



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

Case Reference	: CHI/00LC/LSC/2022/0004
Property	: Admiralty Gate, Dock Road, Chatham, Kent, ME4 4ST
Applicant	: Karandip Benning (1) H Reiss Investment Properties Ltd (2) Edward Chung Ching Li
Representative	: Karandip Benning (1)
Respondent	: Admiralty Gate Limited
Representative	: Vanessa Julie Dore Rodney Guy Townsend
Interested Persons	: The other Lessees
Type of Application	: Determination of Service Charges (Section 27A of the Landlord and Tenant Act 1985)
Tribunal Member(s)	: D Banfield FRICS Regional Surveyor
Date of Decision	: 24 October 2022

DECISION

Summary

The Tribunal determines that;

the Annual Service Charge Budget for 2022 is properly stated at a Grand Total of £65,386.00 of which each unit's contribution is £5,448.33

the 2018 Consultation was compliant

consultation was not required for the consultancy costs incurred

The Tribunal declines to make Orders either under Section 20C of the Landlord and Tenant Act 1985 or Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Background

1. The Applicants sought a determination of the service charges for 2019, 2020, 2021 and 2022 with the total value in dispute stated to be £71,500.00. The charges relate to major works planned to be undertaken this year. It was not clear what the details of those works were and the specific nature of any dispute about the works or any part of them.
2. In his Directions of 10 March 2022 Judge Dobson identified the issues the Tribunal had been asked to determine:
 1. Whether the amount of on-account reserve contributions sought are reasonable;
 2. Whether the consultation requirements in respect of any qualifying works or major works have been complied with before any sums were demanded of lessees, or deducted from the reserve fund;
 3. Whether the demands for payment for the service charge years are valid.
3. The Directions set out a timetable for the exchange of cases between the parties leading to a determination on the papers by the Tribunal.
4. Judge Dobson expressed the view that the application did not identify any specific issues but was confident that such detail would arise in the submission of the parties' respective cases.
5. Regrettably Judge Dobson's confidence was misplaced as the Hearing Bundle submitted failed to provide the detail expected and necessary for the Tribunal to make its determination.
6. The Tribunal's jurisdiction is set out in paragraph 2 above and does not extend to matters of governance of the Freehold Company.

7. Various Directions were made and a Hearing Bundle was eventually received which on examination was found to be inadequate for its purpose.
 - The Statement of Case containing both parties' evidence contains a number of exchanges between them regarding company governance which are irrelevant to the Tribunal's determination together with largely generalised comments.
 - What is described in the index as a Scotts Schedule contained no more than a request for information by the Applicants together with the Respondent's reply.
8. In order to give the parties the opportunity to provide the information needed for a determination on the papers rather than incurring the costs involved in an oral hearing I made further directions on 19 July 2022 requiring the Applicants to provide a list of;
 - Those costs that are challenged and how much they are prepared to pay or budget for those items
 - The grounds on which they challenge the validity of the S.20 consultations
 - The grounds on which they challenge the service charge demands
9. Supporting evidence contained in the Hearing Bundle for each matter challenged was to be identified by the page number.
10. The Respondent was then required to send a reply to each of the challenges made with supporting evidence contained in the Hearing Bundle identified by its page number.
11. The Applicant has provided a further six pages containing headings in respect of the 3 bullet pointed items on the list and with some references to page numbers in the bundle.
12. The Respondent has provided an eight page reply utilising the same headings as the Applicant but without any references to page numbers in the bundle.
13. In my absence on leave Jude Dobson made further Directions noting that there had at least been partial compliance by the parties and that a paper determination remained possible.
14. I have reviewed the parties' latest submissions and consider that a determination on the limited issues now raised is capable of being reached without a hearing in accordance with Rule 31 of the Tribunal's Procedural Rules.

