



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

Case reference : **LON/00BB/LSC/2023/0344**

Property : **140 Barking Road, London E16 1EN**

Applicant : **World Property Investments Ltd**

Representative : **Mr Peter Gunby MRICS**

Respondents : (1) **Mohammed
Nasher Ali Mollah**
(2) **Pearlregal Ltd**

Representative : **Did not appear**

Type of application : **Application under S.27A Landlord
and Tenant Act 1985**

Tribunal : **Judge Rosanna Foskett
Mrs Alison Flynn MA MRICS**

Date of hearing : **2 May 2024**

DECISION

***Reissued on 9 May 2024 with clarification set out in red text
below***

SUMMARY OF DECISION

1. The Tribunal has made findings in relation to the payability and reasonableness of service charges, as set out in this Decision.
2. The overall decision is that:
 - a. The interim service charge for the year 25 December 2023 to 24 December 2024 due on 25 March 2024 and attributable to repair works at the property in the sum of £23,466.21 from each of the Respondents is payable and reasonable **(as half of the total sum**

which is payable and reasonable by each Respondent for the works described in this Decision);

- b. The future service charge demand which is to be issued in September 2024 for the other half of the works described in this Decision will be payable and reasonable assuming it is also in the sum of £23,466.21 for the works (with the total demand for the works being £46,932.52 as referred to on page 207 of the hearing bundle).
- c. The Applicant is entitled to recover the legal costs of these proceedings as service charge under the terms of the Respondents' two leases. The Applicant's actual costs are £3,840 including VAT and this sum is reasonable and half of the sum should be paid by each of the Respondents.

BACKGROUND

3. The Applicant landlord seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable and reasonable.
4. The dispute concerns two leasehold flats at the building at 140 Barking Road, London E16 1EN ("**the Property**"). The Property is a 3-storey 1920s mid-terrace building. The Property is divided into 3 units, 2 self-contained residential flats (first floor and second floor) and one commercial unit on the ground floor.
5. The Applicant is the freeholder of the Property.
6. The First Respondent and the Second Respondent each hold long leases of Flats A (first floor) and B (second floor) at the Property respectively. The First Respondent holds a leasehold interest of 99 years commencing 24 June 1989 of Flat A pursuant to a lease dated 21 October 1989. The Second Respondent holds a leasehold interest of 189 years commencing 24 June 1989 of Flat B pursuant to a lease created by a Deed of Surrender and Regrant dated 8 October 2021. The material provisions relating to service charge are identical in the leases of Flats A and B.
7. The Second Respondent issued a disrepair claim in the County Court against the Applicant in March 2022, which culminated in a settlement in April 2023. Pursuant to that settlement, the Applicant was required to take various steps to redecorate and refurbish the communal parts of the Property and renew the roof covering and carry out remedial repairs to the rear elevation. The Applicant successfully applied to the Tribunal in June 2023 for dispensation from section 20 consultation requirements in respect of certain emergency repairs to the roof and guttering. The rest of the works required section 20 consultation requirements to be followed.
8. The Applicant instructed B Bailey Property Management to enter into section 20 consultation with the Respondents as lessees in October

2022. The first notice was dated 31 October 2022 and contained a detailed specification of works and notes about the consultation process. The Second Respondent put forward a contractor to price the works. The second state of the consultation was dated 14 February 2023 and sent to both Respondents the estimates and a schedule of costs for the works (including the costs provided by the contractor put forward by the Second Respondent). The final stage of the consultation was sent on 20 April 2023. Demands for payment for 50% of the works were sent to both Respondents on 17 July 2023 and have not been paid to date despite the deadline for payment being 25 March 2024.

9. Since the issue of this application, the Respondents have not engaged in the proceedings and did not attend the hearing. No evidence has been filed by them and no submissions made on their behalf.
10. The Tribunal heard submissions from the Applicant's representative, Mr Gunby, and also reviewed the documents provided in the 306-page hearing e-bundle.

THE LEASES

11. The "Building" is described in the Respondents' leases as that which is specified in paragraph 8 of the particulars. Paragraph 8 of the particulars on page 1 describes the building as "140 Barking Road".
12. Clause 4(4) requires the lessees to "*pay the interim charge and the service charge at the times and in the manner provided in the fifth schedule hereto both such charges to be reasonable in default as rent in arrear*".
13. The fifth schedule describes "*service charge*" on Page 24 of the Leases. This sets out the service charge as "*The total expenditure incurred by the Lessor in any accounting period in carrying out its obligations under Clause 5(5) of this lease and any other costs and expenses reasonable and properly incurred in connection with the building including without prejudice to the generality of the following:- "Cost of employing managing agents" and "The cost of any accountant and surveyor employed to determine the total expenditure and the amount payable by the Lessee hereunder"*".
14. Clause 5 contains the Applicant's covenants and clause 5(5) is on Page 10 of the leases. The clause provides that "*subject to the condition upon payment being made by the Lessee of the interim charges and the service charges at the time and in the manner herein before provided:- ... To maintain and keep in good and substantial repair and condition the main structure of the building including the principal internal timber and the exterior walls and the foundations and the roof thereof with its main water tanks, main drains, gutters and rainwater pipes*".
15. In particular it refers to under clause 5(5)(a) "*without prejudice to the forgoing to do or cause to be done all such works installation acts matters and things as in the absolute discretion of the Lessor may be*

