FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LSC/2024/0042**
Property	**:**	**39 Harold Road, Crystal Palace, London SE19 3PL**
Applicant	**:**	**Green Crescent Estates Limited**
Representative	**:**	**Ms N Muir - Counsel instructed by Scott Cohen Solicitors with Mr Jack Ost of Avon Estates (London) Limited**
Respondents	**:**	**The leaseholders at the Property**
Representative	**:**	**Ms Chisholm-Mackintosh of flat 2 for herself accompanied by Mr T Uthayakanthan of flat 5**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Dutton** **Mr O Dowty MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR on 9 October 2024**
Date of decision	**:**	**9 October 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £341,326.02 is a reasonable sum to incur in respect of major works at the property 39 Harold Road, Crystal Palace, London SE19 3PL (the Property) and is payable by the Respondents in respect of the service charges for the year ending December 2024.

(2) The tribunal determines that the Respondents shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. The Applicant Green Crescent Estates Limited seeks a determination pursuant to s.27A (3) of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges that would be payable by the Respondents in respect of the major works in the service charge year ending December 2024.

2. The Respondents are :

• JAS Estates Limited	Flat 1
• Ms M Chisholm-Mackintosh	Flat 2
• Mr A Morgan	Flat 3
• Ms C Wilson	Flats 4 and 6
• Mr T Uthayakanthan	Flat 5

The hearing

3. The Applicant was represented by Ms Muir of counsel at the hearing accompanied by Mr Jack Ost of the managing agents. Ms Chisholm-Mackintosh of flat 2 accompanied by Mr T Uthayakanthan of flat 5 'appeared' in person.

4. Although Ms Mackintosh, as she asked to be called, attended the hearing she had not complied with the directions issued on 5 March 2024 and had not filed any statement or evidence to support any argument against the Applicant. Further her co leaseholders had been debarred from any further participation in the case as from 25 June 2024. By that date no statement or evidence had been lodged by any other leaseholders. Ms Mackintosh made what could only be termed a half-hearted request to adjourn. However, we indicated that any such adjournment could only be on the basis that the Respondents paid the costs thrown away. She had no authority to act of the other leaseholders and in those circumstances given the complete failure to comply with directions and the debarring of the other leaseholders we had no doubt that such an application could not proceed. We accordingly invited Ms Muir to present the Applicant's case.

The background

5. The property which is the subject of this application is being converted, it now seems, into a four-storey house, the basement apparently being the subject of excavation works to create two new two studio flats. There was some uncertainty as to the position on these works although we were told by Mr Ost that the original developer was Delta Land and Plans Limited. It was not a matter for us in these proceedings but may become an issue on the question of service charge apportionment in the future.

6. Neither party requested an inspection, and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The Respondents hold long leases of the 6 flats in the property, one with a term commencing on 25 December 1984 and the others from 25 December 1979. Mr Ost did not think any had been extended. The leases are in the same terms and require the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge.

The issues

8. This application was made by the Applicant for approval by us under the provisions of s27A(3) as to the reasonableness and payability of costs to be incurred.

9. Before the hearing we were supplied with a bundle of papers which included the application, the directions, the order debarring the four other leaseholders (Ms Wilson holds two flats), a statement of case, a witness statement made by Mr Ost with a number of exhibits, and copies of the 6 leases. There was also some copy correspondence. Just prior to the hearing Ms Muir submitted a skeleton argument, for which we were grateful.

10. We asked Ms Mackintosh why she had failed to comply with the directions. Her response was that she had been querying the costs with the managing agents but had not had any replies. She did not produce copies of those missives. She was of the view that we would act as fair arbiters of the dispute and being unfamiliar with the tribunal proceedings had not taken on board the terms of the directions issued as long ago as March. We heard what she said. She did however say that the Property needed the works but that she believed the costs to be too high.

11. The proposed works include roof repairs, a full overhaul of the external elevations of the building including windows and ledges, repairs to brickwork, stonework and masonry including pointing, external joinery repairs and decoration, rainwater goods replacement and waste pipe stack repairs, repairs to garden areas and boundaries, drainage works, intercom replacement and internal repairs and decorations.

12. The costs of the works as set out in the tender analysis is broken down into.

Cost of works	£243,109
Professional fees	£24,310.90 (10%)
Management fees	£17,017.62 (7%)
VAT	£56,887.50
Total	£341,325.03

13. The Applicant acquired the property in September 2021. But a few weeks later, solicitors acting for Ms Wilson the owner of flats 4 and 6 wrote highlighting the shortcomings at the Property and suggesting the way forward, but at the same time raising her concerns at the lack of action by the landlord. This prompted a further report from JMC Chartered Surveyors (JMC), they having previously inspected the Property and created a report in May 2019 with a specification. This report was updated by that company in March 2022, although there is an 'element' of 'cut and paste' as indicated by the continued reference to Roxbury Estates Limited, who we think were the previous managing agents and even the weather was the same, which we suppose at that time of year is a likelihood.

