FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BY/LSC/2023/0070**
Property	**:**	**55, Mariners Wharf, Liverpool L3 4DA**
Parties	**:**	**Joanne King**
		and
	:	**Mariners Wharf Management Company Ltd**
Type of Application	**:**	**Reasonableness of Service Charges Sections 20C and 27A Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Mr J R Rimmer** **Mr I James MRICS**
Date of Order	**:**	**19th July 2024**

DECISION

Order:

1 **The service costs incurred for the 2016-23 years are reasonably incurred at reasonable cost.**

2 **No order is made under Section 20C Landlord and Tenant Act 1985 in favour of the Applicant in respect of any relevant costs incurred by the Respondent.**

Preliminary

1 Mariners Wharf is a large residential development situated on a redeveloped area of Liverpool's South docks, between King's Dock and Coburg Dock, considerable areas of which have been re-purposed since the closure of the docks for their historic purpose. Access is provided to the site by roadway or on foot from Sefton Street.

2 The development consists of a number of residential blocks, each in turn containing a number of residential units. So far as 55, Mariners Wharf is concerned, this is described within the Applicant's lease as a "townhouse" and as such there are no internal common parts within the building of which it forms a part. There are internal common areas to other residential parts of the whole site which comprise apartments.

3 The Applicant makes reference on her application form to issues with the service charges incurred for 2016-2021 and to be incurred in 2023, but her more substantive complaints details concern also in respect of the 2022 year.

4 In each case Ms King details her current service charge costs as being £59.50 per month at the time of her application. It would appear that this amount, (equating to an annual amount of £714.00), has remained constant throughout the period under consideration. This is understood to be the case notwithstanding a notional debit balance appearing on the service charge account as service charge income has not matched expenditure. She expresses particular concern over charges that relate to services that are not provided to her home, being one with no internal common areas:

- Cleaning of common parts (with the added view that in some respects what is provided to common parts is inadequate)
- Scheduled maintenance, including decorating
- Window cleaning

Additionally costs that may be referrable to the Applicant's property, but which are challenged are

- Buildings insurance (the Applicant has her own)
- Gardening/landscaping (the standard of which is considered questionable)
- Lighting (often faulty)

- Administration costs (in the light of complaints by the Applicant in 2016 and 2022 being dealt with inappropriately).

5 A fuller statement was subsequently provided by the Applicant, expanding upon those matters identified above in compliance with directions provided for the proper conduct of the application and in due course the Respondents provide a statement in response and the Applicant then provided a further reply.

6 The Tribunal has also been provided with a copy of the lease for the Applicant's property which is dated 7th April 2000 and provides for the grant of a term of 150 years (less the last 10 days thereof) from 1st January 1989 at a premium and thereafter a peppercorn rent. Under the terms of the lease the leaseholder agrees to pay 1/105th of the relevant service costs through the medium of the Respondent management company. That obligation is provided by a covenant in Clause 4(2) of the lease and Clause 4(4) and provides for payment by half yearly instalments on account of costs for the current year, with a balancing charge provided in due course based upon the actual costs incurred for the preceding year.

7 Those costs relate to what are referred to in Clause 4(1) of the lease as the annual maintenance costs, being the actual costs incurred in managing and maintaining "the Building".

8 The term "the Building" is used regularly to refer to specific costs, notwithstanding the generality of the term management and maintenance costs being used, such as the cost of the television aerial to the building and the costs of enforcing covenants against other tenants of flats in the building. When referring to the cost of compliance with notices, however, the term "the property" is used. Clause 4(1)(b)(ii) refers to the obligations of the management company, in relation to what might be termed the usual remit of services and their provision, as relating to the building but elsewhere the term "the Premises is used.

9 Only the term "the Building" is identified and defined in Clause 1 of the lease as the buildings marked E, F, G and H at Mariners Wharf on the plan attached to the lease. "The Premises" are identified in Schedule 1 of the lease as being the dwelling house at 55, Mariners Wharf situated between blocks F and G. "The Property" is not defined, but can be established by reference to Clause 5(1)(e). This refers to the "entrance ways paths and forecourts forming part of the property and leading to the building". This must mean that "the Property" means the grounds upon which the Building and the Premises are situated.

10 The Applicant's first generic complaint, clearly set out, is that many of those obligations relate to services that are not provided to the Applicant's home and she should not be responsible for meeting the costs of those that do not. Secondly, she identifies what she believes are deficiencies in the level and standard of other services provided to the development as a whole and in respect of which she acknowledges the receipt of some benefit.

