



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

**Case Reference** : **MAN/00BY/LSC/2023/0019**

**Property** : **34, Waterloo Warehouse, Waterloo Road,  
Liverpool L3 0BG**

**Applicant** : **Gary Barrow and Jacqueline Barrow**

**Respondent** : **Waterloo Warehouse Right to manage  
Company Limited (represented by Mr East of  
Counsel)**

**Type of  
Application** : **Reasonableness of Service Charges  
Section 27A and 20C Landlord and Tenant Act  
1985.  
Application by the Applicants and the  
Respondent for leave to appeal against the  
decision of his Tribunal dated 31<sup>st</sup> May 2024**

**Tribunal Members** : **Mr J R Rimmer  
Mr J Faulkner**

**Date of Decision** : **2<sup>nd</sup> December 2024**

**Order** : **(1) The Tribunal determines that the costs  
incurred in relation to litter picking are not  
reasonably incurred at reasonable cost.**

**(2) The application by the Respondent in  
relation to the pest control determination  
is reviewed as set out herein**

**(3) The Tribunal determines that it is  
inappropriate to make an order under  
Section 20C Landlord and Tenant Act 1985,**

**or under Schedule 11, paragraph 5A,  
Commonhold and Leasehold Reform Act  
2002**

**(4) The Applicants' application for leave to  
appeal against the decision of 31<sup>st</sup> May is  
refused for the reasons set out herein.**

**Background**

1 On 1<sup>st</sup> July 2024 the Tribunal published its decision made on 31<sup>st</sup> May 2024 in respect of very lengthy and wide-ranging complaints by the Applicants in relation to the standard of services provided by the Respondents to the development at Waterloo Warehouse, a converted Dockside warehouse at Waterloo Dock, Liverpool.

2 The Tribunal left 2 matters outstanding:

- (1) The reasonableness of the cost incurred in litter picking on the development, since it was not clear, amongst all the issues raised between the parties, how this cost was determined between two contractors as a part of their other contractual obligations in respect of the development.
- (2) The application by the Applicants under Section 20C Landlord and Tenant Act 1985 for an order excluding the professional costs of the tribunal proceedings from being incorporated in future service charge.

3 The Tribunal also made determination in respect of the reasonableness of charges incurred in respect of pest control within the development. The observations provided by the Tribunal and its reasons for finding in the Applicants' favour are set out in paragraph 77 of the decision.

4 The Respondent has asked the Tribunal to review its decision in this regard and for leave to appeal if there is no favourable review.

5 The Applicants have also sought leave to appeal a significant number the elements of the decision that has been made and provided extensive grounds for so doing.

**Litter Picking**

- 6 The Tribunal was, in hindsight, overly optimistic in believing that the parties might come to some agreement over this element of the service charges, having expressed its concerns as to how this service was provided. The Respondent has provided some information as to what it considers to be a reasonable breakdown of costs in respect of litter picking when separated out from the other costs relating to the upkeep of the grounds of

the Warehouse development (both shrubbed areas and car parks/paths/roadways).

- 7 It may be the case that the Tribunal should have been more forthright in its observations of what it had considered. The inspection on 26<sup>th</sup> April revealed very considerable litter and detritus within shrubberies against the wall of the dock estate. It is in no doubt at all that this reflects what the Tribunal saw on the video provided by the Applicants relating to the use of blowers and its effect upon what was not being “picked” but simply moved. Whereas in other respects the Tribunal has supported the Respondent’s contentions in relation to the costs it has incurred in managing a complex, converted, dockside warehouse, the efforts made in relation to litter picking are inadequate and a poor reflection upon what was otherwise viewed by the Tribunal as generally satisfactory service provision. For the avoidance of doubt the Tribunal takes the view that it is not looking at this issue as a situation that could be improved at slightly higher cost. At the moment it is simply inadequate.
- 8 In the absence of any agreement between the parties the Tribunal would disallow those elements of the charges identified by the Respondent in its submission of 12<sup>th</sup> August 2024 in respect of which the Tribunal appreciates the efforts that the Respondent has undertaken to provide further and better information. Within those submissions the Respondent refers to the costs as miniscule. The Tribunal would take the view that therein lies the difficulty for the Respondent in respect of these particular charges. They reflect a cost that is insufficient to deal with the problem. In respect of this item the Applicants have made their point well. They receive minimal benefit from the service now provided.

### **Pest Control**

- 9 The Tribunal provided a determination on this element of the service charge costs at paragraph 77 of its decision. It expressed concern at the system in place at the development and explained its view based upon the observations at the inspection and the submissions made by the Applicants as to how they viewed the adequacy, or otherwise, of the provision.
- 10 The Respondent seeks to challenge the decision made. Again, this challenge is set out in the submission of 12<sup>th</sup> August. The Tribunal has given extensive consideration to the observations made in relation to the total cost of the pest control operations (which the Respondent breaks down into “per person” terms, although this is possibly a “per flat” basis). The Respondent also reminds the Tribunal of the nature and location of the development and the inherent likelihood of vermin presence requiring control.

