FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	BIR/00CT/LIS/2024/0007
Property	:	1 Shirleydale, Harwood Grove, Shirley, Solihull, B90 4AL
Applicant	:	David Crawford and Louise Crawford
Representative	:	Applicants in person
Respondent	:	Abacona Investments Ltd.
Representative	:	Cannon Jones Estate Management Ltd. and Joshua Cullen of Counsel
Type of Application	:	(1) Under section 27A Landlord and Tenant Act 1985 for determination of the reasonableness and payability of service charges. (2) Under section 20C Landlord and Tenant Act 1985 for an order for the limitation of costs. (3) Under paragraph 5A, Schedule 11 Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing liability to pay administration charges in respect of litigation costs.
Tribunal Members	:	I.D. Humphries B.Sc.(Est.Man.) FRICS Judge David R. Salter LL.B (Hons)
Determination	:	By Hearing at the Offices of the First-tier Tribunal (Property Chamber), Centre City Tower, 5-7 Hill St., Birmingham, B5 4UU
Date of Decision	:	**04/02/2025**

DECISION

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1 **Application under section 27A Landlord and Tenant Act 1985 for determination of the reasonableness and payability of service charges**

Background

2 The Applicants hold a long leasehold interest in property known as Flat 1, Shirleydale, Harwood Grove, Shirley, Solihull, B90 4AL which is part of a 1960s development. They bought the flat in 2021 and object to the landlord's service charge which includes a levy to a reserve fund which they say is excessive for the costs likely to be incurred. They ask the Tribunal to order the return of funds they consider excessive to the lessees.

3 They also ask for an order under s.20C of the Landlord and Tenant Act 1985 to limit the landlord's costs and for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the tenants' liability to pay administration charges in respect of litigation costs.

4 The Applications were dated 9 February 2024.

5 In view of the complexities of the case, the Tribunal held a case management conference on 30 April 2024.

6 The Tribunal issued Directions on 1 May 2024.

7 The property was inspected on 4 September 2024 in the presence of the parties followed by a hearing at the Tribunal offices on the same day. After re-convening to consider the 747 pages of evidence and oral submissions made by the parties the Tribunal reaches its decision below.

Facts Found

8 The Tribunal inspected the property on the morning of the hearing with Mr David Crawford representing the Applicants and Mr Dale Jones and Mrs Lyndsey Cannon-Leach of the managing agents, Cannon Jones Estate Management Ltd. representing the Respondent.

9 The Tribunal was given a guided tour of the estate which comprised six blocks of flats built in the 1960s known as Shirleydale, Yarningdale, Cheltondale, Henleydale, Ardendale and Quintondale in a residential part of Shirley, a suburb 8 miles south east of Birmingham city centre.

10 The blocks are between 2 and four storeys high and contain 72 flats, each of which has its own garage in a separate block to the rear, except Ardendale which has parking in an undercroft. The blocks are spaced around the site which has the overall name of 'Harwood Grove' with a cul-de-sac roadway leading into the scheme from the adjoining highway and lawns and landscaping around the buildings.

11 The Tribunal did not inspect the Applicants' flat as the application relates only to the amount demanded by the Respondent for the service charge reserve fund.

Issues

12 The Applicants made 3 applications:

1 for an order to determine the reasonableness of the Respondent's demand for the service charge reserve fund which they consider excessive for service charge years 2021,2022,2023 and the prospective charge for 2024;

2 for an order under section 20C of the Landlord & Tenant Act 1985 and

3 for an order under paragraph 5, Schedule 5A to the Commonhold and Leasehold Reform Act 2002.

Relevant Law

13 The Tribunal's powers derive from statute.

14 Section 27A(1) of the Landlord and Tenant Act 1985 ('the Act') provides that an application may be made to a Leasehold Valuation Tribunal, now the First-tier Tribunal (Property Chamber), to determine whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.

15 Section 18 of the Act defines 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.

16 Section 19 of the Act provides that relevant costs shall be taken into account in determining the service charge payable for a period (a) only to the extent that they are reasonably incurred and (b) where incurred on the provision of services or carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.

17 Section 20C of the Act provides that a tenant may make an application for an order that all or any part of the costs incurred, by the landlord in connection with the proceedings before a ... [First-tier 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.

18 Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides that a tenant may apply to the Tribunal for an order reducing or extinguishing a tenant's liability to pay an administration charge in respect of litigation costs.

19 These are the statutory criteria for the Tribunal's jurisdiction but it is also bound to take account of precedents set by the Courts to interpret the standards to be applied.

20 In respect of the subject property, the Applicants hold a lease dated 20 June 1983 for a term of 109 years less 3 days from 25 December 1962 at a ground rent. The lease required the lessee to pay a service charge to cover the costs incurred by the landlord for repairs, insurance, management and the usual costs of running the development payable in two half yearly payments in advance, assessed by the landlord's accountants or managing agents as a *'fair and reasonable interim payment'* at their discretion. (clause 3(f)).

