



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

**Case Reference** : **BIR/00CN/LIS/2021/0017**

**Property** : **4 Petersfield Court, Stratford Road, Hall Green  
Birmingham, B28 9BL**

**Applicant** : **Andrew Lawton-Smith and John  
Lawton- Smith**

**Representative** : **Jobsons Solicitors LLP**

**Respondent** : **Mr Pravin Shingadia as personal representative of Mr  
Mafatial Shingadia (deceased)**

**Representative** : **Mr Sunil Shingadia**

**Type of Application** : **Liability to pay and reasonableness of service charges**

**Tribunal Members** : **Judge T N Jackson  
Mr V Chadha MRICS MIArb FCIH**

**Date of paper  
determination** : **21st July 2021**

**Date of Decision** : **13<sup>th</sup> September 2021**

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**DECISION**

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## **Decision**

We determine that the service and administrative charges detailed below for years 2010 to 2020 are payable, reasonably incurred and reasonable in amount, and in relation to year 2021, would be payable and reasonable in amount:

### **Service charges**

2010	£1,995
2011	£1,964.30
2012	£2,507.16
2013	£4,406.73
2014	£3,229.86
2015	£3,493.22
2016	£2,681.76
2017	£2,640.40
2018	£1,743.38
2019	£1,952.88
2020	£2,169.08
2021	£ 1,129.33

### **Administrative charges**

2012	£96
2013	£300
2014	£150
2018	£270
2020	£1500

## **Reasons for decision**

### **Background**

1. Mr Mafatial Shingadia, the deceased tenant, was registered as proprietor of the leasehold title WM912791, in August 2008, having acquired a 99 year lease of the Property on 10<sup>th</sup> August 2007 (“the Lease”). A mortgagee held a charge over the leasehold title dated 10<sup>th</sup> August 2007, and was registered as proprietor of that charge on 23<sup>rd</sup> August 2008.
2. The Applicants, the landlord, allege that there are service charge arrears going back to 2007 which the Respondent refuses to discharge without a court determination that the charges are validly demanded.
3. Therefore, by application dated 31<sup>st</sup> March 2021, the Applicants seek a determination under section 27A Landlord and Tenant Act 1985 (“the 1985 Act”) of the payability and reasonableness of service charges for the years 2007 to 2021 inclusive.

4. Following correspondence between the Tribunal and the Applicants' representatives, a second Respondent was removed from the application and Mr Pravin Shingadia (as Executor) was substituted as the Respondent.
5. Following correspondence between the Tribunal and the parties, the Tribunal consented to the withdrawal of that part of the application that refers to service charges 2007 to 2009.
6. There have been previous County Court proceedings prior to Mr Shingadia's death but they did not result in a determination or judgement.

### **The Lease**

7. The Sixth Schedule of the Lease ('The Maintenance Expenses') sets out the Management Company's obligations for which money can be spent or reserved for periodical expenditure in relation to the maintenance of the parts of the Development within which the Property is situated and as described in the Second Schedule.
8. The Seventh Schedule ('The Lessee's Proportion of the Maintenance Expenses') provides that the Lessee's proportion is one fourteenth of the Maintenance Expenses as defined in the Sixth Schedule.
9. Clause 3 of the Seventh Schedule provides for the Lessee's proportion to be paid in advance on the 25<sup>th</sup> March and 29<sup>th</sup> September each year with a requirement to pay any balancing figure within 21 days after the service on the Lessee of the account of the Maintenance Expenses and the accountant's certificate.
10. Clause 6 of the Eighth Schedule ('Covenants by the Lessee') provides that the Lessee covenants to pay to the Management Company the Lessee's proportion of the Maintenance Expenses at the time and manner as provided as provided in the Lease.

### **Inspection and Hearing**

11. Neither party requested an inspection or hearing. We were satisfied that we had sufficient information in the written representations and could proceed without an inspection or hearing.
12. Directions dated 17<sup>th</sup> May 2021 required the Respondent to identify in relation to each service charge year:
  - i. the item and amount in dispute;
  - ii. the reason(s) why the amount is disputed; and
  - iii. the amount, if any, the Respondent would pay for that item.
13. The Respondent was required to provide copies of any alternative quotes and any legal submissions if liability to pay was at issue. The Respondent was also given the opportunity to provide a brief supplementary reply to the Applicant's submission.
14. Following a review of the papers, further Directions dated 26<sup>th</sup> July 2021 were issued seeking clarification regarding a loan referred to as part of the service charges and also in relation to the administration charges of £1500 in 2020. The Applicant's provided the

information requested and the Respondent did not submit any comments in response to that information.

