FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference : LON/00BB/LSC/2023/0228

Property :Ruby Court, 9 Warton Road,

London E15 2GD

Applicants : 30 Applicants as listed in the application

Representative : Alessandro Storer (Flat 47)

Respondent : Notting Hill Genesis

Representative : Justin Bates KC

Type of application :Payability and reasonableness of service charges

Tribunal:

Judge Shepherd

Evelyn Flint FRICS

John Francis

Date and Venue of Hearing: 29-31st January 2024

10 Alfred Place, London WC1E 7LR

DECISION Reviewed on 17th April 2024

1. The Applicants in this case are 31 occupiers who live in a relatively new complex in Stratford E15. The occupiers are mostly long leaseholders although there is one tenant as well. The buildings at issue are called Ruby Court, Opal Court and Sapphire Court. These are part of a wider development known as The Halo. It is a mixed commercial/residential development (6 commercial units and 706 residential units), with the residential properties covering supported living, rental properties, shared ownership and rental tenures. The Tribunal inspected the development at the end of the hearing.

2. We inspected the external areas as well as the internal communal areas of the main blocks. There was evidence of works being carried out by the developer, Ardmore who are remediating unsafe cladding. These works are extensive and have had an effect on the running costs of the development (see further below). We were asked by the parties to look specifically at the cladding remediation, the concierge, the front gate to Ruby Court, the inside of Ruby Court, the plant rooms, the 7th floor corridor of Ruby Court and the Green Roof. Overall, the development presented as an impressive operation. The concierge appeared well organised and efficient. The outside appearance has been affected badly by the remediation works although some attempt has been made to confine them to a limited area. The developer was using substantial access and works machinery which is presumably powered by the electrical supply. The internal residential areas appeared slightly shabby and unclean despite the fact that the block is newish.

3. Mr Storer, one of the leaseholders, represented the residents. He is to be congratulated for his skilled and mature advocacy. He was ably assisted by Christopher Smith another leaseholder. The Respondents were represented by Justin Bates of Counsel who conducted himself in the same skilful and professional manner we have come to appreciate. He called evidence from staff members of Notting Hill Genesis, in particular Alison Roden and Danielle Brown.

4. An agreed list of issues was prepared by the parties and submitted to the Tribunal at the start of the hearing. The Tribunal heard evidence from Ms Rodin and Ms Brown on each of the issues for the years in question which were 2020 to date. In addition to specific challenges the Tribunal were asked to determine: whether the Respondents had complied with the statutory requirements in s.20B Landlord and Tenant Act 1985; whether a settlement of previous proceedings in 2018 affected the Respondent's obligations; whether accurate

and timely accounts for the years in dispute had been provided and whether the services or works carried out were of a reasonable standard.

The relevant law

5. 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.

6. 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.*

   ....

7. 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.

The issues

7. The lease terms and their application were not in issue and were in any event uncontentious. It is not intended to rehearse the terms here. Suffice to say that the principal ones were at clause 7 of the lease. The main point of challenge by the Applicants was the reasonableness of charges. Taking each challenge in turn.

Estate maintenance (2020/2021 – 2023/2024)

8. It became clear during Ms Rodin's evidence that this heading dealt largely with compliance work to ensure the estate is safe. The Respondents had entered into a contract with an external company, first ECG Facilities Services and then

Property Serve Building Solutions Ltd. The contractors charged a fixed price for specific tasks. The Tribunal were told and accept that concerns to ensure safety compliance had been heightened since the Grenfell fire. A lesser proportion of the estate maintenance costs consisted of ad - hoc repairs including maintaining a rubbish compactor. The Applicants were concerned about the apparent increase in expenditure on this item. Ms Rodin maintained that compliance was essential.

