



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

Case reference : **LON/00BJ/LSC/2021/0254**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **Apartment 28 Oyster Wharf, 18
Lombard Road, London SW11 3RJ**

Applicant : **Mr B Hilder**

Representative :

Respondent : **Hawksworth Management Limited**

Representative : **Mr R Granby of Counsel**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal members : **Judge S Brilliant
Mr P Roberts Dip Arch RIBA
Mr J Francis QPM**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **07 February 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face

hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents referred to are in a bundle of 376 pages, the contents of which we have noted.

Decisions of the tribunal

- (1) The Tribunal makes the determination that all of the service charges the subject matter of these proceedings are recoverable.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”).

The application

1. The Applicant seeks a determination pursuant to s.27A of the 1985 Act that the full amount of the costs of a concierge service currently provided to the development in which his flat is situated are not recoverable under the terms of his lease (“the lease”) or are not reasonably incurred.
2. When the Applicant bought his flat the concierge hours were Monday to Friday 9.00 AM to 6.00 PM, and Saturday 8.00 AM to 2.00 PM. In 2018, the Respondent increased the number of concierge hours to 8.00 AM to 8.00 PM seven days a week. In other words, the total weekly hours increased from 51 to 84.
3. The sole questions before us are:
 - (a) As a matter of contract is the Respondent entitled to increase the number of concierge hours as it has done?
 - (b) If so, is it reasonable for the increased costs to be incurred?

The hearing

4. The Applicant represented himself. The Respondent was represented by Mr Granby of Counsel. The Applicant gave evidence on his behalf. Dr Galbraith, Chair of the Oyster Wharf Leaseholders Association (“OWLA”) gave evidence on behalf of the Respondent. Although not a recognised tenants’ association, the majority of residential lessees belong to OWLA.

Background

5. Oyster Wharf is a high end development of 154 apartments and commercial units on the north bank of the River Thames near to Battersea Bridge. Under the lease, the Respondent management company is entitled to recover the service charge costs.

6. The Respondent's job description for the role of a concierge role is set out in the concierge job description. The duties include:

- manning the reception desk;
- getting to know all the residents by sight so that strangers can be challenged;
- receiving all deliveries for the building;
- ensuring the postman has access;
- ensuring residents comply with the parking requirements;
- overseeing the activities of contractors and cleaners;
- ensuring that the security cameras are monitored,
- walking round the building as regularly as possible
- generally assisting residents, their visitors and contractors;
- reporting maintenance problems within the common parts;
- inspecting and dealing with any matters reported by residents as appropriate;
- all other property related duties as necessary or as directed by the Respondent for the general well-being of the property and in the interest of good estate management;
- keeping the refuse areas tidy;
- collecting litter;
- ensuring that there are no obstructions in the entrance hall and that no prams, cycles or other items are stored in the common parts;
- checking weekly the operation of the entry phone system and people gates and reporting faults to the managing agents;
- inspecting the entire estate to check for leaking gutters, blocked drains etc.

7. This is a very comprehensive set of duties. It seems to us that they are entirely appropriate for a development of this nature.

The lease

8. This can be taken shortly. The maintenance expenses which are recoverable through the service charge include in paragraph 6 of Part C of the Sixth Schedule (page 15 of the lease):

Providing a part-time concierge service (our emphasis).

9. It will be observed that this makes provision for a *service*, not necessarily for a single concierge. Thus more than one concierge can be employed during the course of a week, provided that the total hours worked by all the concierges employed amount to no more than a part-time service.

10. The other relevant provision in the lease relating to maintenance expenses which are recoverable through the service charge is paragraph 15 of Part F of the Sixth Schedule (page 17 of the lease):

All other reasonable expenses (if any) reasonably incurred by the Manager in and about the maintenance and proper and convenient management and running of the Development

OWLA

11. OWLA agrees with the Respondent that the concierge service should operate between 8.00 AM to 8.00 PM seven days a week.

The correct construction of paragraph 6 of Part C of the Sixth Schedule

12. The principles of construction are to be found in another leasehold case of the Supreme Court: Arnold v Britton [2015] UKSC 36 | [2015] AC 1619.

13. When interpreting a written contract, the Tribunal:

- has to identify the parties' intention by reference to what a reasonable person having all the relevant background knowledge would understand the term to mean;
- has to focus on the meaning of the words in their context and in the light of the natural meaning of the clause; any other relevant provisions; the overall purpose of the clause and the lease; the facts and circumstances known by the parties at the time; and commercial common sense.
- the less clear a term the more readily the court will depart from the natural reading of a term but the court should not look for drafting ambiguity as a means to move from the natural meaning of words;
- commercial common sense cannot be invoked to undercut the natural meaning of words simply because a bargain has worked out badly for one party.

14. Nowhere in the lease is there a definition of *part-time*. But, as we have already pointed out, it is the concierge service as a whole which must be part-time, not the hours worked by any single employee. So the fact that the total hours worked by the concierges per week is 84 (which far exceeds the hours of a part-time worker) is in itself irrelevant.

