



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

Case reference : **CAM/42UD/LSC/2022/0069**
HMCTS Code : **CVP Remote**

Property : **Focus Apartments, 45 Carr Street,
Ipswich IP4 1HD**

Applicants : **1.Christopher and Kelly Harris
2.Patrice Congard
3.Sameer and Anjali Sule
4.Martin Dye
5.Sandra and Peter Snell
6.Daphne Goldsworthy
7.Chris Battle**

Representative : **Christopher Harris**

Respondents : **1. Grey GR Limited Partnership
2.Sheet Anchor Evolve (London)
Limited**

Representatives : **1.JB Leitch LLP
2.Higgs LLP**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal members : **Judge Ruth Wayte
Mr Gerard Smith FRICS**

Date of Hearing : **27 February 2024**

Date of decision : **2 April 2024**

DECISION

Decisions of the tribunal

- (1) The interim payment requested from the Applicants in respect of the Second Respondent's Estate Charge for 2020 is reasonable and payable.
- (2) A reasonable amount for the contribution to the reserve fund is £13,500 a year (for routine maintenance). The First Respondent has agreed to credit the leaseholders' accounts with a refund in relation to the excess paid by 31 March 2024.
- (3) The interim payment requested in relation to cleaning and caretaking services for 2022 is reasonable.
- (4) The tribunal makes the determinations as set out under the various headings in this Decision.
- (5) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings (including any costs passed on by the Second Respondent) may be passed to the Applicants through any service or administration charge.
- (6) The tribunal determines that the First Respondent shall pay the Applicants £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by them.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the payability of certain service charge items from 2020 through to 2022. The application was prompted by the rapid increase in the service charges from the commencement of their leases in 2016. Four items in particular stood out: Legal and Professional Fees of £20,046 included in the 2020 Service Charge accounts; Estate Charges of some £10,000 a year which were not mentioned in the lease; a huge increase in the reserve fund contributions to £26,000 in 2022 and an apparent increase in the cleaning costs from some £2,000 a year to £15,000 for 2022. The Applicants, led by Mr Christopher Harris, had sought clarification from the managing agents for the First Respondent but in the absence of a satisfactory response made their application to the tribunal in November 2022.
2. Directions were given by the tribunal on 8 February 2023 and the matter was originally listed for hearing on 20 July 2023. Shortly beforehand the solicitors for the First Respondent (the Head Lessor)

made an application to join and seek further documents from the Freeholder. The hearing therefore had to be adjourned, the Second Respondent was joined to the proceedings and further directions were ordered to prepare the matter for hearing, which finally took place on 27 February 2024. By agreement, the hearing was held remotely by Cloud Video Platform (CVP).

3. Mr Christopher Harris represented the Applicants and a number of them attended the hearing as observers. The First Respondent was represented by counsel Rebecca Ackerley with Matthew Harris of Principle Estate Management LLP as her witness. The Second Respondent was represented by counsel Harry Marriott. Both barristers produced skeleton arguments shortly before the hearing. There were also two hearing bundles which had been prepared by Mr Harris and Statements of Account were finally received from the First Respondent the day before the hearing.
4. By the start of the hearing it had been clarified that all of the disputed items were payments on account, as there had been no reconciliation under the terms of the lease since at least 2020 or perhaps at all. The parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of the Estate Charge from 2020 through to 2022.
 - (ii) The payability and/or reasonableness of the interim service charge for contributions to the reserve fund from 2021.
 - (iii) The payability and/or reasonableness of the interim service charge for cleaning for 2022.
 - (iv) Whether an order should be made under section 20C of the Landlord and Tenant Act 1985 and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in respect of any landlords' costs.
5. Having heard evidence and submissions from the parties and considered the documents provided, the tribunal has made determinations on the various issues as follows. The relevant legal provisions are set out in the Appendix to this decision.

The property

6. Focus Apartments is a block of 25 residential flats, converted from former office premises known as Eastgate House in or about 2015. The block is part of the Eastgate Shopping Centre and the residential long leaseholders have use of some of the wider parts of the Eastgate Centre, such as the car park. The First Respondent is the head leaseholder of

Focus Apartments and the Second Respondent is the freehold owner of the Eastgate Centre. The Estate Charge represents a proportion of the freeholder's annual expenses in relation to the Eastgate Centre, which is payable by the First Respondent according to a formula contained in the head lease.

