**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**

**(RESIDENTIAL PROPERTY)**

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| **Case reference** | : | **LON/00AZ/LSC/2023/0082 and LON/00AZ/LSC/2023/0083** |
| **Property** | : | **Flats 1 and 2 Nutley Court, 127 Honor Oak Road, Lewisham** |
| **Applicant** | : | **Alexandra Perrett and Lea Lambell** |
| **Representative** | : | **Alex Maunders** |
| **Respondents** | : | **Ambercrown Limited** |
| **Representative** | : | **Michaela Jacobs** |
| **Type of application** | : | **For the determination of the reasonableness of and the liability to pay a service charge** |
| **Tribunal** | : | **Judge Shepherd**<br>**Oliver Dowty MRICS** |
| **Date of Decision** | : | **30th October 2023** |

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**Decision**

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1. This case was heard on 29th August 2023. The Tribunal is grateful to the representatives on behalf of the parties, Mr Maunders who represented the Applicants and Ms Jacobs for the Respondents.

2. The applications relate to Nutley Court, 127 Honor Oak Road, London, SE23 3SW. Ms. Perrett is the owner of Flat 1 Nutley Court and Ms. Lambell is the owner of Flat 2 Nutley Court ("The Applicants"). Nutley Court itself comprises of six flats, two undercover parking bays, and a garden. The Applicants' flats are on the ground floor. The Respondents are the freeholders of Nutley Court.

**The relevant law**

3. The law applicable in the present case was limited. It was essentially a challenge to the reasonableness of the costs. There was also a limited challenge in relation to payability under the lease, and an alleged failure to consult.

4. The Landlord and Tenant Act 1985,s.19 states the following:

*19.— Limitation of service charges: reasonableness.*

a. *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.*

b. *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.*

….

5. The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

*27A Liability to pay service charges: jurisdiction*

a. *An application may be made to [the appropriate tribunal]2 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.*

b. *Subsection (1) applies whether or not any payment has been made.*

c. *An application may also be made to [the appropriate tribunal]2 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.*

d. *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.*

e. *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

f. *An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—*

*(a) in a particular*

*manner, or (b) on*

*particular evidence, of*

*any question which may*

*be the subject of an*

*application under*

*subsection (1) or (3).*

g. *The jurisdiction conferred on [the appropriate tribunal]2 in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.*

**The issues**

6. At the start of the hearing the parties agreed to limit the case to a series of representative issues:

a) Period of AML Budget
b) Sinking fund
c) Building insurance
d) Gardening
e) Legal fees
f) Roof works
g) Accountant fees

7. Mr Green gave evidence on behalf of the Respondents. He is also a leaseholder of Flat 4. He said that the First Applicant had service charge arrears of £8915.28 and the Second Applicant £8982.05. Various other witnesses were called by both parties.

**Determination**

***Period of AML budget***

8. Service charges were due 6 months at a time (clause 3 of the lease). There was an option to pay on a monthly basis. The lease had not been varied. Whilst it's not the Tribunal's function to deal with issues such as payment arrangements the decision to allow monthly payments is not objectionable as it may assist budgeting by leaseholders.

### *Sinking fund*

9. It appeared that the only major works costs met from the sinking fund was the cost of the roof (see below). Yet the sinking fund had depleted. It also became clear that recovery from the sinking fund had happened in addition to recovery from leaseholders for the same works. This is self - evidently wrong. Further, the sinking fund had been used to pay for legal costs incurred in defending proceedings in the County Court brought by the First Applicant. It's not the Tribunal's function to deal with misuse of reserves. However, the practices described above are wrong. The Respondents would be well advised to educate themselves in managing a sinking fund properly. They are in effect trustees of the fund and should behave accordingly.

### *Building insurance and Directors Liability Insurance*

10. The building insurance had increased but there was no suggestion that the costs were unreasonable. The Directors Liability Insurance should not be recovered from the service charge as there is no provision to do so in the lease.

### *Gardening*

11. The Applicants main complaint was that the gardener didn't attend every 2 weeks as he was supposed to. The Respondents said that most fortnights he did attend but he reduced his times over the winter. He is only paid when he attends. The charges of £50 per visit appear reasonable. Accordingly, the sums claimed are allowed.

### *Legal fees*

12. This related to the Respondents seeking to recover the costs relating to the First Claimant's retrospective license claim (she carried out an extension without consent) and disrepair action which had been settled in a Tomlin order. Instinctively it seems entirely wrong to recover the costs from the general service charge particularly in relation to the settled amount. The First Applicant was within her rights to bring the disrepair action and the Respondents sought to settle the claim. They can't then recover the amounts they agreed to pay out. More fundamental than this is the question whether the legal costs are recoverable under the lease.

13. The Respondent relies on clauses 3 and 4 of the Lease. Clause 3 allows recovery of expenses relating to the management and administration and clause 4 relates to the insurance premium. Neither clause makes any reference to legal fees.

14. Previous cases have emphasised the need for legal cost recovery clauses to be clear and unambiguous: *Sella House Ltd. v Mears* (1989) 1 EGLR 65 and *No.1 West India (Residential) v East Tower Apartments Ltd* [2021] EWCA Civ 1119.

15. The clauses relied on by the Respondents are not clear and unambiguous, accordingly the legal costs are not recoverable.

***Roof works***

16. There were works carried out to the roof in 2022. The charges were separated into categories based on individual invoices: Chris Aly Roofing- £5350; replace skylight- £1500; Replace rotten fascia - £1500; replace rotten tiles- £1500; replace ridging tiles - £1500; replace cladding -£1500. No consultation was carried out before these works were carried out. In *Phillips and another v Francis and another (Secretary of State for Communities and Local Government intervening)* Lord Dyson MR set out the following:

    *It is not in issue that the question of what a single set of qualifying works comprises is one of fact. It is a multi-factorial question the answer to which should be determined in a common sense way taking into account all relevant circumstances. Relevant factors are likely to include (i) where the items of work are to be carried out (whether they are contiguous to or physically far removed from each other); (ii) whether they are the subject of the same contract; (iii) whether they are to be done at more or less the same time or at*
    *different times; and (iv) whether the items of work are different in character from, or have no connection with, each other. I emphasise that this is not intended to be an exhaustive list of factors which are likely to be relevant. Ultimately, it will be a question of fact and degree.*

17. The Respondents sought to argue that the roof works eventually carried out were wholly different from that planned. This seems unlikely. None of the works are unusual in the context of addressing roof defects. All the works related to the roof. There was one quote, the final one on 27 April 2022, that included all of the works. All the works were done at the same time, namely between 25 April 2022 to 6 May 2022 and the works were connected to each other as they all related to the state of the roof. There should have been a consultation and there was not therefore the service charge recoverable for these works is limited to £250 per flat.

***Accountant fees***

18. The principal complaint here was that the fees had increased with no improvement in performance. Thre was also a suggestion that the accounts

had not been prepared by a chartered accountant as required under the lease. We were told that the accounts were signed off by a chartered accountant. We consider the costs reasonable and recoverable.

### *S.20 C Landlord and Tenant Act 1985*

19. The Applicants succeeded on most of their challenges accordingly it is appropriate to exercise our discretion under s.20C. This means that the Respondents cannot recover their legal costs of these proceedings from the Applicants' service charge.

**Judge Shepherd**

**30th October 2023**

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.