



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

Case Reference : **CHI/00HN/LSC/2014/0127**

Property : **San Remo Towers, Sea Road, Boscombe,
Bournemouth, BH5 1JR**

Applicant : **San Remo Towers Ltd**

Representative : **Napier Management Services Ltd**

Respondent : **The Lessees**

Representatives : **Mr G Taylor, Chairman, San Remo
Residents Association
Mrs S T L Jennings, Lessee Flat C41
Miss N Curtis, Lessee Flat E1**

Type of Application : **Service Charges – Section 27A Landlord
and Tenant Act 1985**

Tribunal Members : **Judge M J Greenleaves
A J Mellery-Pratt, FRICS
J Mills**

**Date and Venue of
Hearing** : **12th June 2015 at Poole Court & Tribunal
Centre, Park Road, Poole**

Date of Decision : **24th June 2015**

DECISION

1.0 Preliminary

- 1.1 On 24th of November 2014 the managing agents for the Applicant submitted an application under section 27A of the Landlord and Tenant Act 1985, seeking a determination on the reasonableness and suitability of a number of items of repair for the years 2014 and 2015:-
- 1.2 On 8th of December 2014 preliminary directions were issued, requesting details from the Residents Association of those lessees who were members and those who are not. In addition, the parties were advised that a case management hearing would be arranged in due course
- 1.3. On 5 January, 2015 amended directions were issued.
- 1.4. On 5 February, 2015 a case management hearing was held at the Poole Court and Tribunal centre, at which it was confirmed by the agent for the landlord that no costs incurred by the landlord in connection with the application would be added to the service charge account.
- 1.5. At this hearing the items for a decision by the Tribunal were agreed as:
 - For the financial year 2014 -
 - i) how insurance excesses should be dealt with and any costs of repair, if in excess of the excess figure but not the subject of an insurance claim.
 - ii) how much of the costs of the landlord's use of the office should be reimbursed to the maintenance charge.
 - iii) the extent to which the costs of repairs to the communal corridor/doors by the garage area should be payable by way of the maintenance charge.
 - iv) the extent to which the cost of installation of mesh over the light wells should be borne by the maintenance charge.
 - For the financial year 2015 –
 - i)
 - a) the suitability of the method by which quotations were obtained for the external redecoration of the building and the associated repairs/replacement to the render
 - b) the reasonableness of the cost of proposed works.
 - ii) The responsibility for and reasonableness of the proposed works required to prevent water penetration to one part of the garage area.
- 1.6. Directions were also given as to the timing and extent of the exchange of documents, experts witness' evidence and the preparation of the document bundle.

Documents

- 2.1. The bundle of documents provided to the Tribunal and to the parties consisted of 3 individual bundles from the Applicant, the Residents Association and Mrs Jennings. Whilst each individual bundle was separately numbered in the bottom right-hand corner, the overall bundle was numbered in the top right-hand corner and any references to pages

within this decision relate to the overall numbering.

- 2.2. In addition, the Tribunal received:-
- a) a letter dated 29th of April from Mr Taylor to Mrs Lacey-Payne of Napiers, with observations.
 - b) a letter to the Tribunal from Napiers dated 20th of May 2015, enclosing the witness statement of Mr Thomas Green.
 - c) a letter to the Tribunal from Napiers dated 21st of May 2015, enclosing the draft service charge accounts for the year ending 31 December, 2014.