21 The term was extended to 199 years from 25 December 1962 by Deed made 30 January 2015, and at the same time, a new clause 11 was added to the Fourth Schedule of the 1983 lease to allow the landlord to request additional sums for a service charge reserve fund in the following terms:

'Such sums as the Landlord may reasonably consider to be prudent to be paid into a reserve fund for such items which are required to be dealt with at periodic rather than annual intervals according to the principles of good estate management.'

By clause 3(3)(b) of the 1983 Lease, the service charge year runs from 1 January to 31 December.

Submissions
(References to Bundle pages refer to the Bundle submitted at the Hearing).

22 **In respect of Issue (1) - service charge reserve**

23 The Applicant
In essence, Mr Crawford said that over the four-year period in question, the Respondent had charged between £2,000 and £2,250 per annum to each lessee of which roughly 50% was spent on general running costs and day to day expenditure. In round terms this was an income of around £140,000 - £158,000 per annum of which some £80-90,000 was spend on annual expenses, leaving around £60,000-70,000 to be set aside each year in the service charge reserve to pay for major items of a non-cyclical nature.

24 Mr Crawford accepted that there were major items needing attention over the period and extending into the future; the main items being repairs to garage roofs where old felt needed replacement, repairs to balconies due to water ingress, repairs to rendered panels due to damp problems in the flats and other less costly but still non-cyclical repairs in the future. In his calculations, he totalled the expected annual income from all the flats over the four-year period, added the opening balance in the reserve at December 2020 (£25,523) and calculated a total income of £644,725 over the period. He then deducted the actual costs incurred by the Respondent each year which were considerably less than budgeted, and he estimated the service charge reserve at the end of 2024 to be £156,177. (Bundle 419). He said this was far in excess of what was required and asked the Tribunal to order the Respondent to return what he regarded as excess funds to the lessees.

25 He also said that each year, the landlord's agents had produced budgets with lists of planned expenditure that had not been undertaken.

26 Furthermore, as a Quantity Surveyor with over 20 years' experience he said the specifications for some of the work carried out and tendered were incorrect and the estimated costs should have been reduced, which would have resulted in lower sums being requested for the service charge reserve.

27 Mr Crawford asked for a refund to be paid not only to the Applicants but to all the lessees in the scheme.

28 Over the years, Mr Crawford had asked to see specific bills relating to service charges, but said they had not been provided. Papers had been shown but he had not seen everything and consequently, in his submission, he questioned specific costs for not only the major items listed above but also the amount spent on insurance, amounts paid to third parties for unknown items and the landlord's managing agent's fees.

29 The Respondent
Mrs Cannon-Leach for the Respondent said all the funds had been properly accounted for and the balance at the end of 2024 was projected to be around nil.

30 The service charge accounts prepared by Cannon Jones Estate Management's predecessors, Pennycuick Collins Ltd., for the year ending 31 December 2021, had been certified by Azets Accountants of Wolverhampton as a fair summary of the costs incurred in accordance with the accounts and receipts produced to them. Mrs Cannon-Leach explained that when her firm took over there were some outstanding points that prevented the accounts for more recent years being certified, but said all the funds had been properly accounted for.

31 Furthermore, the service charge funds were kept in an RBS Trust Account as required by section 42 of the Landlord & Tenant Act 1987 for the lessees' protection.

32 In her analysis, Mrs Cannon-Leach said the reserve fund balance at 31 December 2023 was estimated to be £134,375 (assuming no lessee arrears) (Bundle 655) and that the reserve fund contribution from or on behalf of the lessees for 2024, was expected to be £64,630, (Bundle 613) which would, assuming no expenses and no arrears, have meant a credit balance of £199,005 on 1 January 2024.

33 However, this was as expected, because although it may have appeared high, she explained at the Hearing that all the funds had been allocated to specific projects and by the end of 2024 this would have left no funds in the reserve. This had arisen for various reasons. The main reason was that in each year, the Respondent had set aside cash for specific projects but after consulting the lessees it was decided to pursue different priorities and some of the works had been cancelled or postponed. For example, at 31 December 2021, £93,000 had been set aside to repair or replace the garage roofs but instead of carrying out repairs to all the blocks at the same time, the work had been phased and there was still an expected cost of around £40,000 to be spent in 2024 to complete the work. In other cases, cash had been set aside for work that had later been deemed unnecessary as alternative, cheaper methods of repair had been used and the cash saved had been diverted to other projects.

34 The cash projections provided by the Respondent covered planned expenditure to 2037 including replacing doors and windows in communal areas, internal floor coverings, resurfacing the driveway, internal and external redecoration and other items that, although necessary in the medium term, were not critical at this stage but needed to be included in the planned programme of repairs and renewals to assess future service charge budgets.

