FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BD/LSC/2020/0315 & LON/00BD/LSC/2020/0333**
Property	:	**Riverholme, Hampton Court Road, East Molesey, Surrey KT8 9BP**
Applicants	:	**The Leaseholders of Flats 1 – 18.**
Representative	:	**Mr Gerald Sheridan lessee & Chairperson of the Riverholme Residents' Association**
Respondent	:	**JP Wheelan Homes PLC**
Representative	:	**Kinleigh Folkard & Hayward Solicitors**
Type of application	:	**Service charges – section 27A & S20C Landlord & Tenant Act 1985**
Tribunal member(s)	:	**Judge Mullin** **Ms Flynn**
Date of Further Directions	:	**25th February 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The order made is described below.

Decisions of the tribunal

(1) The Tribunal determines that the service charges in the 2019 service charge year in relation to the replacement of storage cupboard doors are limited to £250 per leaseholder for want of proper compliance with the consultation requirements.

(2) The tribunal determines that 50% of the service charges payable as a result of services by Quantum for the service charge years 2014 – 2017 are not reasonable and therefore not payable and that the entirety of the service charges payable as a result of services by Quantum for the service charge years 2018 and 2019 are unreasonable and therefore not payable.

(3) The Respondents may not recover their legal costs of these applications against the applicants by way of service or administration charges.

The hearing

The hearing took place via the Cloud Video Platform on 25th January 2021. The Applicant appeared in person, the Respondent was represented by Counsel. The Tribunal is grateful to the Parties for the helpful and courteous way they conducted the hearing.

Background

By the Applicant's applications, which have been joined by the Tribunal by its directions dated 26 November 2020, these applications are limited to a determination of payability and reasonableness of service charges within the period and for the heads of expenditure detailed therein, namely: -

a. 2019: replacement of doors to storage cupboards; and
b. 2014 – 2019: Cleaning Costs.

The Respondent's have also made an application under section 20C of the Landlord and Tenant Act 1985.

The Issues

The Parties

1. There is a dispute about whether all of the named applicants are entitled to seek a determination as set out in the application. The Applicant is said to be brought on behalf of all 18 leaseholders. Mr. Sheridan has represented the leaseholders in this application.

2. The Respondent stated that some of the leaseholders had purchased their leases either mid-way through the relevant period or after it. They rely on the case of *Gateway Holdings (NWB) Ltd v McKenzie & Anor* [2018] UKUT 371 (LC), in which the Upper Tribunal held that, whilst a residential leaseholder may apply to the Tribunal under section 27A for a determination in respect of service charges paid by their predecessor before they acquired the lease, the outcome of the Tribunal determination in relation to the pre-acquisition years can be of no practical benefit to the new tenant. In the event any sums were found by the Tribunal to have been overpaid in respect of years which pre-date each respective leaseholders' ownership, as they were not the tenant at the relevant time of the demand, then they are not entitled to receive any such overpayment.

3. It is agreed between that the leaseholders of Flats 15 and 18 acquired their leases after the period to which these applications relate and thus they are of no practical benefit to them. However, as *Gateway* makes clear, they are still entitled to seek the determination.

4. There is a dispute regarding the leaseholders of Flat 5. The Respondent maintains that they acquired the lease in November 2020. Mr. Sheridan, for the Applicants, states that this transaction was only to put the lease "back into joint names" and that they have in fact been leaseholders since 1998. He produces some service charge documents naming the leaseholders from 2018 as evidence. It seems to the tribunal that this could easily have been resolved by reference to the land registry, however on the balance of probability, the tribunal is satisfied that Mr. Sheridan is right and that Mr. and Mrs. Plaistowe have been leaseholders since 1998 and can therefore benefit from this determination. It is difficult to see why there would be service charge accounts in their names otherwise.

5. In relation to Flat 12. The leaseholder is not a party to the application, instead her husband has applied on her behalf. The Respondents argue (albeit agreeing to give effect to the determination regardless by crediting the sums to the relevant account) that this means the tribunal cannot make a determination in the leaseholder's favour. The Court of Appeal ruled in *Oakfern Properties v Ruddy* [2006] EWCA Civ 1389 that there was no limit on who might apply for a determination. Accordingly this determination will apply in relation to the leaseholder of flat 12.