15. References to page numbers in the bundle will be indicated as[x]

Lease

16. A copy of the lease for Flat 9 has been provided [17] and it is assumed that the others are in common form.
17. The clauses relevant to this dispute are;
- 3.(iii)(a) to contribute and pay to the Lessor in manner hereinafter described one equal twelfth part of the costs charges expenses outgoings and matters mentioned in the Fourth Schedule hereto **PROVIDED THAT** in this Schedule the expression “all costs charges expenses and outgoings incurred or to be incurred by the Lessor” shall include not only those costs charges expenses and outgoings which the Lessor shall have actually incurred or made in the year in question but also such other reasonable part of all such costs charges expenses and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Lessor may in its absolute discretion allocate to the year in question as being fair and reasonable in all the circumstances
 - 3.(iii)(b) the contribution referred to under paragraph (a) of this Clause for each year shall be estimated by the Lessor’s Surveyor or Accountant (his decision being final) as soon as practicable after the beginning of each year and the Lessee shall pay on account the amount so estimated by two equal instalments on the 25th March and the 29th September in each year
 - 3.(iii)(c) as soon as reasonably may be after the end of the year when the actual amount of the said costs expenses outgoings and matters for the period ending on the 31st December in each year has been ascertained the Lessor’s Surveyor or Accountant shall certify the total amount stating the total and proportionate amount thereof (including any audit fee or professional charges) and serve notice on the Lessee; the Lessee shall forthwith pay the balance due to the Lessor or be credited in the books of the managing agents or if none the Lessor with any amount overpaid
 - 4(c)the Lessor will maintain repair and keep in good and substantial repair and renew the main structure of the building including without prejudice to the generality of the foregoing the principal internal timbers and joists and the roof and the foundations and all external main walls and internal walls timbers ceilings and floors not included in the demise of this lease or the leases of other flats forming part of the Building and the common passageways halls and staircases and the stucco and paintwork the roof void and all gutters rainwater pipes and chimneys stacks and all tanks pipes wires drains fences
- ADD SECTION RE WINDOWS

The Law

18. See attached Appendix

The Issues and the Evidence

The Applicants

Budget costs

19. The Applicants challenge the budgeted costs and have prepared their own major works plan showing significant reductions in expenditure which are explained as follows;

- External works; Lessor budgets £43,000 in 2022, £76,000 in 2023 and £85,000 in 2030.
Lessees propose £10,000 for 2023 and £12,500 for 2030 based on information provided by the Surveyors [90-161] and comments from the Management Company [388]. The works proposed is excessive and scaffolding costs can be removed as proved by repairs carried out to the windows by the Applicants [378]
- Internal Repairs & Redecorations; Lessor budgets £15,000 in 2025 and £20,000 in 2031.
Lessees propose £6,000 and £7,500 respectively. The £6,000 is based on £2,000 per each of 3 communal stairways which were repaired and replastered in 2017. The walls are in good condition and £2,000 is sufficient for painting and minor repairs (Carpets are separate)

20. The Lessees also consider the Fire Protection works to be most critical and should be carried out urgently.

21. The Lessor's proposed expenditure is challenged on the following grounds;

- Unnecessary Works
The surveyors' reports and comments from the management company [93-161 and 388] indicate that the property is sound and not suffering from any structural issues. Though minor repairs are required the Respondent's major works plan enhances the building rather than repairing it and the leaseholders service charges should not be used for this purpose.
- Affordability by the Leaseholders
The total major works plan for the next 10 years has increased from £82,500 in 2001 to £246,000 in 2022, an increase of 298% [90]. Flats 10 & 12 sold with primary reason of unaffordability of service charges. No evidence of assessment of affordability provided despite requests [77]
- Purposeful lack of engagement
Examples are given leading to the conclusion that information is being shielded from leaseholders forcing them to contribute

towards enhancement of the façade of the building that the Applicants believe to be unnecessary, bad value for money and the only purpose is to enhance the value of the freehold.

- Management Decisions

The Applicant claims incorrect management decisions are made such as;

Lack of action following fire assessment in May 2019 [430]

Respondents claim to be unaware that windows could be repaired without scaffolding [79]

Relying on surveyor's report without seeking alternatives

Mismanagement resulting in 50% of leaseholders pursuing legal action and rejecting attempts at reconciliation.

22. The Applicants propose a reduction in reserve fund contributions for 2022 from £45,000 to £3,600 resulting in Total service charges reducing from £65,386 to £23,986.