7. Unfortunately, the conversion of Eastgate House appears to have fallen foul of fire safety provisions reviewed in the light of the Grenfell Tower Tragedy. There are other ongoing applications in respect of dispensation from statutory consultation for remediation works and a Remediation Order in respect of relevant defects under the Building Safety Act 2022. Several of the Applicants are qualifying tenants under that Act and are therefore protected from the costs of those works, although provision has been made for them in the service charge accounts. These issues are part of the context to the application rather than directly relevant to the determination of it, although the "threat" of further huge service charges and the lack of communication from the First Respondent in relation to the works are a continuing cause for concern for the Applicants.

The Applicants' leases

8. Mr Harris had provided a copy of his lease in the original hearing bundle. He and his wife are the original leaseholders, dating back to 2016 when they bought the flat "as new". At Paragraph A the lease confirms that the Landlord has a headlease in the Building (Focus Apartments) which forms part of the Eastgate Centre and the Estate. At Paragraph E it confirms that the Landlord's contribution to the Head Landlord in respect of Estate costs will be passed on to the Tenant, although there is no reference to an "Estate Charge" as such.
9. The provisions in respect of the Service Charge are in the Fourth Schedule. That Schedule again confirms that the Landlord's expenditure will include the service charge payable by them under the headlease. The Service Charge is payable in advance every six months and the lease provides that the Landlord will produce a Service Charge Statement in order to reconcile the account after the end of each service charge year. That statement is intended to be itemised in respect of each tenant. No such statement was provided by the First Respondent, despite an order in the directions for disclosure by 3 March 2023 and a further request from the tribunal shortly before the hearing. Their representatives claimed that the draft accounts met part of the requirements of the lease but it was confirmed at the start of the hearing that no reconciliation had actually taken place since the start of the lease. That meant that the First Respondent held onto any amounts paid over and above the actual expenditure as opposed to returning any service charge excess to the tenant in accordance with the lease. Of course, the reverse would also be true in that the leaseholders had not been asked to pay any shortfall, although it would appear that in

practice any shortfall may have been made up from the reserve fund (which is not what the lease provides in terms of recovery of any deficit).

10. The Landlord's obligations subject to reimbursement are in the Sixth Schedule. They are widely drafted and include a "sweeping up" provision at paragraph 32 including the rectification of any inherent or structural defect and payment of any legal or other costs reasonably and properly incurred by the Landlord in taking or defending proceedings.

The Estate Charge

11. As stated above, the first item challenged by the Applicants was the claim for Legal and Professional Fees of 20,046 which appeared in the 2020 Accounts. In fact, it became clear that legal fees only made up a tiny amount of the total, with the Estate Charge demanded in 2020 making up the bulk of the item. Invoices relied upon by the First Respondent in their Statement of Case included a duplicate invoice for one of the periods and no invoice at all in relation to £5, 315 of the total, which lead to a challenge from Mr Harris for a rebate of at least that sum. Although he stated that the leaseholders had previously not been aware of the payment of Estate Charges, once the Second Respondent had joined the proceedings and explained the position, Mr Harris was able to confirm that they were no longer in dispute, subject to the apparent overpayment in 2020.
12. Ms Ackerley has spent some time piecing together all of the invoices which were said to amount to £20,046 and maintained that no invoice had in fact been paid twice, despite the suggestion to the contrary in the First Respondent's Statement of Case. The Estate Charges paid in 2020 were said to include charges for the period from 25 March 2019 to 24 March 2021. The position was complicated by the fact that the service charge year for the Head Lease is different to the service charge year for the residential flats but it was not clear why the demands for 2019 were made so late, not least as they are payable in advance and based on a formula in the Head Lease.
13. That said, the only monies actually demanded from the leaseholders in accordance with the lease for 2020 were based on the budget and paid as an interim service charge. The budget for 2020 included an Estate Charge of £10,630 which the Second Respondent confirmed was correct. By the time of the hearing, Mr Harris was also able to confirm that the Estate Charges for 2021 and 2022 were agreed. After the hearing the Second Respondent confirmed that the Estate Charge due for 2019 was also £10,630 which enabled the tribunal to confirm that the total amount paid on account over that period appears correct, with no refund due, despite the confusion generated by the 2020 Accounts.

14. In the circumstances the tribunal determines that the interim payments made in respect of the Estate Charge for 2020 is payable under the lease and reasonable in amount.

