021 service charge account.
13. The Applicants objected to the fee paid to a part time estate manager supplied by Zenith at an annual cost of £4,142 for blocks A and B and £4,483 for block C. He referred to Zenith’s document “Your Budget Explained”, which states that the Managing Agent’s fee is a fee “for the full management of the development”, and argued that this fee should include the cost of a weekly attendance on site. He raised the same objection to the annual cost of Health and Safety inspections, at £1,145.04 per block.
14. Zenith’s management fee amounted to some 17.8% of the anticipated expenditure for the year 2021. Mr Tyrer said (a) that this percentage was unreasonably high, and should be reduced to 10%, and (b) that the complexity and lack of transparency in the service charge account, as well as a failure to have the account audited to the International Standard, amounted to a poor service. He referred to other complaints by residents about delays and failures on the part of Zenith, although no witness statements were supplied.
15. Finally, Mr Tyrer explained that the Applicants had serious concerns about the reserve fund, having seen a bank statement which did not appear to show the entries expected in the light of explanations provided by the Respondent. During the year £36,000 was spent from the reserve fund for replacement of fire doors, and £8,167 which had originally been included in the service charge budget and which therefore, Mr Tyrer argued, was not properly payable out of the reserve.

16. The Applicants did not produce alternative figures for any of the contested service charge items, but relied upon their understanding of “Your Budget Explained” and the lack of information provided by the invoices disclosed by the Respondent. In respect of two items of expenditure Mr Tyrer told the Tribunal that he had telephoned the contractor who had raised the invoice, and had been told that the Respondent’s description of the work was inaccurate. However no evidence of this was produced by the Applicants.

#### THE RESPONDENT’S CASE

17. Ms Black for the Respondent explained to the Tribunal that the PT Building Developments Ltd invoices were invariably accompanied by spreadsheets detailing exactly what work had been done, and where and when. She accepted that the invoices themselves, as supplied to the Applicants, did not contain useful information to enable them to ascertain what work they were being asked to pay for.
18. Ms Black confirmed the explanations, in her written witness statement, which dealt with the Applicants’ dissatisfaction with the invoices and with work, separately charged for, the cost of which they believed should have been included in Zenith’s management fee. However she added a number of explanations at the hearing. She told the Tribunal that the accrual for electricity charges had been added back into the service charge account in 2022, when it became apparent that the provision was not required. She also said that the use of PT Building Development Ltd to carry out weeding and to operate the bins, for example, had been required because the caretaker had become ill in July 2021 and had not been able to fulfil all his duties for the rest of the year. She explained that the repair work done by PT Building Development Ltd which was not adequately described in their invoices, related to making good around the architraves of 246 fire doors which had been repaired or replaced during 2021.
19. None of this additional information was supplied by the Respondent prior to the hearing, and none of it was suggested in the letter to leaseholders which accompanied the 2021 service charge account. As Mr Tyrer pointed out, he had had no opportunity to check that part of Ms Black’s evidence that was given for the first time at the hearing. He did not challenge the statement that the accrual for electricity had been credited to the service charge accounts in 2022.

20. Summing up for the Respondent, Mr Worthington referred to the case law cited at paragraph 6 above, and pointed out that no evidence had been adduced by the Applicants. He said that they had failed to present a prima facie case to the Tribunal, that any of the service charges were unreasonable or that the level of service was not to a reasonable standard.

## FINDINGS

21. The Tribunal finds no evidence that in 2021 (a) the service charges for the estate, or for each individual block of flats, are unreasonable or (b) the level of service provided by the Respondent was not of a reasonable standard.

22. Payments to contractors for work usually done by the caretaker are explained by the caretaker's illness during the year.

23. The accrual as a provision for electricity costs since 2016 is permitted by the lease.

24. Zenith's management fee, at approximately £125 plus VAT per apartment per year is by no means unreasonable for the level of service provided. Other aspects of management, such as health and safety checks and weekly estate manager visits to the site, have been properly charged for as separate services.

25. The reserve fund has been properly managed so far as the Tribunal can ascertain from the information provided to it. Expenditure from the reserve fund relates to additional costs, namely the replacement or repair of fire doors, and additional professional fees relating to fire safety to enable sales and mortgaging of apartments on the estate.

26. The Tribunal has accepted Ms Black's additional evidence, although given the involvement of solicitors and counsel on behalf of the Respondent it is surprising that such relevant information was not previously made available to the Applicants. The Tribunal does not know how many of the Applicants may live away from Ladywell Point and perhaps have limited knowledge of events that took place there in 2020 and 2021, during the Covid pandemic.

## COSTS

27. No section 20C order is made. The 20C application was made on behalf of the Applicants, and to make the order would place the burden of the Respondent's costs on those leaseholders who did not challenge the 2021 service charges, which would be unfair in the event that the Respondent adds those costs to the service charge account.
  
28. The Applicants have not shown that any administration charges have been applied to their service charge accounts. No order is made under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
  
29. No order is made pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 in respect of the Respondent's costs. The invoices supplied to the Applicants, even when supplemented by copies of Zenith's spreadsheets, were insufficient fully to explain what the Applicants were being asked to pay for. Additional information supplied at the hearing should have been included, at the latest, in Ms Black's witness statement. The Tribunal does not find that the Applicants, who have not been legally represented, have acted unreasonably in bringing or conducting this application.

**Tribunal Judge A Davies**

**21 February 2024**



## **SCHEDULE**

<b>Applicant</b>	<b>Apartment number</b>
Brian Tyrer	66
Paren Parmeer	132
Piotr Kuna	72
Dr Rupinder Singh Kochar	107
Catherine Hudson	80
Martin Storrie	70
Bhavjot Kahlon	105
Dympna M Pettit	134 and 141
Steven Johnson	98
Filadelfo D Grasso	63
Jonathon Goode	19
Ms Lesley Clarke	184
Mr Robert Townsend	213, 261 and 112
O'Neil Mason	117
Susan Platts-Martin	122 and 251
Daniel Lopez	217
Carl R Williams	207
John M Jones	236 and 253
Sharmoil Karimjee	1
Patryk and Emily Rolka	99
Robert M Summerville	197 and 221
Hetaim Patel	147 and 163
Surjit Bhadare	140 and 171
Emily Bingley	103
Jayesh Solanki	148
Jerry Kottaram	136
Garry Bothwell	144
Christine Massett	180
Zibun Nissa Begum	110