



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

Case Reference : **LON/OOAH/LSC/2024/0029**

Property : **65 Selhurst Road, London SE25
5QB**

Applicant : **Avon Ground Rents Limited**

Representative : **Richard Granby of Counsel
instructed by Scott Cohen Solicitors**

Respondent : **John Anthony Sean Hastings,
Calene Nicola Kamaka and
Rebecca-Patrice Grossett**

Representative : **Not represented**

Type of Application : **For a service charge determination
pursuant to Section 27A(3) of the
Landlord and Tenant Act 1985**

Tribunal Members : **Judge P Korn
Mr O Dowty MRICS**

Date of hearing : **11 April 2024**

Date of Decision : **12 April 2024**

DECISION

Description of hearing

The hearing was a face-to-face hearing.

Decision of the tribunal

- (1) The estimated costs of £66,693.75 for the major works referred to below represent a reasonable estimate of those costs and are therefore payable by the Respondents (one-third each) by way of estimated service charge.
- (2) It will be open to the Respondents to challenge the actual costs (once the works have been completed and the actual costs have been calculated) if the Respondents do not consider that the works have been carried out to a reasonable standard or if the actual costs are lower than the estimated costs or for any other legitimate reason. However, on the basis of the information before it, the tribunal is of the view that the actual costs will have been reasonably incurred if they are in the region of the estimated amount in the absence of any legitimate reason to challenge them.

Introduction

1. The Applicant seeks a service charge determination pursuant to section 27A(3) of the Landlord and Tenant Act 1985 (“**the 1985 Act**”).
2. The Property is a semi-detached house converted into 3 flats. The Applicant is the freeholder of the Property and the Respondents are its leaseholders.
3. The Applicant seeks a determination that sums proposed to be expended on major works will be recoverable from the Respondents. Each leaseholder’s service charge percentage is one-third.

Applicant’s written submissions

4. The Applicant acquired the freehold interest in the Property on 20 December 2021. On or about 28 December 2022 it received a letter from Lyons Davidson Solicitors representing Ms Kamaka (one of the Respondents) complaining of disrepair including significant water penetration. The letter included a report from Andrew King MRICS of PG Ashton and Son dated 22 July 2022.
5. Jack Ost, property manager at Avon Estates (London) Limited (a connected company to the Applicant), responded to the letter on 4 January 2023. The Applicant then undertook some remedial works and then left the scaffolding up in anticipation of carrying out the more extensive works that it now considered needed to be undertaken, the bulk of these works being to the roofs.
6. The hearing bundle contains a schedule of proposed major works. In respect of these proposed works the Applicant states that it carried out

a full section 20 consultation process, which concluded in December 2023. In the course of going through the consultation process it obtained tenders from Richard Hewson Interior Contracts Ltd (“RHIC”) and from AAM Maintenance Limited. RHIC’s quote was substantially the lower of the two. The Applicant recommended to the Respondents that RHIC be awarded the contract as its price was competitive and as it had come recommended. The total estimate is £66,693.75 inclusive of VAT, surveyor’s fees and management charges.

7. The Applicant states that it has taken professional advice in relation to the necessity of the works and is obliged to carry out the works under the terms of the Respondents’ respective leases. The Respondents are each obliged under the service charge provisions contained in their respective leases to pay one-third of the estimated cost of the proposed works, and the Applicant has complied with the statutory consultation requirements in full.
8. Mr Ost has given a witness statement detailing the necessity of the works, setting out the various steps taken by or on behalf of the Applicant and explaining the basis for the amount of the surveyor’s fees and the management fee. Michael Haber MRICS of HAB Consult Ltd is the surveyor instructed by the Applicant on this matter and he has prepared a full specification of works which is included within the hearing bundle.

Respondents’ non-engagement with these proceedings

9. The Respondents have not made any written submissions in connection with these proceedings and they were neither present nor represented at the hearing. This may well simply be because they did not feel that they had any reason to oppose the application.

The hearing

10. The Applicant was represented at the hearing by Richard Granby of Counsel, accompanied by Mr Ost. At the hearing Mr Granby took the tribunal through the contents of the hearing bundle and the relevant lease provisions.

Mr Ost’s witness evidence

11. The tribunal asked Mr Ost various questions regarding his witness statement. It was noted that the Applicant had seemingly not carried out a proper inspection of the Property (following its acquisition of the Property) prior to its receipt of the letter from Ms Kamaka’s solicitors. Mr Ost explained some aspects of his witness evidence in more detail, including in relation to the number of contractors approached for a quotation, the process used to check on the suitability of contractors,

the Applicant's policy of requiring insurance-backed guarantees and the calculation of the management fee.

Tribunal's analysis

12. Having considered the specification of works, we are satisfied that the works in question are all works in respect of which the Applicant is entitled to levy a service charge under the Respondents' respective leases.
13. Whilst it is considered unnecessary to go through the leases in detail in the absence of any challenge from the Respondents, we would just make a few observations. First of all, clause 1 contains the words "... AND YIELDING AND PAYING by way of further rent such sums of service charge as are payable in accordance with the provisions of the Fourth Schedule hereto" and then under clause 2(1) the tenant covenants to pay "*the rent hereby reserved*". Secondly, the Fourth Schedule sets out the service charge mechanism, from which it is clear that the service charge payable is based on the landlord's expenditure in complying with its obligations under the lease, and we are satisfied in the absence of any challenge that the cost of the proposed major works will constitute expenditure by the landlord in complying with its obligations under the lease.
14. Thirdly, under paragraph 9 of the Fourth Schedule "*The Landlord shall be entitled prior to the commencement of any works as set out in the Sixth Schedule to require payment in advance by the Tenant of a rateable proportion of the estimated cost of such works payment to be made by the Tenant within fourteen days of demand*". Therefore the Applicant is entitled to make a separate demand in respect of the estimated cost of major works. Fourthly, in the Sixth Schedule – the Schedule listing the various landlord's obligations which are subject to reimbursement – paragraph 10 includes as one such set of obligations: "*In the management of the Building and the performance of the obligations of the Landlord hereunder to employ or retain the services of any employee agent consultant contractor engineer and professional adviser that the Landlord may reasonably require ...*". This in our view is wide enough to cover the surveyor's fee and the management charge.
15. Taking all of the lease provisions together, we are satisfied that they are wide enough to enable the Applicant to recover by way of estimated service charge the various elements of estimated expenditure included within the overall sum of £66,693.75.
16. On the basis of the unchallenged evidence and information contained in the hearing bundle, we are also satisfied that the works legitimately need doing, that the Applicant has taken appropriate professional advice, that the Applicant has fully complied with the statutory

consultation requirements, and that the estimated costs are reasonable. We are also satisfied that the estimated surveyor's and management fees are reasonable and have been calculated on a reasonable basis.

17. Accordingly, the estimated costs of £66,693.75 for these proposed major works represent a reasonable estimate of those costs and are payable by the Respondents (one-third each) by way of estimated service charge. The parties should also note the tribunal's additional comments in paragraph (2) above under the heading "Decision of the tribunal".

Cost applications

18. There were no cost applications.

Name: Judge P Korn

Date: 12 April 2024

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

APPENDIX

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
- (6) An agreement by the tenant of a dwelling ... is void in so far as it purports to provide for a determination – (a) in a particular manner, or (b) on particular evidence.