S.20 Consultations

23. The Applicants claim the covering letter of 10 September 2018 did not constitute a formal Notice comprising a covering letter [228-229], a Notice of Intention; Nomination Form [232] and Notice of Intention; Observation Form [233]
24. The Applicants queried the lack of detail [234-236] and the Notice of Intention [231] was only supplied after the observation period had ended.
25. Consultation should have been carried out before any sums relating to “qualifying works” were demanded or deducted from the reserve fund.
26. In 2018 works identified as within the Fire Risk Assessment were doors ceiling separation etc – no sums demanded. No reference to Fire works in 2019 but in 2020 there is £3,500 for “Upgrade of fire alarm system” [226] which exceeds £250 per leaseholder. In the 2021 audited accounts under Reserves Utilisation is a total of £5,720 made up of various sums paid to Deeks + Associates, Lee Byrne MD Fire and Safety and Omnicroft for “fire works”. It is believed that the amounts have been segregated to avoid exceeding the consultation threshold.
27. £5,599 was also paid to Tim Deeks in 2020 [499] also exceeding the threshold.

Service charge demands

28. Whilst broadly compliant the half yearly payment dates do not match those set out in the lease.

The Respondent

29. In response it is noted that the Applicants appear to have abandoned their claim regarding previous periods i.e. 2019, 2020 and 2021.

30. The Applicants are seeking the lowest cost solution which ignores the scope of the agreed works; issues highlighted by both surveyors; reviewing specification; CDM and RAMS costs; working at height and other safety requirements on a 3/4 storey building and the need to maintain a 150 year old building to statutory and standards specified in the lease whilst offering good value for money i.e. repairs to suitable and durable.
31. The Applicant's proposed values bear no relation to the established costs and ignores their implied their agreement to them by submitting their proposed contractor's details for tender.
32. The proposals for 2023, 2025, 2030 and 2031 are outside the scope of the Applicant's case.
33. The Applicants fail to specify the **Unnecessary Works** or give further explanation. The photos show several structural defects and the Applicant has been made aware of the need for roof repairs above Flat 3.
34. **External Works** could not be carried out by a reputable contractor without the use of scaffolding. No other unnecessary works have been identified.
35. **Internal Works** are outside the scope of the Applicant's case and no breakdown has been provided in support of the numbers.
36. The lease does not contain reference to **Affordability** and the Application is concerned with reasonableness. It is accepted that demands for 2022 are significantly higher than original forecasts but due to no external works having been carried out for many years, service charges have been unrealistically low.
37. Service charges have not previously included sinking fund contributions and the Tribunal's guidance is sought.
38. Regarding **Lack of Engagement** it is acknowledged that AGMs have not been held for the last three years. Constructive input would have been welcomed as it has been from other lessees etc. Negotiations had been held and it was understood that agreement was reached subject to the Applicants seeking advice from LEASE. Subsequent offers have been made subject to various conditions.
39. The lease contains restrictions to prevent enhancement and betterment and no evidence has been provided to support a claim that this has occurred.
40. Under the heading Management Decisions;
 - Fire Precautions Access to the loft was restricted being via Flat 3 with a vulnerable Lessee. The estimates for the works were

higher than the current budget and various means of offsetting the costs have not made progress whilst this case remains ongoing.

- Scaffolding Whilst work on individual flat's sashes may be carried out from within, the repair/replacement of window frames, lintels, cills or pointing requires scaffolding. The use of a cherry picker would be problematic due to lack of access to the sides or rear of the building.
- Additional Surveyor Reports Tim Deeks was appointed via Omnicroft as he is a member of RICS and has knowledge of the building. A second surveyor was likely to come to the same conclusions as evidenced by the Applicant's surveyor. The Application seems linked to the Applicants setting up a RTM Company.

S.20 Consultations

41. These were frustrated by lack of funds, the Covid lockdown and then the two phased approach for external decorations. Tim Deeks has drawn up a number of Specifications of Work following the Notice of Intentions being sent and been paid as per the normal sliding scale. No fees have been paid for contract administration of actual works as that point has not yet been reached.
42. The cost of Fire Prevention Works has not required consultation as the expenditure was for consultants to examine the loft void and make recommendations.

Service Charge Demands

43. Whilst it is accepted that the dates of service charge demands are not as per the lease arrears would not exist until after the dates specified in the lease. Options to pay monthly are also offered and used by the majority of Lessees.

