

Q785



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

Case Reference : LON/00AE/LSC/2013/0633

Property : Flats 1-135 Watling Gardens,
Cricklewood, London, NW2 3UD

Applicant : Mrs Paula Mackmurdie and several
other leaseholders of the Watling
Gardens Estate as identified in the
Schedule attached to the
application

Representative : Mrs Paula Mackmurdie

Respondent : (1) London Borough of Brent
(2) Brent Housing Partnership

Representative : Ms Sian Davies of Counsel

Type of Application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal Members : Ms N Hawkes
Mr H Geddes JP RIBA MRTPI
Mrs S Wilby

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR
16.1.14

Date of Decision : 16.1.14

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the statutory consultation procedure has been complied with and that the revised sums claimed (a schedule of which is to be served by the First Respondent on both the Applicants and on the Tribunal in order that it can be attached to this decision) are payable by the Applicants in respect of the estimated costs of the Fire Safety Works.
- (2) The tribunal makes an order, by consent, under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable by the Applicants in respect of the estimated costs of proposed major works in connection with fire safety described in a notice pursuant to section 20 of the Landlord and Tenant Act 1985 dated 31.1.13 ("the Fire Safety Works").
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicants were represented by Ms Paula Mackmurdie (a leaseholder of 76 Watling Gardens) at the hearing and the Respondents were represented by Ms Sian Davies of Counsel.
4. Immediately prior to the hearing, a Scott Schedule was handed in by the Respondents which Ms Mackmurdie was given time to consider.
5. An application on the part of the First Respondent pursuant to section 20ZA of the 1985 Act for dispensation from the consultation requirements provided for by section 20 of the 1985 Act was received by the Tribunal on 14th January 2013. Ms Mackurdie did not object to this late application being determined at the hearing.

The background

6. The Applicants hold long leases of flats within 13-135 Watling Gardens, Shoot Up Hill, Cricklewood, London NW2 2UK ("the Properties"). The

First Respondent is the freehold owner of the Properties and the Second Respondent is an Arms Length Management Organisation.

7. The Properties are located in three blocks which are divided into a total of 123 flats. Block A contains 44 units; block B contains 40 units and block C contains 39 units.
8. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been relevant to the issue in dispute.
9. The Applicants' leases require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
10. It is not in dispute that, pursuant to the terms of their leases, the Applicants are required to contribute towards the costs of the Fire Safety Works, subject to the issue of whether or not the statutory consultation process has been complied with and subject to the issue of reasonableness.

The issues

11. The Tribunal was provided with five hearing bundles for this application and a helpful Scott schedule running to 13 pages. It is to the credit of the parties and to their representatives that during the course of the day they managed to narrow the matters in dispute down to just one remaining issue.
12. The sums claimed by the First Respondent had in some instances been revised and/or clarified in response to concerns raised by Ms Mackmurdie on behalf of the Applicants and the Tribunal adjourned the matter in order to give the parties time to consider and discuss the Scott schedule.
13. Following these discussions, Ms Mackmurdie informed the tribunal that the Applicants no longer dispute the estimated charges but she expressly reserved the Applicants' right to challenge the final account, should this be considered necessary.
14. The parties informed the tribunal that the Applicants had asked the First Respondent to provide further clarification of items 6.11.2, 6.13.5, 6.16.1, 7.2.1, "Loft access" at page 7 (unnumbered) and item 8.3.1 and that the Respondents had agreed to provide a written explanation of the areas of concern by 6.2.14. The tribunal was asked to record this agreement in its decision.

15. Ms Mackmurdie also asked the tribunal to record that there is a dispute of fact between the parties as to whether or not the Watling Garden Tenant Management Organisation Limited ("the TMO") will contribute the sum of £25,000 towards the cost of the Fire Safety Works.
16. Mrs Mackmurdie accepted that the tribunal does not have jurisdiction to order a third party to voluntarily contribute towards the cost of the Fire Safety Works but she stated that she had spoken to the TMO manager by telephone during the course of the day and that she had been informed that the TMO would make a £25,000 contribution.
17. The tribunal makes no finding of fact in respect of this matter which is outside its jurisdiction.
18. The tribunal was informed that the First Respondent consents to the making of an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
19. Accordingly, the parties agreed that the only remaining issue to be determined was whether or not the statutory consultation process pursuant to section 20 of the 1985 Act had been complied with (and, if not, whether dispensation should be granted).
20. Having heard evidence and submissions from the parties and having considered all of the documents which were referred to, the tribunal has made a determination as follows.

The statutory consultation process

21. Ms Mackmurdie stated that the leaseholders were not properly served with the notices pursuant to section 20 of the 1985 Act dated 31.1.13 ("the section 20 notices") which are relied upon by the First Respondent save that the leaseholders in block B were later "re-served".
22. Ms Appiagyei, Senior Leasehold Management Officer employed by the Second Respondent, gave evidence that she had personally put the section 20 notices into envelopes before sending them to a different department for posting by first class post. She also stated that enclosed in the same envelope was an invitation to provide the leaseholders with a new front door free of charge.
23. The Respondents rely upon evidence that responses were received from the leaseholders of flats 107 and 129 on 11.2.13 and 4.2.13 respectively and that, by May 2013, seven of the leaseholders had responded to the correspondence regarding the new door. They argue that if these leaseholders had received the correspondence regarding the door, they must also have received the section 20 notices.