14. There then followed what appears to be a correct s20 Landlord and Tenant Act 1985 consultation which did not it seem generate any specific response although one leaseholder did indicate an intention to put forward an alternative contractor, but that did not materialise.

15. A thorough tender analysis was carried out by JMC and AAM Maintenance Limited were shown to be the preferred contractor, for the reasons set out in the analysis, which seemed to us to be perfectly reasonable.

16. The lease terms relevant to this case are

"4(4) That the Landlord will maintain repair decorate and renew (a) the main structure the roof foundations chimney stacks and the rainwater pipes of the building and (b) the gas and water pipes drains and electric cables and wires in under and upon the building and enjoyed or used by the Tenant in common with the owners and lessees of the other flats (c) the main entrances and passages of the building so enjoyed or used by the Tenant in common with the owners and lessees of the other flats (c) the main entrances and passages of the building so enjoyed or used by the Tenant in common as aforesaid and (d) the boundary walls and fences of the building

4(6) That the Landlord will so often as reasonably required decorate the exterior of the building in such manner as shall be agreed by a majority of the owners or lessees of the flats comprised in the building or failing agreement in the manner in which the same was previously decorated or as near thereto as circumstances permit and in particular will paint the exterior parts of the

building usually painted with two coats at least of good paint at least once every three years".

The matters set out in the Third Schedule include

"1. Maintaining repairing redecorating and renewing:

(a) the main structure roof foundations chimney stacks the gutters and rainwater pipes of the building.

(b) the gas and water pipes drains and electric cables and wires in under or upon the building and enjoyed or used by the Tenant in common with the owners and lessees of the other flats

(c) the main door entrances and passages of the building so enjoyed or used by the Tenant in common as aforesaid and

(d) the boundary walls and fences of the building.

2. The cost of cleaning and lighting the main entrances and passages and other parts of the building so enjoyed or used by the Tenant in common as aforesaid.

3. The cost of decorating the exterior of the building . . ...

6. The costs expenses and outgoings incurred in maintaining repairing redecorating renewing cleaning and lighting the internal common parts of the building.

7. The maintenance of the said front and rear gardens

8. All other expenses (if any) reasonably incurred by the Landlord in and about the maintenance and proper and convenient management and running of the building.

9. The cost of and management charges for the maintenance and management of the building."

Findings

17. Our obligation in this case is to determine whether the costs of these major works are reasonable and will be payable by the Respondents on an equal 1/6th basis.

18. We bear in mind that the Respondent leaseholders, including Ms Mackintosh have not participated in these proceedings. They have had ample opportunity to raise concerns and to have filed statements and perhaps even contrary expert evidence. They have not done so. Indeed, it was apparent that the Respondents did not argue that the works were required, but rather the costs of same. The s20 consultation started in March 2022 but no formal response was made. We were told at the hearing today that AAM Maintenance are willing to stand by their costings.

19. We did raise the possibility of splitting the works between those that were external and required scaffolding and those that were either internal or did not require scaffolding. We were met by the cogent argument both from Ms Muir and Mr Ost that splitting the works would require further costs analysis and with increasing costs in the building industry the Respondents could well lose out. In addition, it seems that some of the works such as the repair to pathways, tree lopping, and some of the fire safety precautions have been addressed and are the subject of the usual annual service charge regime and so should not appear in the final accounts. Further, we were told that as part of the development of the basement the contractor involved has agreed to reinstate the garden, so that should be another expense which should not visited upon the Respondents in the final reckoning.

20. We were told that the Applicant would seek 50% of the costs forthwith and the remainder to be paid when the works had been completed. This does not, of course, remove the Respondents' rights to challenge the standard of work or any accounting issues that may arise.

21. The question of fees was raised but 10% for the surveyor does not in our experience seem untoward and we were told that the surveyor JMC has opened an office in Hendon so that supervision of the works will not be a problem. The tasks to be undertaken are set out at paragraph 12 of Mr Ost's statement. The fees of the managing agents at 7.0% again does not seem excessive and at paragraph 11 of his witness statement Mr Ost sets out the tasks undertaken for the fee.

22. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondents to refund any fees paid by the Applicant within 28 days of the date of this decision.

Name: Judge Dutton **Date:** 9 October 2024

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

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 Cha