11 Helpfully, the Applicant provided copies of the expenditure accounts for the year in question and marked those where she believed there were items that required explanation, or where she believes that the expenditure was not such as to be recoverable under the service charge. A number of photographs were also supplied to illustrate some of the concerns expressed.

12 In response the Respondent provided a detailed rebuttal of the allegations made and produced a schedule of the issues raised by the Applicant and providing the Respondent's views upon each.

13 As neither party had requested a hearing, and the Tribunal had previously considered that this was not a matter requiring a hearing to be held, the written submissions provided the tribunal with all the information that was available to it in reaching its determination.

Inspection

14 It was, however, considered appropriate for the Tribunal to inspect the development at Mariners Wharf prior to giving its consideration to the application and this was carried out on the morning of 4th June 2024. The tribunal members were of the view that it needed to see only the common parts of the development to which physical services related, rather than the Applicant's own property which benefitted from the more abstract services such as management and caretaker provision. This led to an unfortunate situation where the Applicant had waited in anticipation of a more personal visit from the Tribunal which never materialised.

15 Nevertheless, the Tribunal was able to note that the development was reasonably modern, matching the parties' information that it was approximately 30 years old, and comprised buildings of brick construction under tiled roofs, some being linked townhouses and others being blocks of low-rise apartments with communal hallways and landings.

16 There are extensive grounds surrounding the buildings, with a combination of grassed and paved areas and car parking areas that would appear to provide sufficient off-road parking for residents and some visitors' spaces. All those areas appeared to be maintained to a reasonable standard, subject to consideration of matters raised by the parties. The development is situated approximately 1 mile from Liverpool City Centre and has good public transport provision.

The Lease

17 Although reference has been made above to terms of the lease between the parties it is necessary to note particular provisions that regulate the relationship between the parties in relation to the provision of services and the charges levied therefore.

18 The Tenant covenants in clause 3(2) to pay the service charges by way of additional rent. The only further reference to additional rent is in Clause 4 where there is reference to the annual maintenance cost, rather than service charge, although the only realistic interpretation of those terms is that they are interchangeable.

19 Clause 4(1) provides:

(a)…

(b) "annual maintenance cost" means the total of all sums actually spent by the Management Company in any year in the management and maintenance of the Property and shall without prejudice to the generality of the foregoing include:

(i) the cost of procuring or providing any sums required in connection with the same where they exceed the monies for the time being held by the landlord and Advance Payments

(ii) the costs of and incidental to the performance by the Management company of the covenants contained in sub-clauses (1) (2) (3) and (4) of clause 5 of this Lease but excluding the cost of any repairs which are required to be covered by the policy of insurance provided for under clause 5(4)

(iii) the annual rentals or other expenditure (if any) involved in supplying and maintaining a communal television and/or radio aerial system as may from time to time be installed in the building.

(iv) the costs of and incidental to compliance by the management Company with every notice regulation or order of any competent local government or other authority in respect of the Property or any part thereof.

(v) all fees and expenses payable to any solicitor accountant surveyor architect or other professional or competent advisor or agent whom the management company may from time to time reasonably employ in connection with the management and/or maintenance of the property (…) and in or in connection with enforcing the performance and observance by the Tenant and all other tenants of flats in the Building of their obligations and liabilities.

20 Clause 5 provides the following relevant covenants by the landlord in favour of both the tenant and the landlord:

(1)(A) as often as may be necessary to maintain repair cleanse repaint redecorate and renew

(a) the main structure of the building…

(b) the drains pipes conduits (etc)

(c) the passages staircase landings entrances and all other parts of the building (…) enjoyed or used by the Tenant in common with all or any of the other tenants or occupiers of the Building

(d) the gas and water pipes conduits ducts sewers drains and electric wires and cables (including television and radio wiring and aerials in under or upon the building and enjoyed or used by the tenant in common with all or any of the other tenants or occupiers but excluding such installations and services as are incorporated and exclusively serve the premises.

(e) the entranceways paths and forecourts forming part of the Property and leading to the Building (including the boundary walls gates and fences of the property)

(but in respect of all those sub-clauses excluding damage for which the tenant is responsible).

21 Thus, the management company's obligations in respect of "the building" are included within the wider obligations in respect of "the Property" in relation to which the Applicant covenants to pay the service charge/annual maintenance cost, notwithstanding the fact her "premises" are not part of "the Building".