considered necessary and advisable for the proper maintenance safety and administration of the building".

16. Clause 5(5)(g) permits the Applicant *"to set aside such sum of money the Lessor shall reasonably require to meet such future costs as the Lessor shall reasonably expect to incur of replacing maintaining and renewing those items which the Lessor has hereby covenanted to replace maintain or renew"*.
17. The fifth schedule on the top of Page 25 goes on to say under clause 1 subclause 2 the share of the total expenditure is as specified in paragraph 7 of the particulars.
18. The particulars are on Page 1 of the leases with paragraph 7 stating *"the proportion shall be one-third of the total expenditure"* in both leases.
19. The *"interim charge"* meaning is set out in paragraph 3 under the fifth schedule clause on Page 25 meaning "such sum to be paid on account of the service charge in respect of each Accounting period as the Lessor or its managing agents shall specify at their discretion to be a fair and reasonable interim payment.

THE LEGISLATION AND AUTHORITIES

20. The relevant key provisions of the Landlord & Tenant Act 1985 are set out in an Appendix to this Decision. In summary:
 - a. Section 18 defines "service charge"
 - b. Section 19 provides that service charges must be reasonable in amount and have been reasonably incurred.
 - c. Section 20 (as amended) requires that the Lessees must be consulted before the Landlord carried out works above a certain value.
 - d. Section 21: A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants and dwellings in relation to service charges.
21. It should be noted that in *Plough Investments v Manchester City Council* (1989) EGLR 244, it was held that *"it is for the Landlord to decide how the works should be undertaken and the Tenant cannot insist on the Landlord carrying out only a minimum standard of works"*.

REASONS FOR THE TRIBUNAL'S DECISION

The repair works at the Property

22. The works covered by the specification in the section 20 process appear to the Tribunal to be payable under the terms of the leases.
23. The need for those works is identified and explained in the report of Mr Gunby which appeared in the bundle, split into various items (front elevation, rear elevation, main roof, mono-pitch roof to the rear

addition and common parts). The Respondents have adduced no evidence to say that the works themselves are unreasonable.

24. All the works identified fall within the repairing obligations contained in clause 5(5) of the leases.

Whether the cost of the proposed repair works is reasonable

25. The Schedule of Costs provided a breakdown of cost of the actual building works and the cost of overseeing the works, together with the cost of the consultation process and contingency amounts for unforeseen works and inflation.
26. All the estimates obtained were from independent contractors and the process conducted with transparency.
27. The Respondents have not put forward any evidence that the costs are not reasonable and, having scrutinized Mr Gunby's report, the various documents produced as part of the section 20 process and the photographs of the building in the e-bundle, the Tribunal is satisfied that the costs are reasonable.
28. The section 20 consultation process was conducted in accordance with the relevant legislation.

Costs of the proceedings

29. The Applicant seeks to recharge the costs incurred in bringing Tribunal proceedings. The Tribunal was handed a costs schedule showing the actual costs incurred totalling £3,840 including VAT, which are payable to Mr Gunby, a chartered surveyor, for assisting the Applicant with its case preparation and presentation.
30. The Applicant was in some difficulty identifying a clause in the leases on which it could rely for the recovery of these costs. However, on balance, the Tribunal is satisfied that the costs fall within the definition of "Total Expenditure" in paragraph 1(1) of the fifth schedule in the leases, being "*any other costs and expenses reasonably and properly incurred in connection with the Building, including without prejudice to the generality of the foregoing ... (b) the cost of any ... Surveyor employed to determine the Total Expenditure and the amount payable by the Lessee hereunder*".
31. It was reasonable and proper for the Applicant to bring the application it did in light of the Respondents' failure to engage with the section 20 proceedings and subsequent failure to pay the interim service charge demands.
32. The costs in the schedule are reasonable in the circumstances and would not have had to be incurred (or not incurred to the same extent) had the Respondents properly engaged with the proceedings and made their position clear from the outset.

Name: Judge Foskett, Mrs Flynn

Date: 2 May 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

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.