



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

Tribunal Case Reference : LON/00AP/LSC/2024/0047, 0049, 0050, 0076, 0145

Property : Flats 3, 6, 14, 20 & 32 Queensborough Court, North Circular Road, London N3 3JP

Applicant : Queensborough Court Freehold Ltd

Representative : Collins Benson Goldhill LLP

Respondents : Martin Harold White (Flat 3)
Ronald Regai Mind & Roseline Chitepo Ndoro (6)
Michael Lee Fialka & Simon Lawrence Fialka (14)
Dharmesh Chauhan (Flat 20)
Ali Shah Bodaghloo (Flat 32)

Type of Application : Payability of service charges

Tribunal : Judge Nicol
Ms M Krisko FRICS

Date and venue of Hearing : 14th October 2024
10 Alfred Place, London WC1E 7LR

Date of Decision : 14th October 2024

DECISION

- (1) The Tribunal consents to the withdrawal of the applications insofar as they relate to the annual service charge payments.
- (2) The Tribunal has determined that the advance service charges demanded by the Applicant from the Respondents in relation to the major works programme are reasonable and payable:

(a) Flat 3	£16, 572.01
(b) Flat 6	£18,969.67
(c) Flat 14	£12,747.70
(d) Flat 20	£14,022.47

(e) Flat 32 £12,747.70

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicant is the lessee-owned freeholder of Queensborough Court. The Respondents are the lessees of 5 of the flats within Queensborough Court.
2. The Applicant applied for determinations under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the reasonableness and payability of service charges:

Flat 3

- (a) s20 major works contribution 2023 £16,572.01
- (b) service charge 1/4/23 – 30/6/23 £764.13
- (c) service charge 1/7/23 – 30/9/23 £ 764.13
- (d) service charge 1/10/23 – 31/12/23 £764.13

Flat 6

- (a) interim service charges arising in 2023 of £19,628.53 including:-
 - (i) s20 major works contribution 2023 £18,969.67
 - (ii) service charge 1/7/22 – 30/9/22 £36.51
- (b) service charge 1/10/22 – 31/12/22 £778.89
- (c) service charge 1/1/23 – 31/3/23 £764.13
- (d) service charge 1/4/23 – 30/6/23 £764.13
- (e) service charge 1/7/23 – 30/9/23 £764.13
- (f) service charge 1/10/23 – 31/12/23 £764.13
- (g) interim service charge arising January 2024 £663.27
- (h) interim service charge arising April 2024 £663.27

Flat 14

- (a) s20 major works contribution 2023 £12,747.70
- (b) service charge 1/4/22 – 30/6/22 £600.57 (£436.99 of which remains outstanding)
- (c) service charge 1/7/22 – 30/9/22 £600.57
- (d) service charge 1/10/22 – 31/12/22 £600.57
- (e) service charge 1/1/23 – 31/3/23 £589.15
- (f) service charge 1/4/23 – 30/6/23 £589.15
- (g) service charge 1/7/23 – 30/9/23 £589.15
- (h) service charge 1/10/23 – 31/12/23 £589.15
- (i) interim service charge arising January 2024 of £511.56

Flat 20

Interim service charges arising from anticipated s20 major works in 2023 of £14,022.47

Flat 32

- (a) s20 major works contribution 2023 £12,747.70
- (b) service charge 1/1/23 – 31/3/23 £589.15

- (c) service charge 1/4/23 – 30/6/23 £589.15
- (d) service charge 1/7/23 – 30/9/23 £589.15
- (e) service charge 1/10/23 – 31/12/23 £589.15
- (f) January 2024 – March 2024 £511.56

3. The case was listed for hearing on 14th October 2024. The attendees were:

- Mr Will Beetson, counsel for the Applicant
- Ms Monica Topman, solicitor for the Applicant
- Mr Peter Christofi, witness for the Applicant
- Mr Dharmesh Chauhan, one of the Respondents
- Mr Kanyar Ghambai who said he represented Mr Ali Shah Bodaghloo, another of the Respondents.

4. The documents before the Tribunal consisted of:

- A bundle of 597 pages;
- A supplementary bundle of 9 pages; and
- A skeleton argument from Mr Beetson.

5. The documents did not include anything from the Respondents, despite the Tribunal's directions issued on 27th February 2024 and amended on 18th April 2024, other than a short witness statement from each of Mr Chauhan and Mr Bodaghloo.

6. Mr Chauhan's statement included the following last paragraph:

In conclusion, the work performed has been found to be unsatisfactory, falling well below the expected standards of quality and professionalism. The deficiencies identified reflect a lack of adherence to the agreed specifications and demonstrate a disregard for the necessary quality controls. Immediate corrective measures were required to address these issues and ensure that the work met the required standards. We have lost all confidence with seeing a high level or even satisfactory final result of works.

7. Unfortunately, the preceding 1½ pages contained no further detail. As Mr Beetson rightly points out, it is for the Respondents to establish that there is a case to answer but the generalised and unspecific assertions in Mr Chauhan's statement fall far short of doing so. Legal proceedings must, above all, be fair and it is not fair on the Applicant to require them to address allegations without any of the necessary details.

8. As to Mr Bodaghloo's statement, it includes a long list of complaints against the Applicant and their managing agents but they are either not relevant to the dispute before the Tribunal or suffer from the same problem of lacking any specifics. Some of the complaints might found a claim for breaches of the covenants in the lease but the Tribunal's role is to look at the reasonableness and payability of service charges, which is a different question. Just to take one example, Mr Bodaghloo complains that the building's entrance door is insecure, resulting in several break-

ins. It is possible that the failure to maintain the door would be a breach of covenant entitling the residents who have suffered losses to sue in the courts for damages. However, the failure to maintain the door would also likely mean that the lessees would not have been charged for its maintenance and so there would be no charge for the Tribunal to consider.