The Law

22 The Tribunal's jurisdiction in relation to service charges and relevant costs is set out within Section 18 Landlord and Tenant Act 1985 and Section 19 of the Act sets out that:

(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

23 Further section 27A landlord and Tenant Act 1985 provides:

(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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

24 Section 20c Landlord and Tenant Act 1985 provides:

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred by the landlord in connection with proceedings before a court… or leasehold valuation tribunal…are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application

(2) The application shall be made-…

(b) In the case of proceedings before a leasehold valuation tribunal to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;…

(c) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Submissions

25 Both parties provided the Tribunal with extensive submissions in support of their respective cases. Each dealt with the two elements of the Applicant's concerns: that which related generally to the matter of the Applicant's contributions to costs that did not relate directly to her premises, having no common parts and then that which related to specific services and the standard and costs thereof.

26 In the light of the Tribunal's consideration of the terms of the Applicant's lease, set out above the Tribunal is satisfied that as a general principle the Applicant is required to contribute her relevant proportion (0.952%) of the costs that are incurred in relation to the maintenance etc. of the Property and the Building, notwithstanding her premises are not a part of the Building.

27 With particular reference to those costs raised by the Applicant, (typically the same cost heads, though not necessarily the same amount in each year) relating to window cleaning, communal cleaning, maintaining door entry systems, repairs and provision of light and heat to common parts they would appear to be costs from which the Applicant gains no direct benefit. They nevertheless fall within the ambit of paragraph 5 to the lease as being costs that are recoverable as part of the annual maintenance costs, including door entry systems as being part of the entrance ways.

28 The Applicant has gone to some effort to draw the Tribunal's attention to a number of matters in the accounts and expenditure ledgers provided by the Respondent in order to highlight what she regards as discrepancies. So far as how they are recorded she may have a point to the extent that the recording system may not provide sufficient clarity as to the nature of the expenditure incurred and the beneficiary of that expenditure. Chiefly, but not solely it concerns the identification of repairs. Are repairs necessarily chargeable to the service charge, or should they be re-charged to individual leaseholders. The Respondent provides extensive responses in respect of those items, robustly to confirm that they relate to matters that ultimately fall upon the Respondent to pay for from the service charges, either arising directly in respect of common parts, or affecting individual leaseholders by reason of defects elsewhere, within the common parts.

29 That observation is nevertheless subject to the further requirements that the costs in question are such as to fall within the terms of the lease, be reasonably incurred, and the costs themselves are reasonable.

30 The Tribunal considered all the representations of both the Applicant and Respondent in relation to those costs questioned by the Applicant in order to reach its conclusion as to whether they were so incurred. The Tribunal reminds itself that in relation to such matters it is dealing with issues of reasonableness. It must only determine if the costs, properly falling within the terms of the lease are reasonable. It is not for the Tribunal to consider if they may be provided more reasonably, at a more reasonable price. It is merely required to consider if what has been incurred are reasonable, as opposed to unreasonable.

31 The Tribunal is therefore undertaking a balancing exercise. It weighs the cost of what is done against the standard that is provided. It needs to look at all the heads of charge where complaint is made to see if the standard and cost of what is provided tips to the unreasonable.

32 <u>Staff and vehicle costs</u>
Do the costs of the caretaker/site manager and the running costs of the vehicle involved fall within the lease? They do. They are costs incidental to the management of the development. They are reasonable to incur as they assist the management company directly and the leaseholders indirectly in providing a presence and n avenue of communication. Such staffing is commensurate with the size of the development and the amounts involved represent a reasonable cost for the staffing input provided. If the respondent requires there to be staffing elsewhere as well, there is nothing to suggest that there is an unreasonable proportion attributed to this development.

33 <u>Management Fees</u>
The Applicant has concerns that issues she has raised, of which there are several, are not resolved to her satisfaction. The evidence adduced by the parties is

conflicting in the ways they outline the issues and how resolution has been sought, or achieved. The Tribunal has considered all that has been submitted. This is not relevant to what the Tribunal must decide. Has the Respondent provided management to the development? Yes. Is it proper to charge for this? Yes, the lease allows it. Is the cost, year on year reasonable for what is done? The only suggestion that it may be unreasonable is the suggestion issues have not been resolved. That may sometimes be the case here, or elsewhere. It is not sufficient evidence that what the Respondent is charging is unreasonable. Even when considering whether the service to an individual tenant may or may not have been satisfactory, the Tribunal is tasked with consideration of what has been incurred by way of cost, was it reasonable to incur them and are they reasonable in amount. There is nothing here to suggest otherwise.

34 "Accounting discrepancies"
The Tribunal has put the above in inverted commas. It is not a complaint about discrepancies in the sense of arithmetical error or calculation. It is a complaint that certain items of expenditure have been allocated to service charges when they may relate to individual properties that should bear their own costs, or to matters that ought not be considered as within the obligations that the Respondent must fulfil and for which the Applicant should pay,

35 The Applicant has gone to very considerable effort to identify them and mark them in the statements of detailed expenditure provided by the Respondent. The respondent has then gone to extensive lengths to comment and explain them.