Discussion and Decision

44. Whilst this Application is for the determination of service charges with particular reference to the cost of external works the underlying issue between the parties is the manner in which the management of the building is undertaken and by whom. It has been made clear in Directions that such underlying disputes such as management decisions and Board membership are not within the Tribunal's jurisdiction and will not be considered unless they impact on the reasonableness of the service charge. Although the parties' submissions referred to above include some such issues they will not form part of the Tribunal's determination and will not be referred to in the decision.

45. At paragraph 37 above the Respondent seeks the Tribunal's guidance in respect of sinking fund contributions. The Tribunal's jurisdiction is solely to determine disputes between the parties and to determine the service charges in accordance with the lease and applicable statute. Guidance will not be given.
46. Whilst the Application was in respect of service charge years 2019 to 2022 the only issues identified in the Applicants' bundle addendum in respect of the years in question are the Reserve funds for Major Works of £45,000 included in the demand attached to Omnicroft's letter of 26 November 2021 [217], issues of compliance with the S.20 consultation requirements and validity of service charge demands.

2022 Budget

47. The issue for the Tribunal is whether, at the date the service charge was demanded (26 November 2021) the budgeted expenditure was reasonable or not.
48. The service charge demand dated 26 November 2021 [212] contains the Annual Service Charge Budget which includes the disputed sum of £45,000 derived from the Major Works Plan for the year ending 31 December 2022 [226] showing budgeted expenditure of £43,000 for External Repairs and Redecorations – Front Only of £43,000, £30,000 for Fire Protection Works plus £750 for minor items. Although outside of this current Application it was noted that a further £76,000 is budgeted in 2023 for External Repairs & Redecorations – Rear Only.
49. The External works budgets are said to be based on an estimate received from a Surveyor with allowance for contingency.
50. In the Respondent's reply dated 12 May 2022 [73] reference is made to "Schedule of Works, Quotes and preparation for externals" for 2019 delayed in 2020-21 due to Covid and lack of funding. In 2022 Fire precautions and Phase 1 of externals are due with Phase II in 2023.
51. At paragraph 8 of the Statement of case [76] the Respondent explains that the elements that have increased from the 2021-2022 Major Works Plan are External Decorations £70,000.00 (scope plus materials and labour costs and roof repairs) and Fire Protection £27,500.00 (upgrade loft space plus heat detectors in flats). Further explanation is given at paragraph 10 [77] indicating that the Major Works Plan is "an estimate and for guidance purposes only"

52. In seeking the estimate received from the Surveyor within the bundle I note that in Deeks' letter of 11 May 2022 [106] there is reference to tenders being invited in March 2020 in respect of External Repairs and Decorations following which a tender report was produced in June 2020. It is assumed that the specification on which tenders were sought is that also dated March 2020 [237] for External Repairs and redecorations including window repairs.
53. A further specification was prepared in October 2021 for the Front elevation only and acknowledging that windows were the lessees' responsibility [306]. Although copies are not in the bundle it seems that on 1 December 2021 tenders were received and a report issued the result of which has not been provided to the Tribunal.
54. I have been unable to locate within the bundle a surveyors report identifying £45,000 as the likely cost of the front elevation works, likewise there is no indication of the result of the 2020 tender exercise on which an estimate of the likely cost of the reduced 2021 specification could be based.
55. In the absence of evidence in support of the £45,000 estimate I have turned to the only Expert evidence in the bundle namely the reports from Accolaide Surveyors dated 19 April 2022 commissioned by Mr Sonny Benning [93] and Tim Deeks of 11 May 2022 [106].
56. It is noted that in conclusion Accolaide report "In conclusion, the majority of the works to the building on the front elevation are of a decorative nature, with any associated repairs being necessary in order to complete the redecorations. It would make economic sense for any repairs to be undertaken whilst the scaffolding is erected, given the high cost of access" In explaining the need for scaffolding Health and Safety legislation is referred to.
57. In Tim Deeks' report there is a timeline of events from 2015 to 4 March 2022 together with a photographic schedule of condition said to support his professional opinion of timing and condition.
58. The Applicants' objections in support of their proposed budget of £10,000 for 2022 appears to be that some of the proposed works are unnecessary and/or improvements and that scaffolding is unnecessary. In examining the schedule of works and the photographic evidence provided I am unable to accept the first suggestion and the Applicants' own evidence from Accolaide confirms the need for scaffolding.
59. Whilst I would have preferred to have evidence in support of the Respondent's budget of £45,000 for external works, in dismissing the Applicants' objections to that sum **the Tribunal determines that the Annual Service Charge Budget for 2022 is**

properly stated at a Grand Total of £65,386.00 of which each unit's contribution is £5,448.33.