- 11 The Applicants in their extensive submissions in relation to their appeal also re-emphasise their view that traps are being left unbaited and unattended for considerable periods. The Tribunal must look at the cost and what is being done for that cost
- 12 Whilst the Tribunal does not necessarily agree that the system currently in place is necessarily the best that can be devised, it feels bound to concede that some element of pest control is required to deal with the issue. It also accepts that the Respondent is likely to be correct in asserting that there is a constant presence in need of control. The Tribunal must however remind itself that it is not sufficient for it to simply find that an alternative system would be more reasonable, but that the current one involves cost that is unreasonably incurred and/or in an unreasonable amount. Taking those criteria into account it is of the view that the amount incurred is reasonable in relation to the level of provision.
- 13 Whilst the Tribunal has noted the improvements being made to the provision if this element of the services outlined in the respondent's more recent submission, they have not been considered when it has reviewed what was provided in the past.
- 14 The Tribunal also notes that the Applicants are concerned that either side of their own submission on this point the Respondent makes amendments to its submission. They largely relate to the improvements to the system of monitoring that the Respondent indicates to have taken place. To the extent that those amendments relate to the system now, rather than in the years under consideration they are irrelevant and have not been taken into consideration. The Tribunal has exercised its further judgement in the light of matters raised in paragraphs 11 and 12 above.

### **Section 20C Landlord and Tenant Act 1985 etc**

- 15 Section 20C is quite straightforward in its wording and sets out what the powers are that the Tribunal has under the following provisions:
  - (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-
    - (a)...
    - (b) In the case of proceedings before a First-tier 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 such tribunal

- (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.
- 16 The Tribunal will make the point that there has only been limited guidance given to it by superior courts to assist it in assessing how best to exercise the wide discretion that it has been given.
- 17 It also noted that the Respondents also made an application under Schedule 11, paragraph 5A, Commonhold and Leasehold Reform Act 2002 which provides provisions in broadly similar terms should those costs be considered administration charges, rather than service charges.
- 18 Following the conclusion of the hearing in relation to the substantive application the Tribunal provided certain directions to assist with this Section 20C matter and has now received submissions from the parties, sufficient for it to proceed. Neither party has sought a hearing in relation to this aspect of the case and both appear content for the matter to be determined on the papers.

#### Submissions

- 19 The Respondent makes the following case:
- (1) The lease allows for the recovery of the costs incurred in respect of the proceedings within
  - (2) The Tribunal has determined that the matters raised by the Applicants very largely in favour of the Respondent.
  - (3) Nothing was done by way of conducting or defending the proceedings by the Respondent, or its representatives, that was improper.
  - (4) What was done, both in relation to the services provided and in conducting these proceedings, was appropriate given the extent of the works and their importance.
  - (5) The Applicants had brought the proceedings on their own without apparent support from other leaseholders.
  - (6) The Applicants had suffered no costs or loss themselves in conducting the proceedings.
- 20 Reference should be made to the decision of the Upper Tribunal in *Church Commissioners v Derdabi* [2010] UKUT380 (LC) and its predecessor, the Lands Tribunal, in *Schilling v Canary Riverside Developments PTF Ltd* LRX/26/2005. The Tribunal should look at where success and failure lay in the substantive matter and should then consider very rarely the making of an order in favour of wholly unsuccessful tenants.
- 21 The Tribunal should however refer to the case of *Kullar v Kingsoak Homes Ltd* [2013]UKUT 15 (LC) for guidance that a tribunal should look beyond the bare outcome in order to establish what would be just and equitable.

- 22 The Tribunal accepts the basic principle that the Respondent seeks to impress upon it. In the absence of any, or very limited, success at all by the Applicants there should be an assumption that no order should be made in their favour.
- 23 The Respondent will know, however, that Section 20C, and paragraph 5A, by giving the Tribunal the discretion that it has, allows it to look at all the surrounding circumstances to decide whether, notwithstanding the assumption made, some sort of order is just and equitable.
- 24 The Tribunal takes the view that the matters raised within the application were of some complexity in relation to what amounted, within the terms of lease, to services. The costs involved in providing them were considerable and significant liabilities would be incurred or avoided, depending upon the findings of the Tribunal. A party is entitled to present its case to its best advantage and incur professional costs in seeking to avoid adverse findings
- 25 The Tribunal will say that all those considerations set out above, and taken together, are not sufficient for the Tribunal even to contemplate that a pendulum that has swung to the benefit of the Applicants sufficient to suggest that it would be just and equitable to make an order in their favour.
- 26 For those reasons set out above, the Tribunal does not consider an order under either Section 20C Landlord and Tenant Act 1985, or Schedule 11, paragraph 5A, Commonhold and Leasehold reform Act 2002, is appropriate in these proceedings.

### **The Applicants' appeal**

- 27 The Applicants wish to appeal the decision of the Tribunal in respect of a number of its determinations as to reasonableness. They provide an extensive submission in aid of that goal.
- 28 Before dealing with the substantive issues the Tribunal address an issue that appears to have caused offence to the Applicants in describing the supply of information as a "plethora". The Tribunal is happy that this was to emphasise the considerable quantity, an "extensive supply", of information for its consideration. It was not intended in any way to belittle the very considerable efforts to which the Applicants had gone to provide support for the arguments that they have put forward.
- 29 The Applicants provide general grounds for appeal as follows:
- (a) The Tribunal wrongly applied or misinterpreted a relevant principle of valuation or other professional practice.

- (b) The Tribunal made findings of fact not supported by the evidence.
  - (c) There was unfairness in the proceedings leading to an unfair decision
  - (d) The Tribunal failed to consider or misinterpreted relevant evidence And should therefore reconsider its decision.
- 30 The Applicants then go on to ask the Tribunal to apply those criteria to specific elements of its decision.
- 31 In so far as the relevant aspects of the decision relating to litter picking and pest control are addressed above, the Tribunal does not need to re-iterate them here.
- 32 For the remaining elements of the decision about which the Applicants are clearly dissatisfied the Tribunal needs, once again, to address the fundamental issue as to what it is examining. It is looking at the costs incurred from the perspective of their reasonableness in amount and their reasonable relevance to the general benefit of Waterloo Warehouse and satisfying the requirements of the lease as to what is required by way of provision of services for the development.
- 33 Where possible the Tribunal set out at each head of its determination the cost for an individual flat for one of the years (2017) for which it was asked to consider the costs of services.  
It is here that the Tribunal takes the view that it has very clearly considered those matters to which the Applicants refer in their notice of appeal:
- Relevant principles of valuation, or other professional practice.
  - Findings of fact according to the evidence
  - Considering relevant, but not irrelevant evidence
  - Being fair to the Applicants (and for that matter the Respondent)
- 34 Whilst addressing the Applicants' submissions further, below, the Tribunal has no difficulty in addressing some of their other issues by reference back to those relevant paragraphs of the decision. It also reminds the parties that its decision was reached after consideration of the extensive evidence provided in written and photographic form (and for the avoidance of doubt including the "thumb-drive" video evidence) before the hearing and the oral evidence provided there.
- 35 For the amounts in question, year by year the services are provided at reasonable cost to a reasonable standard. If the Tribunal is permitted to note that the Applicants do not seek the Tribunal's reconsideration of all the heads of charge assesses in the decision, then it will say that it has applied the same standards of evidence, proof and professional competency to those that have been challenged.

- 36 The Tribunal has expressed and continues to express its views that those amounts that have been expended have been reasonable and have been reasonably applied to the provision of services to the development. To the extent that the Tribunal needs to continue to emphasise that finding, it will address in general the matters to which the Applicants address their major concerns.
- 37 The Tribunal, in its decision accepts much of what the Applicants say about the issues that affect the building, but it also accepts that what the Respondent applies by way of funds to address those concerns are reasonable and the building benefits from such amounts as are spent. It is an old building, converted from its original purpose as a warehouse with the basic elements of construction that pertain to such a structure.
- 38 There has to be a balance between what could be spent, what could be afforded, what might reasonably be paid and what might reasonably be done. The Respondent, in the view of the Tribunal, achieves a balance between those principles that relate to all such matters as security, cleaning, access supervision, health and safety and the other heads of charge considered by the Tribunal.
- 39 The Tribunal is further satisfied that there remains an outstanding issue in respect of the repairs that are required to the Applicants' own flat and which appear not to have been dealt with satisfactorily. If, and when, that is done the cost will likely fall on the service charge, not on the Applicants in any other way. So far as costs that have been incurred are concerned they do not relate to the matter of those repairs, save except it could be argued that some element of the management fee payable by the Applicants might be considered. Here, also the Tribunal found itself satisfied that for the purposes of providing services in general to the development the fee charged is reasonable.
- 40 The Tribunal confirms that it was unfortunately drawn to the conclusion that there is an unfortunate clash of views between those of the Applicants and those of the manager of the development, despite denials from certain quarters. Such was clearly evident from the hearing that took place and the distress apparent when the relative proportions of time spent upon the issues of the Applicants compared with those of the other occupiers were aired.
- 41 For those reasons set out above the Applicants' application for leave to appeal is refused.

J R RIMMER (CHAIRMAN)

13<sup>th</sup> November 2024