36 The questions to be asked are

(1) Do they amount to expenditure that should form part of the service charges or building costs referred to in Clause 5 of the lease? If they don't there should not be a charge.

(2) If they do are they nevertheless reasonably incurred and is the cost reasonable.

37 It may be the case that the manner in which entries are made onto the accounting system used by the Respondent does not lend itself to an easy and clear analysis as to whether the expenditure relates to the obligations imposed on the Respondent by the lease and that they relate to common parts and common areas, rather than being within leaseholders' premises.

38 Whilst the Respondent may wish to reflect upon the nature of the entries themselves the Tribunal is drawn to the conclusion that the entries upon the system as they are, together with the further explanations given in the Respondent's statement of case indicate that they properly relate to matters within the respondent's obligations in clause 5. The Applicant has done her best in raising the queries, but there is no evidence provided that suggest that the Respondent's explanations are in any way erroneous.

Repairs

39 Many of those accounting entries may then be considered alongside others in relation to repairs. Such considerations may then be put alongside others in relation to such matters as gardening, decorating, cleaning and window cleaning. Irrespective of whether the Applicant has any direct benefit from the provision of some of those services and clearly she does not, it is still necessary to assess if they fall within terms of the lease as services that the Respondent supplies and for which the Applicant should pay. The Tribunal is happy that they do.

40 The nature of the costs incurred suggest that to incur them was reasonable and that work has been to a reasonable standard. The Tribunal noted in the course of its inspection there were some areas of concern that had been highlighted by the Applicant, There were some matters where the Respondent chose not to act upon matters raised by the Applicant (e.g. grass cutting, vandalism).

41 The Applicant is rightly concerned about the environment in which she lives. Her hope, quite clearly and quite rightly, is to live on a development where she feels safe, comfortable and the highest standards of service are provided. Those standards are matters that require to be addressed outside this Tribunal which is is concerned with reasonableness, not excellence.

42 The Tribunal is satisfied that the common parts and open areas of the development are maintained to a reasonable standard. There may be situations where some matters might be dealt with better (the Applicants photographs, for example, show dog fouling. water collection on the car park, paint flaking from a pillar). No doubt better services could be provided at higher cost. There is however nothing to suggest that such costs as have been incurred have been incurred unreasonably and work has been done to a standard that in totality may be regarded as reasonable.

43 The Tribunal has taken some time to consider in detail the matters raised by the Applicant. It believes it is entitled to consider matters in the round. The Applicant has provided no suggestions as alternatives for amounts that appear in the accounts produced by the Respondent for the service charge years under consideration. The explanations given by the Respondent to matters of detail are credible. It is unfortunate that the Applicant is required to pay for so many elements of the service charge that provide her and fellow owners of townhouses with no direct benefit. The overall picture is, however, of one where the Applicant's contribution is to costs that are reasonably incurred and at reasonable cost.

44 Section 20C Landlord and Tenant Act 1985

The Applicant has made an application that any professional, or other, costs incurred by the Respondent in respect of the Application should not form part of the service charges payable by the Applicant in future service charge years. The provisions of the Clause 4(1)(b)(v) to the lease (set out in paragraph 18, above)

would appear to allow for this to happen without an order in the Applicant's favour.

45 Section 20C of the Act is set out at Paragraph 23, above. It is quite succinct in its terms and the test for the Tribunal to apply is simply whether it is, or is not, just to make an order.

46 Some guidance has been given by courts to the matter, particularly to the effect that no Applicant should consider that there is an entitlement to an order, nor should the making of an order be dependent upon "winning", rather than "losing" in the Tribunal, particularly one where the jurisdiction under consideration is one where, as a general principle, each party bears its own costs. The determinant is, indeed, the justice of the situation.

47 In this case the Tribunal has determined that Applicant has not made out her complaints against the Respondent. That should carry considerable weight with the Tribunal, even when taking into account the observations in the preceding paragraph.

48 The Tribunal should also bear in mind that the only beneficiary of an order would be the Applicant and not the other 104 leaseholders, who could still be required in future service charge years to contribute to the costs incurred by the Respondent. An order in the Applicant's favour would be of negligible effect and to the Tribunal's mind it would not be just to pass on even that limited benefit to the Applicant or create that limited detriment to the other leaseholders, given the outcome on the main issues determined by the Tribunal. An order under Section 20C is therefore refused.

J R RIMMER