FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference	:	**LON/OOBE/LSC/2022/0268**
Property	:	**63 Wells Way, London SE57GB**
Applicant	:	**Various Leaseholders at 63 Wells Way, London SE57GB**
Representative	:	**Stuart Murty – Flat 4, 63 Wells Way**
Respondents	:	**Peabody Trust**
Representative	:	**Mr Shaw**
Type of application	:	**Determination of payability and reasonableness of service charges pursuant to s27A LTA 1985**
Tribunal	:	**Judge Shepherd** **John Naylor FRICS** **Jacqueline Hawkins**
Date of Decision	:	**9th May 2023**

Decision

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1. This case was heard on 27th March 2023. The Tribunal is grateful to the representatives on behalf of the parties, Mr Murty for the leaseholders and Ms Shaw for the Respondents.

2. The case concerns 63 -67 Wells Way, London SE57GB ("The premises") . These are purpose - built blocks containing flats. Mr Murty represented all of the leaseholders most of whom live in 63 Wells Way, in addition he represents Sophie Lawrenson of 65 Wells Way and Daniel Darwish of 67 Wells Way.

3. The case concerns a dispute over various items of service charges levied between 2018 and 2021 (The relevant period). The leaseholders allege that these charges are not reasonably incurred. The issues were summarised in a Scott Schedule and can be broadly summarised as follows:

    - Management fee is too high as the service is poor.
    - Fabric repairs – cost too high.
    - Garden and grounds maintenance – poor service and cost too high.
    - Fire equipment costs not reasonable.

The relevant law

4. The law applicable in the present case was limited. It was essentially a challenge to the reasonableness of the costs. There was no challenge in relation to payability under the lease, an alleged failure to consult or limitation.

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

19.— Limitation of service charges: reasonableness.

(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.

(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.

....

6. 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

(1) 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.

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

(3) 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.

(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 (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).

(7) 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.

Management fee

7. The Applicants complained of a number of failings by the Respondents. They said that there was poor communication. The managers were changed and they were not informed. There was a lack of accountability. There was a flytipping issue that took a long time for the Respondents to address. Drug dealing was taking place in the car park to the premises. Scaffolding had been erected and then removed. The leaseholders had raised this issue with the Respondents but had not received a proper response. In 2018 the Respondents agreed in a mediation agreement to work with the leaseholders. In fact there had only been one meeting with the leaseholders after the mediation agreement.

8. Mr Shaw said the management fee was reasonable. He said a good service was being provided. The premises were located in a high anti- social behaviour area and there was open access on both sides. He said the Neighbourhood Manager went to the premises periodically – once or twice a year.

Fabric repairs

9. The Applicants complained about the works to the external fabric of the building. There were leaks which occurred every time it rained. Scaffolding had been erected but no works carried out. Insulation had not been carried out. A new roof was installed in the summer of 2022 but the work had been unsatisfactory. Scaffolding holes had been left. There was little Peabody presence during the works. There were health and safety concerns.

Garden and grounds maintenance

10. The leaseholders showed the Tribunal photographs of materials which had been dumped in the garden space. These were building materials relating to this site and another. Rats were using the materials as bedding. The rubbish had been in the garden for a month. There was also a disused cabin which was there for over 6 months. There was little scrutiny of the works. They could not use the garden. There was litter in the bushes.

11. Mr Shaw said the costs were reasonable.

Fire equipment

12. The leaseholders complained about the cost of the fire equipment works. These included the fitting of fire doors, fire stopping etc. Mr Shaw said the cost of the works were capped below the s.20 limit.

Determination

Management fee

13. The Tribunal considers that there was no proper management during the relevant period. This was reflected in the persistent fly tipping issue , the rubbish being left in the garden, the scaffolding being erected and then removed and the accounts not being provided on time. We deduct 50% of the management for the full relevant period.

Garden and grounds maintenance

14. During 2020-2021 this service was found particularly wanting. Rubbish was left in the gardens attracting rats and a cabin was left for six months. It was not possible for the residents to use the garden in this period. A 20% deduction for the fee in 2020-2021 is made.

Fabric repairs

15. These repairs were unsuccessful and leaks continued also the roof insulation failed. The scaffolding was removed after it hadn't been used. The Tribunal makes a 20% deduction in the costs for 2020-2021 and 2021-2022. The costs in 2018-2019 are disallowed entirely.

Fire equipment

16. The sums claimed were reasonable. The Respondents had capped the costs below the s.20 level.

S20C Landlord and Tenant Act 1985

17. The Tribunal allow the leaseholder's application as they have largely been successful. This means that the Respondents are precluded from recovering any costs incurred in this case from the service charge.

18. In addition the Respondents are ordered to reimburse the Applicants with the hearing and application fee totalling £300.

Judge Shepherd

9th May 2023

RIGHTS OF APPEAL

1. 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.

2. 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.

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 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.