FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AK/LSC/2023/0021**
Applicant	**:**	**Crofton Way (Enfield) Management Ltd**
Representative	**:**	**Property Management Legal Services Ltd**
Respondents	**:**	**The leaseholders**
Property	**:**	**63 Flats and Garages at Crofton Way, Enfield EN2 8HR**
Type of application	**:**	**Determination of the reasonableness and payability of service charges and administrative charges**
Tribunal	**:**	**Tribunal Judge I Mohabir** **Mr Naylor FRICS**
Date of decision	**:**	**15 July 2024**

DECISION

Introduction

1. This is an application made by the Applicant for a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") of the Respondents' liability to pay and/or the reasonableness of service charges for proposed works arising in the 2023 service charge year.

2. The development at Crofton Way has been, helpfully, set out by the Applicant in its skeleton argument in the following way.

3. The development is comprised of 63 residential flats and 63 garages. The freehold title to Crofton Way is split across two titles and two freeholders. The Mayor Burgesses of London Borough of Enfield is the registered proprietor of land lying West of the Ridgeway. The remainder of the freehold is held by 18-28 Crofton Way Enfield Management Company Limited, a tenant owned and not for profit company.

4. Each of the 63 flats is held subject to the terms of a long lease. Each lease has been varied by a deed of variation. The Applicant derives its ability to perform the management functions from the deeds of variation. By the deeds of variation, the Applicant has covenanted to observe and perform the covenants on the part of the landlord set out in the occupational leases. The relevant terms of the leases is dealt with below.

5. Each of the 63 flats has a garage. It appears that all the garages are starting to show signs of structural failure. The worst affected are garages 28, 30, 32, 34, 36, 38 and 40, which form block H. The Applicant proposes to demolish these garages and build seven new garages to replace them at an estimated cost of approximately £150,000.

The Issues

6. The substantive issue in this case is whether the Respondents are contractually liable under the terms of their leases to pay a service charge contribution for the cost of rebuilding the seven new garages. The ancillary issue the Applicant asks the Tribunal to decide is whether the estimated cost of replacing the proposed garages is reasonably incurred and/or whether the on account demands are reasonable. These are considered in turn below.

Relevant Law

7. This is set out in the Appendix annexed hereto.

Hearing

8. The hearing in this case took place on 13 May 2024. The Applicant was represented by Ms Zanelli, a Solicitor from Property Management Legal Services. The only Respondent who appeared in person was Ms

Soylemez, the lessee of Flat 89, who was assisted by a friend, Miss Kelly who was the previous owner of her flat.

Procedural

9. Ms Soylemez had made an application to adjourn the hearing so that she could have time to properly prepare for the hearing. The application had been made on 10 May 2024 and was considered at the commencement of the hearing.

10. The application was refused by the Tribunal for the following reasons. The Tribunal issued directions on 10 August 2023 in relation to the preparation for the hearing. This was subsequently amended on 25 October and 5 December 2023 to give Ms Soylemez further time to do so. The Tribunal, therefore, considered that she had been given sufficient time to prepare for the hearing and she had failed to do so without, it seems, good reason. Accordingly, the Tribunal proceeded with the hearing but allowed Ms Soylemez to make oral submissions.

11. It should be noted that the Tribunal received written objections from Uma Kanagaratnam (Flat 62) and Edward Stamatiou (Flat 52) and were noted as Participating Leaseholders in the Tribunal's directions dated 10 August 2023. However, neither filed or served any evidence in support of their objections.

Decision
Contractual Liability

12. The relevant lease terms that gives rise to the leaseholders liability to pay a service charge contribution under their leases is as follows.

13. The deeds of variation variously dated and made between the London Borough of Enfield and the Applicant, varied the occupational leases, so that in accordance with clause 1(4) of the deeds of variation the Applicant has covenanted as follows:

"(4) The Company has agreed with the Council to undertake henceforth the responsibilities on the part of the Council contained in the Fifth Schedule to the Lease upon the terms hereinafter mentioned and the Lessee has agreed to join herein in manner hereinafter appearing".

14. In other words, the Applicant covenanted to perform the covenants on the part of the original landlord (the Council) under the terms of the original leases it had granted in respect of the flats and garages for the development.

15. By clause 2(1)(b) of the original leases, the lessees covenanted to:

"to pay the Council on demand by way of further rent in respect of each year of the term hereby granted during any part of which the common

repairs and services mentioned in the Fifth Schedule hereto or any of them shall be carried out and maintained as hereinafter mentioned such sum as shall be proper proportion attributable to the demised premises of the total cost incurred by the Council in maintaining the common repairs and services (or such of them as shall during the period in question have been carried out and maintained as aforesaid) such sum to be paid by two half-yearly instalments in advance on the 24th day of June and the 25th day of December in every year".

16. By clause 5 of the deeds of variation the occupational lessees are required to pay *"the rent specified in Clause 2(1)(b) of the Lease to the Company and in the event of any amount not being paid within 21 days after becoming due (whether legally demanded or not) the Council will at the written request and at the cost of the Company take such steps necessary to determine the term created by the Lease in accordance with the provisions in that behalf therein contained".*

17. The service charge expenditure that can be recovered by the Applicant as service charge expenditure in this way is set out in the Fifth Schedule in the leases. Paragraph 4 in the Fifth Schedule permits recovery of expenditure for common repairs and services including *"... the repair and maintenance of all such parts of the building as are not wholly included in any flat".* The Tribunal was satisfied that the ambit of paragraph 4 would include the garages because the lessees' repairing obligation under the leases is limited to the interior of the flats.

18. The Tribunal agreed with the Applicant's submission that, on a proper construction of the lease terms, it is obliged to repair and maintain the garages and is entitled under the Fifth Schedule of the leases to recover, in principle, the cost of doing so.

19. Indeed, Ms Soylemez did not disagree with this analysis of the lease terms and accepted that she is liable to pay a service charge contribution for the repair and maintenance of the garages. She simply asserted that the cost of this should be met by an insurance claim made by the Applicant. However, this issue is a separate matter and did not fall within the ambit of the application.

Estimated Costs/Reasonableness

20. The Applicant invited the Tribunal to determine that the on account demands it had apparently served on the lessees for the estimated cost of the proposed works was reasonable and/or that the cost of the works was reasonably incurred.

21. The Tribunal declined to do so for two reasons. Firstly, the directions did not provide the Respondents with an opportunity to comment on the expert evidence relied on by the Applicant or for them to possibly serve their own evidence in rebuttal. As stated earlier, the substantive issue in this application was whether the Respondents are contractually liable for the proposed works, which the Tribunal has answered.

22. Secondly, the Tribunal considered that the issue of the reasonableness of the estimated cost was premature given that, on the Applicant's own case, statutory consultation had not as yet taken place. In the Tribunal's judgement, statutory consultation will address the very same issue.

Name: Tribunal Judge I Mohabir **Date:** 15 July 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 of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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.