Inspection

- 3.1 At 10.00 am on 12 June 2015 the Tribunal was given an instructive tour of the relevant parts of the building, led by Mr Peter Watkin, the building manager, and items that would be discussed at the hearing were pointed out. Also accompanying the Tribunal on the inspection were Mr Taylor and Mr Taplin of the Residents Association, and Mrs Head of Napier Management Services
- 3.2. The Property, which was apparently constructed in the late 1930s, is large and formed of 5 linked blocks of flats on 4/5 storeys surrounding a large central courtyard, which is open to the south with sea views from its exposed position on the cliff-top. There are landscaped areas surrounding the buildings with some surface car parking. There is an underground car park, which generally lies beneath the central courtyard.
- 3.3. The Property is apparently constructed of solid brick walls, apart from the parapet wall around the top of the building which is of cavity construction. The finish of the elevations is partly with facing bricks but generally with rendered areas. The roof is generally a flat roof, but there are a number of Italianate features around the building, creating a very attractive appearance and justifying its apparent listing under grade II.
- 3.4. In particular the attention of the Tribunal was drawn to a number of areas where the render appears to be in very poor condition. One area on the southern elevation had the underlying brickwork treated with bitumen, but the subsequent re-rendering appeared to have had no key and had fallen off.
- 3.5. A number of previous repairs were pointed out, which generally seem to comprise the insertion of lead trays above damp affected areas.
- 3.6. Within the garage area, a section at the southern end was noted, where there is ongoing water penetration and a wet floor was evidence of the rainfall the previous evening.
- 3.7. On the roof the Tribunal was able to see at close hand the areas of damaged render.
- 3.8. The Tribunal viewed the office used by the resident manager and by the freeholder, comprising desks, CCTV monitoring, computer and printer and a new telephone system, which apparently had 4 wireless handsets
- 3.9 The Tribunal also viewed the door from the garage and the mesh fitted over light wells which were the subject of matters in dispute.

The Law

4.1 The relevant provisions of the Landlord and Tenant Act 1985 are:-

18 (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose-

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period to which the service charge is payable or in an earlier or later period.

19 (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.

27A (3) An application may also be made to a leasehold valuation 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.

The Lease

- 5.1. The landlord's covenants are set out in part 1 of the 6th schedule.
- 5.2. The costs and expenses payable from the maintenance fund are set out in the 8th schedule and include all the lessor's obligations contained in part 1 of the 6th schedule.
- 5.3. The obligation on the lessee to pay the specified percentage of the maintenance charge is included at paragraph 2 of part 1 of the 5th schedule.
- 5.4. The relevant clauses relating to insurance are in paragraph 4 of part 1 of the 6th schedule, paragraph 4 of part 2 of the 5th schedule and paragraph 13 of the 9th schedule.

The hearing

- 6.1. A hearing was held following the inspection, at the Poole Court and Tribunal centre. In addition to those who had been present at the inspection, there was also Mrs Lacey-Payne of Napier, Mr T Green of Greenward Associates, the Landlord's appointed surveyor for the external decorations works, Mrs Jennings, a lessee, but not a member of the Residents Association, and Miss Curtis also a lessee and not a member of the Residents Association, but who had requested permission to speak at the hearing. In addition, there were 3 observers.
- 6.2. **Proposed major works relating to external decoration and render repair.**
 - 6.2.1. Mrs Lacey-Payne advised that the method of tendering for the contract had been complex. A first tender exercise had not resulted in a sensible way forward. It was not possible to determine the exact amount of redecoration, repair or replacement of render because the drawings available did not give an accurate square metrage for the whole of the Property and visual inspection was not sufficient. Consideration had been given to having a full detailed inspection of the exterior of the Property but this course had been discounted because of the extremely high costs of providing access to the Property purely to check which areas needed attention. An estimate of the cost of such an inspection was obtained by Mr Green as £33,850 plus vat (p235). In addition, she had experience of another block of flats where access had been provided and a 'tap test' had been carried out to determine the extent of the repairs, only to find when the contractor was on site that far more extensive work was required, necessitating an additional £90,000 in expenditure.
 - 6.2.2. Mr Green summarised his written evidence that, after discussions between himself, Napier and the Residents Association, he had sent out a second tender exercise. The tenderers were to put forward prices per square metre for three types of work
 - a. Redecoration only,
 - b. Patch repair of the render to deal with cracks and small areas of damage.
 - c. Replacement, for those larger areas where the rendering had failed