Communal repairs (2020-2021)

9. The Applicants challenged the amount of the costs which amounted to around £60000.

Staff costs / Concierge (2020/21 – 2023/2024)

10. This covered the staff costs for the estate including the estate officers and concierge staff. There were 10 staff members in total (1 Estate Co-ordinator, 1 Estate Services Team Leader, 2 Estate Officers, 1 Concierge Team Leader, 5 Concierge Staff). These staff managed a total of 712 units of accommodation. The Applicants said the estate was over staffed. Ms Ryder explained that the Estate Officers were in fact caretakers. The concierge staff were necessary as part of the fire strategy. It was a 24 - hour concierge. There had been 2 fires in the past. Staff breaks had to be covered. The concierge desk is based in Halo Tower, but the concierge staff provide a service to the entire estate. They accept delivery of parcels for residents. They took repair requests, out-of-hours requests etc. They also provide an element of security via regular patrols and close the estate gates at night.

Internal cleaning (2020-2021-2023-2024)

11. There were five cleaners in total. They carried out internal cleaning in each block except Amber Court. They cleaned every week day. External cleaners could be used but it would be more expensive according to Ms Ryder.

Agency costs / Other employee costs (2022/2023)

12. These were costs of covering for staff absences.

Gardening (2022/2023- 2023/2024)

13. This work was carried out by Mears who came twice a week. They dealt with the hedges, plants etc. Most of the site was taken up by the remedial works but there was still some landscaping to be maintained. An agency is used for short term cover. Once the cladding remediation was complete there would be a landscaping project.

***Water legionella testing* (2022/2023)**

14. The estimated costs were not actually incurred and therefore there is no issue to resolve.

Pest control

15. This sum was conceded.

Site security

16. A security guard patrolled every night from 10 pm – 7 am. Ms Brown said they were not happy with the performance and the contract may be terminated. Steps had been taken in this direction and a procurement exercise was to be followed to identify an alternative company. The Applicants said the security guard added nothing.

<u>Ruby Court</u> electricity (2020/2021 and 2023/2024)

17. This purportedly covered the costs of external lighting and other electricity costs. Electricity is procured under a contract obtained via a brokerage and for which this Tribunal previously granted dispensation from the statutory consultation requirements. The Applicants expressed real concern about the inflated bills. The Respondents had an Energy Manager but this person had failed to attend the hearing or provide a witness statement. Ms Rodin was not clear in her evidence as to why the bills had increased. There was concern that the contractor carrying out the remediation works may be using the communal electricity supply.

18.The Respondents said that the internal electricity costs are based on actual consumption and increases are due to factors beyond the control of NHG.

Motion sensor lighting has been installed so as to reduce waste and other steps have similarly been taken to prevent unreasonable use of electricity.

Fire risk assessment (2022-2023)

19. This is a statutory requirement and was carried out annually. The Applicants questioned why this charge appeared in this category and also in the estate maintenance category. The Respondents confirmed that the latter accounted for external costs and the former internal costs.

Audit (2022/2023 and 2023/2024)

20. This is the cost of the accountants producing the service charge accounts. It was conceded by the Applicants.

Sinking fund (2022/2023)

21. Ms Rodin explained the purpose of the fund.

Insurance (2022/2023)

22. No charges had been made for the cladding remediation which was being met by the developer. The Applicants challenged the level of increase from previous years.

Management fee (2021/22, 2022/23, 2023/24)

23. The charge was around £300 per unit. Ms Rodin said the charge had been used to cover various expenditure including the refurbishment of the offices and the salary of the Estate Operations Manager. In most NHG properties this simply goes to the NHG head office as a contribution to costs. But here, the money remains at the development and is used to cover the Estate Operations Manager's salary and other misc. costs which arise from time to time (e.g. cleaning products).

S.20B

24. The Applicants complained that s.20B notices had been used to delay the accounts. Ms Rodin said there were discrepancies in the accounts because the staff salaries were not known. The costs had however been incurred. The Applicants questioned whether services had been suspended due to the remediation works. Ms Rodin said that landscaping and cyclical decorations had been suspended but not the gardening.

The 2018 settlement

25. In 2018 in settlement negotiations the Respondents had made a number of commitments regarding future performance. Ms Rodin said that a new management system was now in place. This was introduced in 2020. The Applicants said there were still significant problems and the Respondents took some time to obtain a proper management system. They had carried out the accounts manually in the interim. Some of the problems were associated with the merger of Notting Hill and Genesis.