15. The issue is this. Is a service provided for half of the time (that is to say one half of a 24-hour day seven days a week throughout the year), a part-time service?

16. We have not found this an easy issue, but on balance, and taking into account the principles set out above in paragraph 13, it is our judgment that in the context of this case providing a service for half the time is still a part-time service.

17. Accordingly, we prefer the argument of the Respondent to that of the Applicant on this first issue.

The correct construction of paragraph 15 of Part F of the Sixth Schedule

18. This is a sweeping up clause. Only *reasonable* expenses *reasonably* incurred fall within this clause. Equally, only *reasonable* expenses *reasonably* incurred pass the test in s.19 of the 1985 Act. So it seems to us that the Respondent is constrained equally in this respect by the lease and the statute.

19. Thus, for the Respondent to be able to bring itself within paragraph 15 it must be reasonable (objectively) for the costs to be incurred.

Is it reasonable for the Respondent to have increased the hours of the concierge service?

20. It has not been suggested that the Respondent was under any statutory duty to consult about its plans to increase the hours of the concierge service. Nevertheless, it did so by way of a trial and consultation.

21. The reasons for this trial are given in a letter dated 20 March 2018 by Kim MR Rutter of HML¹, the Respondent's property managers.

22. Like many high-end residential blocks Oyster Wharf is busy at the weekend with a steady flow of visitors, deliveries and parcels. Oyster Wharf was also noted to have a sizable proportion of tenanted flats with changeovers often occurring at the weekend which is also when vendors would typically vacate and purchasers move in.

23. Mr Rutter also identifies that Oyster Wharf being busy at weekends, as well as other issues, such as unauthorised works, can create a nuisance for residents if someone is not on site to manage and control them. An onsite presence enables the Respondent to identify when leaseholders are responsible for work or repairs and to charge the individual leaseholder rather than recovering costs through the service charge.

24. Mr Rutter makes the following points in his letter:

- concierge staff being able to monitor and control the activities of leaseholders and tenants vacating and moving into the building seven days per week and general improvement of security;
- concierge staff being available at weekends if leaseholders undertake noisy or unauthorised works and accordingly being able to deal with any nuisance or associated issues;
- assistance in monitoring and controlling the dumping of bulky waste at the building including building materials and bathroom fixtures left by contractors renovating flats, as well as beds, furnishing and boxes left by residents vacating or moving into flats;
- a concierge will help identify who is responsible when waste is dumped which is important as where the Respondent cannot identify who is responsible bulky items are removed at the expense of lessees, bulky waste can also prevent normal council rubbish collections which further increases costs;

¹ The trading name of HML Hawksworth Ltd.

- deterrence and prevention of misuse, damage and overloading of lifts by contractors renovating flats, tenants and leaseholders vacating or moving into the building and the inconvenience and extra service charges caused by such problems;
- added support on site at weekends if any leaks between flats occur;
- support on site at weekends for HML appointed contractors attending out-of-hours emergencies for services to the common parts;
- uniform arrangements in place seven days per week to assist in the delivery and collection of parcels and associated items.
- continuity of service during holidays and illness.

25. The Respondent was also influenced by a more general change in when deliveries, including parcels, are made. They now take place far more in the evening and at weekends, including Sundays. This is undoubtedly brought about by the pandemic and an increase in online shopping. The Respondent also took advice from HML on this issue, which manages a wide portfolio of properties.

26. Before the trial was made permanent a survey of leaseholders was conducted. There are a limited number of responses, but all were favourable save for that of the Applicant. Following the trial period, the extended hours were considered a success by both the Respondent and OWLA and were adopted permanently.

27. There are a large number of emails between OWLA and HML about the trial and the proposed increase in hours.

28. We are entirely satisfied on the evidence put before us (particularly the grounds suggested by Mr Rutter) that it was reasonable for the Respondent to increase the hours of the concierge service in the way that it did. We reject the Applicant's submissions to the contrary.

29. Very properly Mr Granby referred us to Veena SA v Cheong [2003] 1 EGLR 175 in which the Lands Tribunal considered whether the cost of employing a single porter full time (on the facts 30 hours a week) was reasonable in the context of a seven flat building in Mayfair. While accepting that the employment of a porter (which the landlord had a power but not a duty to do) was reasonable in the context of a high end building in Mayfair, the Lands Chamber concluded that as there were only seven flats the cost of a single porter working 30 hours a week alongside a part time cleaner could not be justified, and upheld the decision of the LVT reducing costs by between 50% and 66%.

30. We agree that this decision is clearly distinguishable, given the very different nature of the large development with which we are concerned.

Conclusion

31. For the reasons given above, we are satisfied that the Respondent is entitled to make the charges it has done in respect of the concierge service.

Name: Simon Brilliant

Date: 07 February 2022

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 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).