

12443



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

Case Reference: CHI/00HN/LSC/2017/0043

Property: Dean Park Mansions, 27 Dean Park Road,
Bournemouth BH1 1JA

Applicant: Dean Park Mansions Freehold Ltd

Representative: Foxes Property Management

Respondent: The Lessees

Type of Application: Section 27A and 20C of the Landlord and
Tenant Act 1985
(Liability to pay service charges)
Landlord's application for the
determination of reasonableness of service
charges for the year 2017.

Tribunal Members: Judge A Cresswell (Chairman)

Date and venue of Hearing: 14 September 2017 on the Papers

Date of Decision: 14 September 2017

DECISION

The Application

1. This case arises out of the Applicant landlord's application, made on 21 April 2017, for the determination of liability to pay service charges for the year to 25 December 2017.

Summary Decision

2. The answer to the question posed by the Application is: *"Yes, the lease does permit the cost of installing water pumps to the mains water system to be charged to the Service Charge Account (utilising any Reserve Fund if necessary) and is payable by the Respondent lessees provided that any necessary consultation is followed, the services or work is of a reasonable standard and that the cost is reasonable in amount."*

Directions

3. Directions were issued on 6 and 29 June 2017. These directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, under the provisions of Rule 31 of the Tribunal Procedure Rules 2013.
4. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
5. It was directed that any Respondent lessee contending that the lease does not permit the recovery of the cost of the proposed water pump works must write to the Applicant's representative to say so by 24 July 2017. No such correspondence has been brought to the Tribunal's attention.
6. This decision is made in the light of the documentation submitted in response to the directions.

The Law

7. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
8. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
9. Section 18 Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002, says:

Meaning of "service charge" and "relevant costs"

- (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

Ownership

10. The Applicant is the owner of the freehold.

The Lease

11. David Arthur Mathias holds Flat 10 at the property under the terms of a lease dated 11 February 2015, which was made between the Applicant as lessor and Mr Mathias as lessee. The Tribunal understood this lease to be representative of all leases at the property.
12. Clause 4 requires tenants to pay a Service Charge in accordance with the Fourth Schedule.
13. The Fourth Schedule requires the lessees to pay the Applicant "*a proportionate part of the expenses and outgoings incurred by the Lessor ... in the repair maintenance and renewal and insurance of*" (the property) "*the provision of services therein and ...*".
14. The First Schedule provides the lessees with the right to: "*The free and uninterrupted passage and running of water soil gas and electricity from and to*" (the flat) "*through the sewers drains watercourses cables pipes and wires which are now or may at any time hereafter be in or under or passing through the Building or Estate Grounds or any part thereof*".
15. The Tribunal finds it clear from examination of the papers that the issue here is solely one of construction of the lease. A tenant can only be required to pay a Service Charge if required to do so by the terms of the lease. The fact that a party carries a heavy burden consequent upon the terms of a lease is a factor not relevant to the Tribunal's decision; obviously tenants are able to seek legal advice upon the true construction of a lease at the time of purchase and normally that is a constituent part of the preparations for purchase.
16. The Tribunal first examines the lease to determine whether the Applicant is able to recover its costs via the Service Charge in accordance with the lease. The Tribunal has followed the guidance of the Upper Tribunal in **Geyfords Ltd v O'Sullivan, Grinter, Shaw, Morgan, Bonsor** [2015] UKUT 0683 (LC) and has interpreted the lease in accordance with the guidance of the Supreme Court in **Arnold v Britton and others** [2015] UKSC 36.
17. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:

Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see *Prenn* at pp 1384-1386 and *Reardon Smith Line Ltd v Yngvar Hansen-Tangen* (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, *Bank of Credit and Commerce International SA (in liquidation) v Ali* [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in *Rainy Sky*, per Lord Clarke at paras 21-30.

The Water Supply

18. Installing water pumps to ensure that all tenants have a supply adequate to wash and refresh themselves (*a free and uninterrupted passage and running*) where no water pumps currently are installed cannot readily be described as “*repair maintenance and renewal*”, all of which terms generally relate to existing features.
19. However, the Applicant is also required to ensure “*the provision of services*” within the property and the Respondent lessees have a right to “*the free and uninterrupted passage and running*” of those services.
20. Section 18 of the Act (see above) includes improvements within the ambit of a Service Charge. Installing water pumps to ensure that all tenants have a supply adequate to wash and refresh themselves (*a free and uninterrupted passage and running*) where presently the Applicant is not fulfilling the requirement of the Fourth Schedule detailed above to provide such services is both an improvement and a proper exercise by the Applicant of its responsibilities under the lease and one which can be charged as part of the Service Charge.
21. It is necessary to read the Fourth Schedule in the light also of the First Schedule, to ascertain “*what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean*”. No tenant could have taken a lease in the expectation that they or other tenants would not receive services adequate for daily life.
22. Accordingly, the Tribunal finds that the lease does permit the cost of installing water pumps to the mains water system to be charged to the Service Charge Account (utilising any Reserve Fund if necessary) and is payable by the Respondent lessees provided that any necessary consultation is followed, the services or work is of a reasonable standard and that the cost is reasonable in amount.

A Cresswell (Judge)

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 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.