The reserve fund contributions

15. The budgets for 2021 and 2022 requested £22,946 and £26,000 from the leaseholders for the reserve fund. Mr Harris accepted that the lease provides for a reserve fund but had provided a calculation showing that an annual contribution of £13,500 was more than sufficient to meet the anticipated expenditure in terms of routine maintenance of the property. At the hearing, the First Respondent accepted that calculation and Principle agreed to credit each service charge account with the excess paid to date within 28 days.
16. In the circumstances, the tribunal determines that a reasonable contribution to the reserve fund for 2021 and 2022 is £13,500. For the avoidance of doubt, this does not include any building safety expenditure payable by the leaseholders in accordance with the Building Safety Act 2022.

Cleaning Costs for 2022

17. Again, there had been a great deal of confusion in relation to this item but by the time of the hearing it had become clear that the £15,000 paid on account of final expenditure was for the employment of caretaking and cleaning services by Stratis Incorporated Limited. Although the Estate Charge also included an amount for cleaning it was further confirmed that none of that work related to the residential flats. There was therefore no overlap between the two services.
18. The Applicants had obtained two quotes for a similar service, one from Everbrite for £15,907.68 + VAT and the other from AS Cleaning for £19,200. Matthew Harris from Principle confirmed in the hearing that although he was very happy with the service Stratis were providing, he would be happy to work with the leaseholders going forward to discuss alternative providers.
19. Given that the two quotes produced by the Applicants were in fact more than the monies paid on account, the tribunal determines that this is a reasonable sum.

Application under s.20C and refund of fees

20. This application could have been avoided in its entirety if the First Respondent had dealt properly with the Applicants' queries at an earlier stage and provided greater clarity as to the basis on which monies had been paid to date. The confusion was exacerbated by the

accounts which divide the service charge between Whole Building and Flats Only for no apparent purpose. Neither expression is used in the lease and it makes no sense in relation to the development as a whole. The item for “Legal and Professional Fees” in the 2020 accounts was in fact mainly for the Estate Charge for a period considerably in excess of one year. It was only on 16 February 2024 that the First Respondent was apparently able to clarify the position, shortly before the hearing. Confusion in relation to that item led directly to the joinder of the Second Respondent and the increased costs of all parties.

21. The tribunal was also concerned that the First Respondent’s Statements of Case were unclear, mainly consisted of denials and repetition of very basic factual information and therefore added to the general confusion. The First Respondent’s solicitors are experienced in proceedings before the tribunal and should therefore be fully familiar with the Tribunal’s Procedure Rules, in particular the duty in rule 3 to help the Tribunal further the overriding objective which includes ensuring, as far as practicable, that the parties are able to participate fully in the proceedings. Despite their knowledge that the Applicants were acting in person, the First Respondent’s drafting and correspondence was unclear and unhelpful, right up until the final hearing. What was required was a simple explanation, in plain English, of what the charges were for and how they were calculated. As stated above, it was only just before the final hearing that the Legal and Professional Fees item in the 2020 Accounts was clarified.
22. Even though the tribunal upheld the interim payments made in respect of the Estate Charge and cleaning costs, it was not until the hearing that the First Respondent made the concession in relation to the excessive reserve fund contributions. This item alone amounts to a rebate of nearly £22,000 for just the two years covered by the application. Again, it should have been obvious to the First Respondent that the demands in respect of this item were unreasonable, particularly when Mr Harris for the Applicants provided a spreadsheet showing the calculation against the agent’s costs. It goes without saying that this was not for the leaseholders to do in any event.
23. The Applicants had made applications for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the landlord’s costs of the tribunal proceedings (including any costs passed on by the Second Respondent) may be passed to the Applicants through any service or administration charge. Although Ms Ackerley confirmed in the hearing that the First Respondent would not pass the costs of the proceedings on to the leaseholders, in the circumstances as set out in paragraphs 20-22 above the tribunal determines that it is just and equitable for orders to be made under section 20C of the 1985 Act and Paragraph 5A of the 2002 Act. For the avoidance of doubt, “landlord” is defined in section 30 of the Landlord and Tenant Act 1985 as including any person who has the right to enforce payment of a service

charge. The tribunal therefore considers that this order would also preclude the Second Respondent from passing its costs onto the Applicants.

24. For the same reasons as outlined in paragraphs 20-22 above, the tribunal exercises its discretion in paragraph 13(2) of the Tribunal Procedure Rules 2013 to order the First Respondent to reimburse the Applicants' tribunal fees of £300 within 28 days of the date of this decision.

Name: Judge Wayte

Date: 2 April 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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means 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.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (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 provisions 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.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, Paragraph 5A

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.