- 6.2.3. The exact area which needed to be decorated, was unknown, but with the assistance of Mr Taplin from the Residents Association who had provided a detailed breakdown of the estimated areas by elevation (pages 235-234), the surveyor had been able to make a reasonable assumption, for the purposes of the tender, that the total exterior area of the Property that would be the subject of works would be 6,000 square metres. Further, working on what was hoped would be the worst-case scenario, he had allowed for 25% of the exterior area to be dealt with by patch repairs and a further 25% to be dealt with by replacement. On this basis, he was able to compare tenders and present his tender report (pages 662-669).
- 6.2.4. Mr Green confirmed that because it had been necessary to make assumptions about the overall square meterage and the amounts of required repair and replacement of render did NOT mean that this amount of work would be carried out. This approach had been required to obtain standard rates per square metre. When the contractors had set up proper access and commenced on site, works would only commence after he had been able to inspect, decide the correct treatment, measure the area and authorise for each section of the Property which of the standard rates per square metre would be used in that area. Once the contract had begun he would be able to measure an exact area for the rendering and he would measure and authorise all the patch repairs and replacement by individual areas. Thus, the final contract price would only be known by adjusting the basic tendered figures to allow for the exact measurements.
- 6.3. Mr Taylor of the Residents Association advised that originally he had represented 46 flats, although membership now covered 106 flats. The Residents Association had serious concerns about the way the works had been tendered and the costs. He asked many questions of Mr Green and made points as follows.
- 6.3.1 The Residents Association believed that the actual areas of render which required repair or replacement could be easily and reasonably assessed by visual inspection. The percentage of areas requiring additional repair or replacement was he believed 12% not 25%. Mr Green did not believe that a correct assessment could be made until proper access to all areas was erected. He also restated that only after he had inspected each area would a decision be made as to whether to authorise the contractors to carry out repairs or replacement of the render.
- 6.3.2 The Residents Association was concerned that there was no correct measurement for the total square meterage of the Property that will require redecoration. Mr Green accepted that this was the case and that in order to obtain like for like rates from the tenderers the assumption was made of 6000 square metres.
- 6.3.3 The Residents Association had not had sufficient time to get expert comment but had been advised that, of the British Standards Numbers quoted in the specification, a large number had been updated or withdrawn. Mr Green was not aware of this and so not able to respond to this claim at the hearing.
- 6.3.4 Mr Taylor was concerned in particular that there had been double counting in respect of one tenderer. Mr Green confirmed he was aware of

this and that this tender had been rejected because the contractor had not complied with the requirements of the tender.

- 6.3.5. Mr Taylor was concerned as to how the measurement of the exact areas which might require repair or replacement was to be carried out. Mr Green confirmed that the relevant RICS code of measurement would be used.
- 6.3.6. With regard to the area on the south elevation which had previously been covered in bitumen beneath the render, Mr Green confirmed that the bitumen would need to be stripped off before any re-rendering took place.
- 6.3.7. There was some discussion concerning the likelihood of planning permission being required if large areas of render needed to be replaced. Mr Green had explored the planning requirements for a listed building such as the Property and he clarified the various differences between planning permission, building regulations approval and listed building consent.
- 6.3.8. Mr Taylor was unhappy that the second set of tenders received appeared to have been analysed in an unusual way and that the tender report appeared to have changed matters. Had Mr Green compromised the integrity of the tender process? Mrs Head explained that the sealed bids had been sent to and opened in the office of Napier and not by Mr Green. After they had been opened she was unhappy that they were not sufficiently clear for her to understand that the analysis of the tenders did provide like for like prices and therefore she did not feel confident in explaining them to lessees and the Residents Association. In discussion with Mr Green it had been decided to ask each tenderer to complete a simple table which set out the rate per square metre for the three types of work - redecorate only, repair and redecorate, and replace and redecorate- and using the assumptions explained above of 6,000 square metres and worst case scenarios of 25% repair and 25% replacement the total cost. The figures in the table were not prepared by Mr Green he stated; they were the figures entered into the table by the tenderers.
- 6.3.9. The Residents Association was very concerned that the estimated cost of the works appeared to have increased enormously. How could it be that the Applicant had asked for determination of a cost of approximately £350,000 when the second stage notice under the section 20 procedure sent to lessees now states a sum of £709,000 including VAT? The content of the section 20 consultation notices was the responsibility of Napier, not Mr Green. Mrs Lacey-Payne explained that the statutory consultation procedure did not suit the kind of contract which was necessary in this case, with fixed tendered rates per square metre, the exact amount of work to be decided when the chosen contractor was on site, and when the landlord's surveyor had determined and authorised that work. So Napier felt it had no choice but to state in the section 20 notice what it estimated at this stage was the worst case scenario of £709,000 inc VAT. There was no intention to spend to this sum unless circumstances discovered on detailed inspection required it. If a lesser figure than this worst case figure had been used in the consultation notice, then it would have become necessary to halt works on site once that lesser sum was spent. Such a halt to works with necessary re-tendering and delay was not a course that Napier believed was in the interest of any interested parties at San Remo.