S.20 Consultation

60. It would be helpful first of all to set out in general terms the requirements as to consultation which are;
- Stage 1: Notice of intention to do the works Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.
 - Stage 2: Estimates The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.
 - Stage 3: Notices about Estimates The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.
 - Stage 4: Notification of reasons Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.
61. The first issue is whether the Notice of Intention was valid. The Applicants say it lacked detail and that the Notice [231] wasn't received until after the observation period had ended.
62. The bundle contains a covering letter dated 10 September 2018 [228] explaining that three Notices would be served the first of which is said to be attached being the Notice of Intention [230].
63. The Notice refers to the works as "the erection of scaffolding and the full external repair and redecoration of all elevations" and which invited "the name of a person from whom we should try to obtain and estimate" to be received within 30 days of the date of the Notice said to be 12 October 2018. Mr Benning sent a nomination dated 9 October 2018.
64. Whilst the description of works is brief it does cover the works contained and given that the nomination was received within the

period specified **I am satisfied that the 2018 Consultation, as far as it went was compliant.**

52. Looking now at the second part of the objection relating to whether consultation was required for sums paid to Deeks + Associates, Lee Byrne MD Fire and Safety and Omnicroft for “fire works” and £5,599 paid to Tim Deeks in 2020 [499].
53. The Respondent explained that Tim Deeks has drawn up a number of Specifications of Work following the Notice of Intentions being sent and that the cost of Fire Prevention Works has not required consultation as the expenditure was for consultants to examine the loft void and make recommendations.
54. Section 20 Consultation is required where “qualifying works” are to be carried out. “Works” will usually mean physical works to a property rather than consultancy. Where the consultancy concerned is for supervision of physical works then it may be argued that the cost of consultancy should be added to the cost of works for which consultation is necessary but that is not the case here. **The Tribunal is therefore satisfied that consultation was not required for the consultancy costs incurred.**
55. The leases state that service charges are paid by equal instalments on 25th March and 29th September. The Lessor however demands them in full on the 1st January. The Applicant acknowledges that the service charge demands were largely compliant save as to the lease dates not being complied with. The Respondent accepts that demands do not accord with the dates set out in the lease but that arrears would only occur after those dates as specified.
56. The Tribunal finds that the service charge demands are not in accordance with the dates set out in the lease and that the sum due will only become payable on the 25th March and 29th September in each relevant year.

Section.20C and Paragraph 5A Applications

The Law - Limitation of service charges: costs of proceedings.

57. “(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... the First-tier 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-...
(ba) in the case of proceedings before the First-tier Tribunal, to the 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.”

The submissions

58. The Applicants say that they have had no alternative to proceeding with the Application due to the Respondent’s “complete disregard for leaseholder interests and have taken measures to limit the ability of leaseholders to gain more information regarding the major works” citing; no AGMs since 2018, no engagement with leaseholders and rejection of requests to become Directors.
59. The Respondent says they have not withheld pertinent information, received no requests for AGMs and engagement with leaseholders is through the S.20 procedure.

Decision

60. At paragraph 24 of the decision in SCMLLA (Freehold) Ltd, Re Cleveland Mansions, and Southwold Mansions [2014] UKUT 58 (LC) the Deputy President stressed that as an order under section 20C interferes with the parties’ contractual rights and obligations, it ought not to be made lightly, or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances.
61. At paragraph 75 in Conway & Ors v Jam Factory Freehold Ltd [2013] UKUT 592 (LC) he said: “In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make.”
62. This is a case where the Applicant has raised issues outside of the Tribunal’s jurisdiction and been largely unsuccessful in the disputed matters within it. **The Tribunal therefore declines to make Orders either under Section 20C of the Landlord and Tenant Act 1985 or Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.**

D Banfield FRICS
24 October 2022

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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.