35 Mr Cullen said it would be better for the lessees in the long run if the annual costs were evened out, rather than being faced with major expenses in any one year, and that this was provided for by the service charge provisions introduced in 2015 at clause 3(15)(e). Such provision would be 'prudent' and in accordance with the principles of good estate management.

36 <u>Tribunal Decision</u>
The Tribunal would like to thank all parties for providing their true and honest opinions based on the available information available; Mr Crawford for the Applicants and Mrs Cannon-Leach and Mr Cullen for the Respondent.

37 It was impossible to reconcile all the figures from the information provided at the Hearing as some of the figures were rounded and others relied on accruals for income and expenditure yet to be incurred, but the Tribunal was able to assess the essence of the parties' cases from the information provided.

38 At the outset, it is noted that the Applicants asked the Tribunal to order any excess funds to be repaid but we must point out that this is outside the Tribunal's remit. The Tribunal is a statutory body and can only make declaratory statements relating to its functions under section 27A of the Act. It has no power to issue an order to repay.

39 Furthermore, the Tribunal is only able to determine applications before it. This application relates only to the service charge reserve fund budgets for 2021-2024. Consequently, the Tribunal is unable to determine whether the costs actually incurred were, or will be, fair and reasonable and if the Applicants wish to challenge them they will

need to make a separate application to the Tribunal under s.27A of the Act specifying exactly which costs and charges for which year are contested.

40 In like vein, the Tribunal is only able to make a determination relating to this application for the present Applicants, it is unable to make any order in respect of other lessees without their express consent or being identified as joined parties.

41 Reading the submissions, the Tribunal appreciates why the Applicants considered the reserve to be excessive but having heard the Respondent's case it is clear that taking the long view as the Tribunal must, there are major expenses that would need to have been taken into account in both the short and medium term.

42 In cross examination, Mr Crawford agreed it would be prudent to take a long view over 4 to 5 years and that the garage roofs, balconies and render panels all needed attention. He agreed the service charge reserve was purely to cover estimated costs and that this included VAT. He disagreed with some of the specifications proposed and there was extensive coverage of detail provided in the Bundle which the Tribunal is unable to consider in this application as it has to focus on whether, standing in the position of the managing agent on the 1st of January each year, the projected budgets were fair and reasonable.

43 Taking an overall view, the Tribunal finds they were. It finds the sums demanded from the Applicants for the service charge reserve fund for the years 2021, 2022, 2023 and 2024 to have been payable and reasonably incurred under section 27A of the Act.

44 **In respect of Issue (2) - section 20C of the Landlord & Tenant Act 1985**

45 The Applicant
The Applicants ask the Tribunal to order that all the costs incurred or to be incurred by the landlord in connection with proceedings before the 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.

46 The Applicants rely on clause 3(15) of the 1983 Lease added by the 2015 extension:

The Tenant will reimburse the Landlord in respect of all costs reasonably incurred including all legal fees, agents fees and costs ***in making any application*** *to any judicial body in*

- *a. pursuing arrears of ground rent, service charge and/or insurance premiums;*
- *b. pursuing any breach by the Tenant of the covenants contained in this Lease;*
- *c. the costs of preparation for and application to the Leasehold Valuation Tribunal or other similar body required for the confirmation of the service charge to be paid in any particular year*
- *d. preparation for and application to any appropriate judicial body to amend the terms of this Lease for the better management of the Development.'*

N.B. the Tribunal has added the emphasis in bold.

47 Mr Crawford points out that the Respondent did not 'make the application', he did, and as such there is no contractual reason why he should be liable for the Respondent's costs.

48 The Respondent
Mr Cullen for the Respondent emphasises that a section 20C order cannot be extended to parties other than the Applicants.

49 Mr Cullen directs attention to sub-paragraph 3(15)(c) of the Lease, focussing on 'the costs of preparation for and application to the Leasehold Valuation Tribunal ...' and submits that this requires the Applicant to pay the Respondent's costs.

50 Tribunal Decision
The Tribunal notes that the application was made not by the Respondent but by the Applicants and as clause 3(15)(c) only covers applications made by the Landlord, there is no contractual liability for the Applicants to pay.

51 Accordingly, the Tribunal grants the Applicants the requested order under section 20C of the Act.

52 **In respect of Issue (3) - for an order under paragraph 5A, Schedule 11 to the Commonhold and Leasehold Reform Act 2002**

53 Exactly the same arguments were advanced by the parties as in respect of the section 20C application.

54 Tribunal Decision
Accordingly, the Tribunal reaches the same decision and grants the Applicants the requested order under paragraph 5A, Schedule 11 to the Commonhold and Leasehold Reform Act 2002, that no part of the litigation costs in this Tribunal is to form part of an administration charge payable by the tenant.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal Procedure

In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the parties may make further application for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law only. Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 28 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal. Where possible, any such application should be made by email to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).