6.3.10 In reply to Miss Curtis, Mr Green confirmed that to have been able to be more specific as to the total cost, would itself have cost very much more in addition and that in relation to the contingency sum, the sum actually to be paid would be checked to ensure only the work actually done was paid for.

6.4 Insurance claims and excesses during 2014

6.4.1. Mrs Jennings had queried the inclusion of the insurance excess of £250 per claim being included within the maintenance or service charge as she understood the maintenance charge was only for areas which were used in common with other lessees. Hence decoration repairs within flats should not be included.

6.4.2. Mrs Lacey-Payne explained that Napier had recently adopted a written policy for dealing with excesses as this had been required as a result of its recent accreditation for Arma-Q. Mrs Lacey-Payne confirmed that her view was that the excess should be considered as part of the cost of insurance of the Property alongside the premium because the inclusion of the excess allowed the overall premium to be reduced. She also confirmed that if the damage had been caused and could be proven to be by negligence on behalf of the lessee, then the excess in that case would NOT be charged to the maintenance account but would be charged to the individual lessee concerned. She added that in her experience it was not easy to prove negligence but in one case as San Remo a lessee had been charged costs because of negligence.

6.4.3 An examination of the relevant lease clauses found them to be difficult to interpret but they added strength to the argument that a lessee who had caused damage to the Property or other flats by negligence should be responsible for the excess under the policy.

6.4.4 Mrs Lacey-Payne accepted that Napier had adopted so far a policy of not making claims for damage where the cost was marginally above the insurance excess of £250 in the hope of keeping down premiums.

6.4.5. The Residents Association confirmed that they were in agreement with the policy of the managing agents but it felt that Napier had been remiss in not communicating the policy to all residents and that this should be done.

6.5. Office costs for 2014.

6.5.1. The costs of the office can be included in the maintenance charge according to paragraph 7 of part 1 of the 6th schedule and this basis was accepted by all parties.

6.5.2. Mrs Jennings was concerned at the cost of the telephone being used by a contractor, Mr Lyle, who was working for the Applicant on matters not dealing with any items covered by the maintenance charge such as the refurbishment of flats in San Remo. She had discovered recently that the Applicant had made a one off payment of £1573.11 in September 2014 to reflect this usage by Mr Lyle over a number of years whilst major alterations had been made to San Remo to suit the Applicant. Her analysis of the telephone bills did show a substantial reduction in this unauthorised use in the latter part of 2014, but she was of the opinion that some 20% of the telephone charges of £1424, as shown in the draft accounts, say £290, should be borne by the landlord in the 2014 service charge year.

