



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

Case Reference : **MAN/00CB/LAC/2014/0005**
Property : **27 Priory Wharf, Birkenhead CH41 5LB**
Applicant : **Mr John George Gammon**
Respondent : **Priory Wharf Management Company Ltd**
Type of Application : **Commonhold & Leasehold Reform Act 2002
Schedule 11, Paragraph 5**
Tribunal Members : **Laurence Bennett (Tribunal Judge)
Jonathan Holbrook (Tribunal Judge)**
Date of determination : **23 June 2014**

DECISION

Application

1. Mr John George Gammon applies for a determination under Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 of his liability to pay and reasonableness of an administration charge relating to 27 Priory Wharf, Birkenhead CH41 5LB (the Property).

Preliminary

2. The Applicant is the owner of the Lessee's interest in the Property created by the lease specified below. The Respondent is the Management Company which is a party to the lease.
3. The application was received on 22 April 2014.
4. Directions were made by a Deputy Regional Judge of the Tribunal on 14 May 2014. These included: "The Tribunal considers it appropriate for the application to be determined on the papers provided by the parties without holding a hearing....." The directions gave opportunity for the parties to request a hearing. No request was made.
5. The Applicant and Respondent provided submissions and documents in accordance with the directions.
6. The Tribunal convened on 23 June 2014 without the parties to determine the application.

The Law

7. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act) provides that:-
 - 1(1) In this part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –
 - (a) for or in connection with the grant of approvals under his lease, or application for such approvals,
 - (b) for or in connection with the provisions of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) In respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) In connection with a breach (or alleged breach) of a covenant or condition in his lease.
 - 1(3) In this part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither –
 - (a) Specified in his lease, nor
 - (b) Calculated in accordance with a formula specified in his lease

- 2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
- 5 (1) An application may be made to a Tribunal for determination whether an administration 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

8. The operation of the Act was brought into effect by SI 2003 No 1986. Paragraph 8 of Schedule 2 of that instrument states:

Paragraphs 2-5 of Schedule 11 shall not apply to an administration charge that was payable before the first commencement date.

9. The first commencement date was 30 September 2003

The Lease

10. The Applicant holds the leasehold interest in the property created by a lease dated 30 September 1991 made between The Merseyside Development Corporation (1) Forgerun Limited (2) Priory Wharf Management Company Limited (3) John Joseph Carroll and Daphne Annette Frances Carroll (4) for a term of 999 years from 1 January 1990 (the Lease).
11. Paragraph (c) of the Fourth Schedule to the Lease contains the Leaseholders covenant: "Not without the prior written consent of the Lessor to alter or amend or permit the alteration or amendment of the exterior of any building"

Facts and Submissions

12. The Applicant sought permission to replace dilapidated timber windows at the Property which included an alteration involving a different type of window, a change of fenestration and removal of the lower section of the kitchen wall."
13. The Respondent's Agents Messrs Keppie Massie requested a licence fee of £250 + VAT for the issue of permission.
14. The Applicant considers that the fee should be no more than £50 "Reflecting the small degree of works incurred by the Landlord and the multiple nature of the licences being issued."
15. The Applicant included contemporaneous correspondence showing a problem affecting the wider development which was intended to be addressed communally but for which it was agreed individual Leaseholders should have an option of carrying out window replacements themselves.
16. The Respondent acknowledges that the elevations and drawings submitted by Mr Gammon "Will in the main be replaced to match the existing but using the specification required by the Local Authority."

17. The Respondent states that the fee reflects that this is the first application and the proposed patio windows involve a change of design which involved some discussion. The work took 3 hours at an hourly fee rate of £100 + VAT but capped at £250 + VAT. A breakdown was given of the involvement of the building surveying team, report to client board, production of licence and preparation of emails. It is refuted that there will be a further 131 licences as it is likely that Leaseholders will accept the communal scheme of window replacement.

Tribunal's conclusions with reasons

18. Although the relevant covenant within the Lease does not make an express provision for payment we find that it is reasonable for a payment to be a condition of consent to defray the Management Company's expenses.
19. It follows that the payment requested by the Respondent is a variable administration charge falling within Paragraphs 1(1)c and (d) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and within the Tribunal's jurisdiction.
20. We do not find relevant that there may be subsequent licences or that a need for window replacement might have arisen from a breach of the Lessor's repairing covenants within the Lease. The Applicant was obliged to seek permission to carry out individual works and as a consequence it became necessary for the Respondent to consider the request.
21. We have considered the extent of the work involved in considering the Applicant's request and preparing a letter of consent. We do not consider it necessary that a Chartered Surveyor should have been involved for 3 hours as beyond consideration of the building and construction implications the remainder of the activity was administrative. We have noted the correspondence and the details provided. We find from the parties' submissions that the Managing Agents were familiar with the building and had given attention to communal proposals for window replacement. The Applicant's request related to matters already under consideration and save for the departures from replacement exactly in accordance with proposed communal specification required in our opinion little additional research or detailed examination. We consider an experienced Surveyor capable of reaching a speedy conclusion, issues such as advising the Board are administrative in nature.
22. Accepting a reasonable hourly rate for a Chartered Surveyor is £100 + VAT, we conclude the appropriate Surveyor's input should £100 + VAT. Noting the administrative work including preparation of permission we conclude a further sum of £100 + VAT is payable.

Order

23. The sum payable to Priory Wharf Management Company Limited by Mr John George Gammon for the consent requested shall be £200 + VAT if applicable.