24. Ms Mackmurdie was the only leaseholder to give direct evidence regarding service. However, she has been representing the other leaseholders in the negotiations regarding the First Safety Works and she accepted that she had not suffered any prejudice as a result of the not having seen the section 20 notice when it is said to have been served other than feeling aggrieved.
25. The Tribunal finds as a fact that it is likely on the balance of probabilities that the section 20 notices were served by addressing, pre-paying and posting the letters containing the section 20 notices by first class post to the lessees. The tribunal notes that it would, in any event, have been appropriate to grant dispensation from the consultation requirements on the basis that Ms Mackmurdie accepts that she has not suffered any prejudice other than injury to feelings and it was not asserted that any of the other leaseholders have suffered prejudice.

Judge: Naomi Hawkes

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 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 for which the service charge is payable or in an earlier or later period.

Section 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 provisions 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.

Section 27A

- (1) An application may be made to a leasehold valuation 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 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.
- (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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

- (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 a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (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.



Brent Civic Centre
 Engineers Way
 Wembley
 Middlesex HA9 0FJ
 DX 145100 Wembley Central 2

TEL / MOB 020 8937 3427
 FAX 020 8937 2164
 EMAIL kay.north@brent.gov.uk
 WEB www.brent.gov.uk

Mrs P Mackmurdie
 76 Watling Gardens
 Shoot-up-Hill
 Cricklewood
 London
 NW2 3UD

Your Ref:
Our Ref:KN/719/1139

Date: 6 February 2014

First by email paulamack@hotmail.co.uk and
Paula.Mackmurdie@teamrelocations.com

Dear Mrs Mackmurdie,

**RE: IN THE PROPERTY CHAMBER, LONDON RESIDENTIAL PROPERTY FIRST TIER TRIBUNAL
 IN THE MATTER OF SECTION 27A(1) & 20C OF THE LANDLORD & TENANT
 ACT 1985 AS AMENDED 13-135 WATLING GARDENS, SHOOT-UP-HILL, CRICKLEWOOD, LONDON,
 NW2 3UD**

I am writing further to Tribunal hearing of the above matter on 16 January 2014 when it was agreed that the Respondents would provide further clarification to the leaseholders in respect of six remaining matters as itemised in the specification of works by 6 February, as referred to in Table 1, below.

Table 1

Item number as per Specification of Works	Leaseholders Query	Respondents Response
6.11.2	Service riser doors and frames why are they so expensive 10 time doors £19,468.00 without OHP.	These are floor to ceiling height doors, with more complicated installation / location. See also below
6.13.5	Communal area service boxing – fire stopping and additional works	Service penetrations between floor levels have been specified to be fire stopped, which will require removal of the boxing. This and the vulnerability of the pipe within necessitate the removal of the current boxing and their replacement with fire rated boxing / panels.
6.16.1	Hatch to lift motor room why so expensive please provide a break down of cost.	The cost is the tendered cost of £2,200 / each comprising £2,000 materials and installation cost and £200 OHP-s. The tender was accepted by BHP therefore this sum cannot be revised.
7.21	21 External bin store doors - why is each block a different price	The cost of these doors on the schedule provided is of £3,821.40 / each.

Cont...



8.3.1	Please justify why the blocks have different prices on the same doors	<p>1. Staircase double doors: For block 57-96 the cost of these doors marked less (£2,394.23) than for other blocks. This is an error and OHP wasn't added. Door cost is £2633.65/door. See revised schedule.</p> <p>2. Ground floor communal screen/door combo: Cost of these doors are less at block 97-135 than at other blocks. Reason: Less number of glazed panels within the screen. See revised schedule.</p> <p>3. Riser cupboard doors: The cost of these doors are substantially less at block 97-135 (£1,067.66) than at other blocks (£2,141.48) This is an error made by the contractor at tender. At BHP approval the following cost applies per door throughout: £1,795.08. See revised schedule.</p> <p>4. Electrical intake cupboard doors (E IC): The cost of this door are substantially less at 13-56 (£1,067.66) than at block 97-135 (£2150.74). This is an error made by the contractor at tender. At BHP approval the following cost applies per door throughout: £1,609.20. See revised schedule.</p>
8.13	loft access hatch, same query as 6.16.1 but different block.	See response to 6.16.1

I enclose with the hard copy of this letter, the door schedule with revised figures that correlate to Table 1 and the revised cost monitoring sheet reflecting the forecast adjustment as set out in Table 2, below.

You will also be aware that, the Chairman (Judge Hawkes) has requested that the parties provide an agreed figure for the adjusted amount claimed by the landlord following discussions in relation to the Scott Schedule. As you are know, because many of the figures provided are estimates and subject to change whilst the works are finalised, we are unable to provide a final figure for your agreement. However, you will see from Table 2, below, that my clients have been able to provide an estimated cost of completion of the works, broken down by block, which is more than 20% less than the original estimate and I invite you to confirm your agreement to the estimated figures as set out in Table 2.

Table 2

Block	Notice of Estimates - Cost / Leaseholder	Current Cost - Cost / Leaseholder	Forecast Cost Adjustment
13-56 Watling Gardens	£5,059.37	£3,583.53	-29.18%
57-96 Watling Gardens	£5,508.45	£3,714.53	-32.57%
97-135 Watling Gardens	£4,739.00	£3,773.60	-20.38%



I look forward to hearing from you in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read 'KAY NORTH', with a stylized flourish at the end.

KAY NORTH
Senior Housing Lawyer
Housing & Litigation Team
For the Director of Legal and Procurement

*** The Legal & Procurement Department does not accept service of documents by e-mail.**