## **Submissions**

### Applicants

15. The Applicants have submitted an arrears schedule for the period 25<sup>th</sup> December 2007 to 27<sup>th</sup> July 2020. The schedule includes details of half yearly service charges; interest chargeable; administration fees for default notices and referral to solicitors; Landlord loan interest; legal costs and details of payments made. They have also provided copies of the service charge accounts from year ended 2008 to year ended 2017 with the exception of years ending 2009 and 2010; report on expenditure for 2018; the majority of service charge demands between 2008 and June 2017 and statements of account from 25<sup>th</sup> December 2017 to 21<sup>st</sup> April 2021.

### Respondent

16. The Respondent did not provide the information required by the Directions identifying the items in dispute nor did he provide a supplementary reply. By email dated 12<sup>th</sup> June 2021 the Respondent's representative stated that he did not intend to object to the application and determination being sought. The Respondent did not provide comments in response to the Applicant's information provided as required by the further Directions dated 26<sup>th</sup> July 2021.

## **Deliberations**

This Tribunal has jurisdiction under section 27A of the Landlord and Tenant Act 1985 to determine the payability and reasonableness of service and administration charges but not rent, County Court costs or statutory interest.

### Payability

#### *Service charges*

17. The Respondent has not disputed the Lease provisions allowing service charges to be charged and we therefore have not recited in full the relevant Clauses. We have had regard to Schedules Six, Seven and Eight of the Lease. We find that the service charges are payable under the provisions of the Lease.

#### *Administration charges*

18. Clause 14 of the Sixth Schedule of the Lease includes as Maintenance Expenses the costs of generally managing and administering the Development including the employment of managing agents and enforcing the observance of covenants by Lessees. The Respondent has not disputed the payability of administration charges. We find that administration charges are payable.

### Reasonableness

#### *Service charges*

19. In the absence of any submission or evidence from the Respondent regarding items of expenditure being unreasonable, we determine that the Respondent's service charges charged in 2010 to 2020, as detailed below, relate to expenditure which has been reasonably incurred and is reasonable in amount, and in relation to 2021, the service charge amount would be payable and reasonable. There is a lack of clarity as to whether the withdrawal of the application relating to service charges 2007 to 2009 includes or excludes the service charge dated 25<sup>th</sup> December 2009 which covers the period to 23<sup>rd</sup> June 2010. We have therefore included it in the figures below. However, the matter of the limitation period and the enforcement of the payment of the service charge is a matter for the parties and/or County Court and not the Tribunal.

	£	
2010	£1,995	(£997.50 x 2)
2011	£1,964.30	(£982.15 x 2)
2012	£2,507.16	(£1,253.58 x 2)
2013	£4,406.73	(£1,598.40 x 2 and £1,209.93 service charge shortfall for year ended 2013)
2014	£3,229.86	(£1,614.93 x 2)
2015	£3,493.22	(£1,746.61 x 2)
2016	£2,681.76	(£1,340.88 x 2)
2017	£2,640.40	(£1,320.20 x 2)
2018	£1,743.38	(£871.69 x 2)
2019	£1,952.88	(£976.44 x 2)
2020	£2,169.08	(£1,084.54 x 2)
2021	£ 1,129.33	

#### *Administration charges*

20. Administration fees were charged variously including £96 for legal costs, £60 and £90 for a default Notice and £90 and £180 for a solicitor referral. The Respondent has not disputed the amount of the administration charges nor suggested an alternative amount. We find the charges detailed below to be reasonably incurred and reasonable in amount.

#### Service charge year

2012	£96
2013	£300
2014	£150
2018	£270
2020	£1500 (for ongoing legal action)

#### **Costs**

21. Neither party has made an application for costs and we make no such order.

#### **Appeal**

22. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson