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| Crest |  | FIRST-TIER TRIBUNAL**PROPERTY CHAMBER****(RESIDENTIAL PROPERTY)** |
| **Case reference** | **:** | **LON/OOAF/LSC/2024/0656** |
| **Property** | **:** | **66 THE AVENUE, FITZGERAD PLACE, BECKENHAM, KENT BR3 5ES** |
| **Applicants** | **:** | **Andrew Combs** |
| **Respondent** | **:** | **Leasecon Engineering Associates Ltd** |
| **Type of application** | **:** | **An application under section 27A Landlord and Tenant Act 1985** |
| **Tribunal**  | **:** | **Judge Shepherd****Jennifer Rodericks MRICS** |
| **Date of Decision** | **:** |  **8th May 2025** |

**DETERMINATION**

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1. This matter originates from an application made by Mr Combs a leaseholder of the premises at 66 The Avenue, Fitzgerald Place, Beckenham, Kent, BR3 5ES (“The premises”) . The application is made on behalf of most of the other leaseholders in the premises. There are seven flats in the premises all held on long leases. It is assumed the lease terms are similar but nothing turned on that. The freeholder of the premises is Leasecon Engineering Company Limited . Their director is Stephen Clacy.
2. A hearing took place on 2nd April 2025. Mr Combs represented himself and Mr Clacy and Dr MacEvoy represented the Respondents. There were previous proceedings between the parties in LON/OOAF/LSC/2023/003.
3. The Applicant challenged service charges for the period 2021-2023. The parties prepared a useful Scott Schedule of issues which we have used to define the issues we were required to decide.

**The law**

1. The Landlord and Tenant Act 1985,s.19 states the following:

  *19.— Limitation of service charges: reasonableness.*

*(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;*

 *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.*

1. The Tribunal’s jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

*27A Liability to pay service charges: jurisdiction*

*1. An application may be made to [the appropriate tribunal]2 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]2 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.*

1. In *Waaler v Hounslow* [2017] EWCA Civ 45 the Court of Appeal held the following:

*Whether costs were “reasonably incurred” within the meaning of section 19(1)(a) of the Landlord and Tenant Act 1985 , as inserted, was to be determined by reference to an objective standard of reasonableness, not by the lower standard of rationality, and the cost of the relevant works to be borne by the lessees was part of the context for deciding whether they had been so reasonably incurred; that the focus of the inquiry was not simply a question of the landlord's decision-making process but was also one of outcome; that, where a landlord had chosen a course of action which led to a reasonable outcome, the costs of pursuing that course of action would have been reasonably incurred even if there were a cheaper outcome which was also reasonable; that, further, before carrying out works of any size the landlord was obliged to comply with consultation requirements and, inter alia, conscientiously to consider the lessees' observations and to give them due weight, following which it was for the landlord to make the final decision; that the court, in deciding whether that final decision was reasonable, would accord a landlord a margin of appreciation; that, further, while the same legal test applied to all categories of work falling within the scope of the definition of “service charge” in section 18 of the 1985 Act, as inserted, there was a real difference between work which the landlord was obliged to carry out and work which was an optional improvement, and different considerations came into the assessment of reasonableness in different factual situations.*

**Determination**

1. Some of the issues raised required no determination by the Tribunal. In any event taking each issue in turn:

***External fence***

1. Mr Combs showed us photographs of the fence on the right hand boundary of the premises. He said that the fence was in disrepair. Panels had fallen down. Dr MacEvoy said the problem was compounded because the Respondents did not own the fence. They had written to the owners. They had met the owners on site and they discussed the removal of the defective fence. It was surprising that the Respondents’ gardeners had not sought to remove the ivy from the fence. There was no charge made to the service charge therefore no issue for us to determine.

***External dwarf wall***

1. Mr Combs complained about the lack of response to complaints about the defective wall. The Respondents replaced the dwarf wall in February 2025. No charge had been made to the service charge accordingly there was no issue for us to resolve.

***Leaking skylights in the penthouse***

1. The Respondents had constructed a penthouse flat at the top of the building which had caused disruption to the leaseholders. It transpired that the leaking skylights had been resolved without any charge to the leaseholders. There was no issue for us to resolve.

***Failure to provide receipted invoices***

1. This was not an issue for us to resolve.

***Invoice from J. Interiors for £480***

1. This invoice had been included in the previous proceedings and therefore has already been subject to resolution.

***Cleaning costs***

1. Mr Combs said the cleaners had not come for a six week period and the quality of cleaning was poor. Dr MacEvoy said he had carried out a spot check and the cleaning was fine. He said that during the works to the penthouse cleaning had been carried out to make good. We were not satisfied with the explanation from Dr MacEvoy because a spot check only provided evidence at the date of the check. Also, the leaseholders are more likely to know whether the cleaning is done. We consider that the Applicant is justified in his complaint and accept the proposed deduction of £90.

***Charge for £120***

1. This was conceded by the Respondents.

***Provision of invoices***

1. There was a disputed allegation that invoices had not been provided. This was not within our jurisdiction to resolve.

***Gardening contract***

1. Mr Combs argued that the gardeners did not need to come twice a month during the growing season. We do not consider that twice a month visits are unreasonable. There was however some evidence of poor performance by the gardeners with a video showing them dumping garden rubbish and the ivy on the hedge had not been dealt with. We consider that a deduction of £250 is appropriate for the period in question. Also, we understand that the Respondents accept that they are restricted by the cap of £100 per unit due to a failure to consult on the contract.

***Management costs***

1. The managing agent was LMD Management. Mr Combs argued that a per unit charge of £172 was appropriate. We consider that the existing charge of around £300 per annum is reasonable and make no deduction.

***Insurance charges***

1. Mr Combs challenged the way the insurance was paid for which included interest costs on a loan. We do not consider it is reasonable for the leaseholders to pay the interest charges on the loan. It is for the Respondents to arrange the insurance and recover the cost from the leaseholders however the interest on the loan is not per se an insurance cost. The Respondents will need to deduct the interest charges for the years in question.

***Electricity costs***

1. These were conceded by the Respondents.

***Charges of £330, £200.04 and £320.04***

1. Mr Combs withdrew the challenge to these sums.

***Charge for cutting down various trees - £936, asbestos inspection - £240, leak cost -£270, gardening contract- £250, cleaning contract - £100***

1. The cutting down cost was reasonable and the work was necessary. Accordingly, we allow it in full. We also allow the cost of the asbestos survey. The Respondents accepted the sum of £270 was not due.We do however allow the proposed deduction of £250 in the gardening contract for the reasons that we have already given above. We don’t accept the cleaning contract should be reduced further by £100.

***Apportionment***

1. The penthouse flat was completed in May 2022. From that point onwards the apportionment of the service charge ought reasonably to be 1/8 per unit. It may be that the lease needs amendment to reflect this.

***Consequent costs orders under s.20C Landlord and Tenant Act 1985***

1. The parties are invited to reflect on this determination and make any submissions about s.20C or the reimbursement of the application and hearing fees within 14 days of receipt of this determination.

**Judge Shepherd**

**12th May 2025**

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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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 Chamber).