9. The Applicant asked the Tribunal to bar the Respondents from further participation in the proceedings for their failures to comply with the Tribunal's directions. However, the final hearing has been reached without anything meaningful or substantive from the Respondents. They effectively barred themselves. The Tribunal would not permit them to bring up anything new at this late stage. Nevertheless, given their attendance and the progress of the case as summarised in this decision, the Tribunal allowed Mr Chauhan and Mr Ghambai to make representations.
10. Unfortunately, the Applicant had also committed their own default. Paragraph 1 of the directions had required the Applicant to send to the Respondents, amongst other documents, any estimates on which service charges were based. Many of the service charges claimed were advance service charges for the years 2023 and 2024 and would have been based on a budget consisting of estimated figures for the coming year. After the Tribunal queried whether the estimates/budgets had been included in this disclosure, and some investigation by his instructing solicitor, Mr Beetson confirmed that they had not been.
11. The Tribunal had been prompted to make its enquiry about the estimates/budgets because they were not in the hearing bundle. The certified service charge accounts for 2022 were also not in the bundle. The Applicant's solicitor spent some time retrieving documents from her office but the only further documents emailed to the Tribunal were statements of each Respondent's account, not the annual accounts or budgets showing a breakdown of service charge expenditure.
12. Mr Beetson sought to justify the absence of the annual accounts or budgets by pointing out that the Respondents had failed in their duty to identify what parts of the budgets or accounts were in dispute and so they were not relevant documents. This misunderstands the approach which Mr Beetson himself identified in his skeleton argument. The proceedings before the Tribunal are not an action for debt in which a court may be satisfied just by the production of a relevant demand. The Tribunal is being asked to determine that service charges are reasonable and payable – even in the absence of anything from the Respondents, the Tribunal needs to understand that what has been demanded is within its jurisdiction and under which provision. Without the budgets and accounts, the Tribunal cannot determine that monies demanded are service charges and whether they are based on estimated or actual costs.
13. Moreover, since the Applicant had not sent the Respondents the estimates/budgets, it was arguable that the Respondents had not had a

fair opportunity to pick out anything they disputed. It is an open question whether they would have taken that opportunity but the Tribunal cannot let the Applicant's default pass on the basis of speculation.

14. The Tribunal put to Mr Beetson that the Applicant should either withdraw its application and start again or accept an adjournment so as to put its case in order. After consulting those instructing him, he put forward another option. He proposed that the Tribunal should consent to the Applicant withdrawing the applications insofar as they related to the annual service charges which depended on the absent budgets/estimates and accounts but then proceed to determine the reasonableness and payability of the charges for the major works programme. The Applicant had not defaulted on disclosure or the contents of the hearing bundle in relation to the latter issue and it was urgent for both the Applicant's finances and the progress of the works that it be determined.
15. Mr Chauhan and Mr Ghambai objected to proceeding with any part of the case at this hearing. They accepted that they had failed to comply with the directions or provide a sufficiently detailed case but blamed late receipt of the Tribunal's directions. They said they now realised the necessity of taking legal advice and wanted time to do so.
16. The Tribunal was not satisfied that the Respondents should get more time. They have had months to obtain legal advice. Mr Chauhan and Mr Ghambai were present at the case management hearing before Judge Korn at which the amended directions were made and explained to them. Today's hearing was the first time they had informed the Tribunal about their alleged difficulties with complying with the directions or asked for time or further directions from the Tribunal. Further, their complaints related solely to the conduct of the works but the Tribunal was only being asked to determine the reasonableness and payability of the advance service charges, i.e. the charges levied in advance of the works, not any issues arising from how the works were actually carried out later.
17. In the circumstances, the Tribunal accepted Mr Beetson's proposal. The Tribunal consented to the withdrawal of the application insofar as it related to the annual service charges and proceeded to consider the major works programme.
18. Berrys, on behalf of the Applicant, drew up a specification of works dated 5th October 2022 which was served on the lessees on 16th November 2022. The Applicant also commissioned a report by QFSM Fire Safety Management dated October 2022 which recommended a number of works. The Applicant then went through the statutory consultation process required by section 20 of the 1985 Act. Based on a detailed specification of works, they chose the lowest tender of £386,294.70 from Redwood Contractors Ltd, including a 10% contingency but with VAT to be added. On their face, the works appear to have been properly commissioned and the resulting service charges appear to have been

properly calculated. The Respondents have provided no specific reason to think they may not be reasonable or payable.

19. The Applicant demanded the following sums in relation to the major works and the Tribunal is satisfied that they are reasonable and payable:

(f) Flat 3	£16, 572.01
(g) Flat 6	£18,969.67
(h) Flat 14	£12,747.70
(i) Flat 20	£14,022.47
(j) Flat 32	£12,747.70

20. Mr Chauhan asked what happens when a lessee cannot afford the sum demanded and whether it is possible for payment to be by instalments. These are valid questions but the Tribunal has no jurisdiction in relation to them. The Applicant is legally-advised and will be well aware of the difficulties involved in recovering such debts. Mr Chauhan mentioned that some other lessees have entered into payment plans and no doubt the Applicant is open to listening to any similar reasonable proposals from those who have yet to pay in full.
21. The Tribunal also pointed out that a ruling in the Applicant's favour in relation to the advance service charges based on estimated costs does not prevent the actual costs and final service charges based on those actual costs from being challenged in later proceedings. However, the Tribunal expressed its hope that the parties can seek agreement rather than resorting to further litigation.

Name: Judge Nicol

Date: 14th October 2024

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 20C

- (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, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the

- application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) 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.

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.