Determination

26. Although the costs across the various blocks were standard the apportionment amounts varied. It is not intended to detail the actual costs here but to refer to either lump sums or percent allowances for each item of service. If there is any dispute about the application of the decision to the actual costs incurred the parties will need to refer back to the Tribunal stating the point of dispute that needs to be resolved.

Estate maintenance (2020/2021 – 2023/2024)

27. It is prudent for the landlord to meet their compliance responsibilities and to use an independent contactor for this purpose. The costs appeared reasonable and are allowed in full.

Communal repairs (2020-2021)

28. These costs appeared reasonable and there were no alternative costs provided. The sums are allowed in full.

Staff costs / Concierge (2020/21 – 2023/2024)

29. The need for a good concierge and caretaking service is regarded by the Tribunal as essential on a large complex development such as this. The Tribunal were however concerned that a management team was somewhat "top heavy" for the development. There is an Estate Co-ordinator, an Estate Team Leader and a Concierge Team Leader. These were in addition to the Estate Operations Manager. Some of the tasks could be performed by a generic manager covering a variety of tasks. Rather than deducting specific staff which is largely a matter for the landlord we have adopted an approach of looking at the overall outgoings and have reduced overall staff costs by £70000 per annum for the periods in question. We consider the remaining sum is a reasonable fee to charge.

Internal cleaning (2020-2021-2023-2024)

30. We were not impressed by the standard of the internal cleaning, especially in relation to the number of cleaners employed, and we consider it fair to make a deduction to reflect this. We allow 50% of the sum claimed for the period in question.

Agency costs / Other employee costs (2022/2023)

31. These costs are allowed in full as they are largely unavoidable.

Gardening (2022/2023- 2023/2024)

32. We were also not impressed by the standard of the gardening carried out. Indeed it is hard to see that 2 man days a week was justified because much of the landscaping has been affected by the remediation works. We allow 33% of the amount charged for the period in question.

Site security

33. The security service is clearly a concern for the Respondents and they are reviewing the service currently. In any event we consider that it is excessive to charge for a security guard every night of the week. More realistically security is required for the weekend and perhaps one other day. We allow 43% of the amount charged.

Estate electricity (2020/2021 and 2023/2024)

34. The Respondents' counsel Mr Bates identified an error in the VAT rate applied which will need to be rectified. In addition to this we have significant concerns about the recent inflated charges for electricity. There remains a risk that the remediation contractors have been using the electricity supply and that this has caused the recent spike in costs. The lights in the garage areas also seemed to be permanently on although they are supposed to have motion sensors on them. It seemed to be common ground that the average consumption for previous years was 4000kwh which equates to approximately £1408 per month or £16896 per annum which is the amount we allow along with the daily rate and 5% VAT.

Fire risk assessment (2022-2023)

35. This is a prudent measure and the costs are allowed in full.

Audit (2022/2023 and 2023/2024)

36. These sums are reasonable and are allowed.

Sinking fund (2022/2023)

37. This is a prudent cost and is allowed in full.

Insurance (2022/2023)

38. No comparators were provided by the Applicants and the sums appear reasonable. They are allowed in full.

Management fee (2021/22, 2022/23, 2023/24)

39. We were concerned that sums other than the Estate Operations Manager's salary had been attributed to these costs improperly. It had become like a "slush fund" from which miscellaneous items could be paid for. There were no accounts demonstrating what the management fee had been used for. We asked for this information but it was not forthcoming. We allow only the Estate Operation Manager's salary and on costs only for the years in question.

S.20B

40. We had concern that following the merger manual accounts had been prepared by Ms Rodin. It is not fair on her to have this additional responsibility without the skills to fulfil it properly. Nonetheless the s.20B notices appeared valid.

The 2018 settlement

41. Plainly the Respondents have failed to fully comply with the commitments made in the 2018 settlement. There was some confidence however that the service will improve in the future particularly as the Applicants appear to appreciate the service provided by Danielle Brown.

s.20C Landlord and Tenant Act 1985

42. This was a genuine application which was cogently argued by Mr Storer. The Applicants have been successful albeit partially. We have no hesitation in exercising our discretion under s.20C and disallowing the Respondents from recovering their costs of the proceedings from the service charge.

Judge Shepherd

February 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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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).