6. The leaseholders of Flats 3, 9, 13 and 16 acquired their leases during the relevant period covered by the application. They are entitled to seek the determination (as per *Gateway*) but they will only practically benefit to the extent they were leaseholders at the relevant time the service charges were demanded.

7. No other issue is taken with whether any other leaseholder is a party to the application or whether they are entitled to benefit from them.

Storage cupboard doors

8. In their defence to these Applications, the Respondents accept that they have not properly consulted regarding the storage cupboard doors and have indicated that they will be crediting the leaseholders any service charges in excess of the £250 limit, if they have not already done so. Nothing more need be said about the storage cupboard doors.

Cleaning costs

9. The Application challenges the service charges in relation to cleaning at the property in the service charge years for 2014 – 2019.

10. The Applicants maintain that the cleaning services were not carried out properly, that two contractors were appointed to do the same work (in respect of the cleaning of the bin room) and that one of the contractors did not attend at all in the 2018 and 2019 service charge years despite the leaseholders being charged for the costs of their attendance.

11. The Applicants had originally pursued an argument that the cleaning contracts were qualifying long term agreements and had not been consulted upon. This argument was not pursued at the hearing and in any event the Tribunal is satisfied the contracts were not qualifying long term agreements because they were not for a period of longer than 12 months and were terminable immediately upon notice.

12. The Respondents agreed there had been a degree of overlap between the cleaning companies. These were "Quantum" and "Bee Kleening".

13. Quantum were engaged between 2010 until February 2020 and were engaged to clean the bin room and ramp twice monthly.

14. Bee Kleening have attended the property from 2014 until May 2020. They were contracted to (among other things) sweep out the bin room and disinfect when required on a weekly basis.

15. It follows, and this was put to the Respondents, that the bin room should have been very clean indeed given the frequency with which it was said to be being cleaned: twice monthly by quantum and weekly by Bee Kleening. Unfortunately, there is a substantial amount of evidence (see for example the various statements of the leaseholders at page 119 onwards) that this was not the case and that the bin area and ramp were very infrequently cleaned and were often in a very unsatisfactory condition. It is said the leaseholders themselves had to perform this task,

which they were paying service charges for two different contractors to do.

16. There is no hard evidence from the Respondents to counter that assertion beyond the fact that they received, they say, no complaints from the leaseholders, they were invoiced for the work and that the contractors were "trusted traders".

17. The tribunal prefers the evidence of the Applicants. It seems clear that there was a degree of overlap between the scopes of the cleaning contractors, which is unreasonable in and of itself. It is equally clear, on the balance of probabilities, that the bin room was not regularly satisfactorily cleaned by the contractors (if it was cleaned at all) throughout the relevant period. The leaseholders' statements are compelling evidence and there is little if any real evidence from the Respondents to rebut it. Invoices do not in and of themselves establish that cleaners attended the site or did a proper job when they did attend. There was no direct evidence from anyone from the Respondents who had inspected the site on a regular basis and who could give evidence of the cleanliness of the relevant areas.

18. Happily, the tribunal was informed the situation is much improved, with proper cleaning now in place at a reduced cost. Additionally, sign in sheets for the cleaners are being provided in order to monitor attendance.

19. The Applicants do not propose that they should be refunded the totality of the service charges. They argue that the charges would be reasonable if the leaseholders were refunded 50% of Quantum's fees for the service charge years 2014 – 2017 and the entirety of Quantum's fees for the years 2018 and 2019 when it is suspected they did not attend the site at all.

20. The tribunal considers this to be a sensible resolution to the applications and determines the service charges accordingly.

S.20C

21. The Applicants have been successful in challenging the service charge items. It would not be just for them to be penalised for a largely successful application by way of administration charges or service charges. The Applicant's s.20C application for an order limiting the Applicant's costs pursuant to section 20C Landlord and Tenant Act 1985 and pursuant to paragraph 5A of Schedule 11, Commonhold and Leasehold Reform Act 2002 is therefore allowed. The Respondents shall not seek to recover its costs of these applications against the Applicants by way of service or administration charges.

Name: Tribunal Judge Mullin
Ms Flynn

Date: 25th February 2021

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). **9(7) and (8) of the 2013 Rules.**