- 6.5.3. It was noted that the landlord already contributed £500 per annum towards the office costs of which £100 was noted to be in respect of telephone usage for interests of the Applicant which were not related to the maintenance charge.
- 6.5.4 Mrs Lacey-Payne accepted that Mr Lyle had used the office phone, that he had been told not to, and that recently some now very infrequent use may have continued. Napier had sought to control office telephone costs by removing the fax machine, installing a new phone system and requesting itemised billing to allow checking.
- 6.5.5 Under this heading of office costs the Residents Association wished to raise the issue of the costs of the laundry room where a gas meter for the dryer had recently been installed. This issue was not part of the original application to the Tribunal by the Applicant and not one of the issues identified in the directions for the hearing. The Tribunal declined to hear any views on the issue.
- 6.6. **Garage door repair in 2014.**
- 6.6.1. The inspection had noted that the door which had been repaired was a pedestrian door leading from the common parts of the flats into the garage and was not the up and over access door for cars. A cylinder for the door closer had been replaced at a cost of £119.03. On this basis, Mrs Jennings accepted that the cost was correctly included within the maintenance charge, although she asked that Napier should provide a better description of costs in future invoices to avoid ambiguities. Mr Taylor also accepted that this was a valid charge on behalf of the Residents Association.
- 6.7. **Light well mesh/grilles costs in 2014**
- 6.7.1. Mrs Jennings confirmed her view that the addition of the mesh grilles over the light wells to prevent rodent access at a cost of £732 and £140, totalling £872, should have been part of the original construction of the flats and should not be included in the maintenance charge.
- 6.7.2. Mr Taylor confirmed the view of the Residents Association that this was probably a valid service charge item.
- 6.8. **Proposed works to remedy water ingress to garage.**
- 6.8.1. The area where the repairs were proposed to take place had been pointed out the Tribunal during the inspection and it was confirmed by the Building Manager of the Applicant that the proposed method of repair, using a proprietary product called IKPO, had been used successfully in other areas of the garage roof. Mr Taylor accepted that this was a valid item for the maintenance charge but he queried the material being used and asked why no thought had been given to using asphalt, the current waterproofing system, which has lasted many years. He believed that the use of IKPO was more expensive and was more difficult to lay correctly than asphalt but had no detailed evidence on this point.
- 6.8.2 Mrs Lacey-Payne said that a surveyor engaged by Napier had recommended the specified method of repair and Napier had accepted his advice. The proposed works had been tendered and quotations obtained in 2014, the lowest of which was in the sum of £18,581.56.

Consideration

7.1. The Tribunal considered the bundles submitted and all the points raised by the parties at the hearing and considered that:-

7.1.1. **Proposed major works relating to external decoration and render repair.**

7.1.2. No queries had been raised in respect of the consultation process and the Tribunal was satisfied that the requirements for consultation had been satisfactorily complied with.

7.1.3 It was clear to all parties and the Tribunal that these works were necessary and needed soon. It was disappointing that there was such disagreement between the parties on the process of tender and likely costs when there was evidence in the bundles of meetings between them at various stages.

7.1.4 The Tribunal considered that, given all parties seemed to have accepted that a full inspection of the Property to establish with greater accuracy the extent of the works was prohibitively expensive, the method of tendering used by the Applicant's surveyor and subsequent tender analysis was reasonable. The outcome was that there were fixed rates per square metre to redecorate, or to repair render and redecorate, or to replace render and redecorate. Further the lessees had the reassurance that the exact areas that would be confirmed by the Applicant's surveyor only when full access was available when the chosen contractor was on site and had provided the necessary access. The Tribunal determined that the method of tendering was satisfactory and that, bearing in mind the advice of the surveyor (p668), the rates per square metre quoted by the recommended contractor, Novus (p678), were reasonable.

7.1.5 Whilst the assumptions used by the surveyor, with the addition of the contingency, the managing agent's fees and Vat, provided a total figure of £709,200, it was not possible to confirm that this sum was reasonable for the total cost of the proposed works as the final extent of those works was not yet known. However, the assumptions made by the surveyor are reasonable in the overall context of the proposed contract and the figure of £709,200 is reasonable to be used as part of the section 20 consultation procedure. This will avoid the possibility of a further application if a lower figure were to be used which might prove to be insufficient.

7.2 **Insurance claims and excesses in 2014.**

7.2.1 The basis of the policy used by Napier, which allowed for the insurance excess to be included in the maintenance charge as a necessary part of the cost of insuring the Property, is a reasonable approach to take, provided that where there is a provable case of negligence, any sum above the excess should be recovered from the negligent lessee.

7.2.2. However, the discretion being used by Napier where a claim was slightly in excess of the excess and so not made the subject of an insurance claim, was not a cost of insurance and any amounts in excess of the policy excess for a repair that could be the subject of an insurance claim should not be included within the maintenance charge.

7.3. Office costs in 2014.

7.3.1. It is accepted that the Applicant had attempted to be fair by contributing £500 to the maintenance fund in respect of use of the office for matters not related to the upkeep of the common parts of the Property. However, the Tribunal accepted that for a part of the year 2014 the telephone had been used to a greater extent than the £100 allowed for in his contribution. Mrs Jennings estimate of 20% of the telephone cost for that year was accepted and applying this to the figure in the draft accounts amounted to £290 of which £100 have already been paid within the £500 contribution. Thus, for 2014 only, an additional £190 should be paid by the Applicant.

7.4. Garage door repair in 2014.

7.4.1 The door that the work related to had been clarified and all parties accepted that this was a valid charge to the maintenance charge.

7.5. Light well mesh/grilles.

7.5.1 Whilst Mrs Jennings had made a valid point, the Tribunal felt that this problem could not have been foreseen at the construction of the additional flats, and it was certainly not a responsibility of the individual lessees, as this area fell outside their demise. It was therefore considered that this cost of £872 was a valid cost to the maintenance charge.

7.6. Proposed works to remedy water ingress to garage.

7.6.1 This comprises work to the building and as such is a valid item for the maintenance charge. It was noted that the managing agents had accepted the advice of the surveyor and there was no evidence before the Tribunal as to whether the use of asphalt would be cheaper or not. The proposed method of repair was therefore accepted as a reasonable method. The quotation received, of £18,581.56 was considered to be reasonable

The Determination

8.1. The Tribunal determines that:-

8.1.1 The method used to obtain tenders for the external decoration and repair/replacement work was reasonable.

8.1.2. The figures per square metre of work to redecorate only, to repair, and to replace, tendered by Novus are reasonable and can be adjusted when the exact areas for each type of work are known. The Tribunal did not determine that the sum in the second stage section 20 notice of £709,000 inc VAT was reasonable because as explained above the exact extent of the works required had yet to be determined and then authorised by the Applicant's surveyor.

8.1.3 The addition of a contingency sum of £50,000 - approximately 10% of the worst scenario outcome - in a contract of this size was reasonable. This sum would only be expended if additional unforeseen work was found. Because of the need to carry put these major works to the exterior of the Property in reasonable weather conditions the Tribunal announced its decision on the above points to the parties at the end of the hearing.

- 8.1.3. The application to the maintenance fund of any insurance excess is reasonable.
- 8.1.4. The application to the maintenance fund of any amount over and above the excess on the insurance policy for the year 2014 is not reasonable.
- 8.1.5. The amount payable by the landlord in respect of his use of the office should be increased to £690 for 2014.
- 8.1.6. Payment by the maintenance fund in 2014 for the garage door repair in the sum of £119.03 was reasonable
- 8.1.7. Payment by the maintenance fund in 2014 for the light well mesh/grilles in the sum of £872 was reasonable.
- 8.1.8. Payment by the maintenance fund for the proposed repair of the garage roof in the sum of £18,581.56 was reasonable.

APPEALS

- 9.1 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 9.2 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.
- 9.3 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.
- 9.4 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.