

10576



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

**Case References** : BIR/37UG/LSC/2014/0015  
BIR/37UG/LAC/2014/0004  
BIR/37UG/LLC/2014/0008

**Property** : Flat 2 Sherwood Lodge, Dale Crescent,  
Balderton, Newark NG24 3JT

**Applicant** : JH Watson Property Investments Limited

**Representative** : Watson Property Management

**Respondent** : Ms Victoria Witt

**Type of Applications** : (1) A determination of liability to pay and  
reasonableness of service charges pursuant to  
section 27A of the Landlord and Tenant Act  
1985 (“the 1985 Act”) and

(2) A determination of reasonable  
administration charges pursuant to paragraph  
5 of Schedule 11 to the Commonhold and  
Leasehold Reform Act 2002 (“the 2002 Act”) and

(3) An Application for an order for the  
limitation of the landlord’s costs in the  
proceedings under section 20C of the  
Landlord and Tenant Act 1985.

**Tribunal Members** : V Ward BSc (Hons) FRICS  
Judge R Healey

**Date and venue of  
Hearing** : **27 November 2014**  
**Nottingham Magistrates Court**  
**Carrington Street**  
**Nottingham NG2 1EE**

**Date of Decision** : **23 January 2015**

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**DECISION**

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## **Introduction**

1. The first two applications are made by the Lessor, JH Watson Property Investments Limited ("the Applicant") for a determination of the reasonableness of service charges and administration charges relating to Flat 2 Sherwood Lodge, Dale Crescent, Balderton, Newark NG24 3JT ("the Property") for payment by the Respondent Lessee, Ms Victoria Witt.
2. The application in respect of service charges is made for the period 1 July 2014 to 30 June 2015. The application in respect of administration charges relates to charges levied by the Applicant in respect of the costs they incurred during a previous dispute with the Respondent that was brought before the First-tier Tribunal (Property Chamber) and determined on 30 January 2014 (BIR/37UG/LIS/2013/0044 & BIR/37UG/LLC/2014/001).
3. The third application is made by the Lessee is for an Order under section 20C of the 1985 Act that requires the Tribunal to determine whether any, or all, of the costs incurred by the Lessor in connection with these proceedings are to be taken into account in determining the amount of any service charges payable by the Lessee.
4. The Respondent holds the Property on a lease ("the Lease") dated 30 August 1990 for a term of 199 years from 25 December 1988. The rental under the lease is currently £50 per annum
5. Directions were issued on 11 August 2014. Submissions were received from both parties and were copied to either side accordingly. The Applicant requested an oral hearing.

## **Inspection**

6. The Tribunal carried out an inspection of Sherwood Lodge on Thursday 27 November 2014. Present on behalf of the Applicant was Mr Nicolas Warren of Watson Property Management and also the Respondent, Ms Victoria Witt.
7. Sherwood Lodge ("the Building") comprises a development of four flats arranged over 2 floors constructed in traditional materials. A communal hall and lobby provides access to the flats and the Property itself is located on the ground floor. Externally there are garden areas laid to grass and a storage building to the rear.

## **The Submissions of the Parties**

8. The Hearing was held after the inspection at Nottingham Magistrates Court. Upon opening, Mr Warren announced that unfortunately the surveyor who dealt with Sherwood Lodge on behalf of Watson Property Management, Mr Manjoy Patel, could not attend the Hearing due to a car crash. The Tribunal asked Mr Warren if he was content to proceed without Mr Patel being present and Mr Warren confirmed that he was.

## **Service Charges**

9. At the Hearing, the parties jointly requested that the Tribunal consider the service charge year for the period ending 30 June 2015. The Tribunal explained that they only had jurisdiction to deal with the liability for and reasonableness of costs actually incurred. However the Tribunal were advised that the freehold interest is being sold to an entity which includes the Respondent and hence the parties would be grateful for the opinion of the Tribunal as to whether or not the costs would in principle appear reasonable. The Tribunal found no issue acceding to this request in order to assist the parties but advised that such an opinion would not prevent any leaseholder from making an application to the Tribunal for a further determination in respect of any of the costs actually incurred.
10. On behalf of the Applicant, Mr Warren of Watson Property Management then took the Tribunal through the service charge application. Initially he stated that service charges are payable in accordance with Clause 2 (2) (b) of the lease in equal half yearly instalments on 1 July and 1 January each year. He confirmed that a summary of tenant's rights and obligations was also enclosed with any service charge demand.
11. Due to the fact that on 20 July 2014 the Respondent had advised Watson Property Management that she disputed the amounts stated on the service charge demand, the Applicant thought it appropriate to apply to the Tribunal for determination of the service charges.
12. The Applicant produced a breakdown of the service charge budget and the Tribunal noted that the total sum due for the year ending 30 June 2015 was £907.90.
13. In response Ms Witt stated that she considered that Watson Property Management were negligent in their management of the development and nothing had changed

since the previous Tribunal decision in connection with the management of the Building and maintenance issues evident then had still not been resolved today.

She summarised the failings as follows:

- The communal door is falling apart
  - The stair carpet is dangerous and residents have been forced to cut it off to prevent it becoming a tripping hazard
  - Flat window sills are in poor condition
  - The communal hallway upstairs and downstairs have not been redecorated.
14. In response Mr Warren directed the Tribunal to part of his submission which evidenced correspondence between Watson Property Management and the Respondent which provided evidence of co-operation. He did however acknowledge that the property was “worn”. He also stated that repairs and decoration were carried out on a cyclic basis. Mr Warren did make the comment that “the property is not in Mayfair and it is perfectly reasonable that a leaseholder would wait for cyclical maintenance”.
15. In response Ms Witt repeated the fact that nothing had happened since the inspection of the last Tribunal and that maintenance issues take a significant period to be dealt with and that there is no evidence of any form of cyclical or regular maintenance.

### **Administration Charges**

16. In respect of administration charges Mr Watson confirmed to the Tribunal that there had been previous applications before the Tribunal and during the course of these proceedings the Applicant incurred various costs in complying with the Tribunal’s directions and also attending the Hearing, and they sought to recover these from the Respondent as variable administration charges. Mr Warren also indicated that further costs will be incurred during the current proceedings in order to comply with the Tribunal’s directions including attendance at the Hearing, and where further costs are incurred within the service charge year end 30 June 2015, the Applicant wishes to claim them from the Respondent under this application. To this end he had produced a Scott Schedule. It was noted at the Hearing that the Schedule contained errors and accordingly subsequent to the Hearing a further amended schedule was provided.
17. The total costs recorded on the schedule were £4,333.72 and were made up of 28 items pursuant to both the current and previous applications.

18. As part of his submission Mr Watson gave the Tribunal an explanation of Watson's Property Management credit control policy. This detailed the procedures of the company and the charges that were made to leaseholders should they be in arrears with their service charge.
19. At the Hearing Mr Warren referred to the Court of Appeal decision in the case of Freeholders of *69 Marina, St Leonards-on-Sea -v- Oram & Ghoorun* [2011] EWCA Civ 1258. This case was cited with respect to contemplation of forfeiture proceedings but did not specifically refer to its application to the present proceedings.
20. Mr Warren also directed the Tribunal to *Barrett v Robinson* [2014] UKUT 322 (LC). This latter authority indicated the landlord only had to have forfeiture proceedings in mind before contemplating serving a Section 146 Notice. When questioned by the Tribunal as to how forfeiture proceedings were "contemplated" with regard to this matter, Mr Warren directed the Tribunal to Watson Property Management's credit control policy and specifically the following statement.

"All actions taken in recovery of arrears owed to landlord are considered to be actions in contemplation of forfeiture of the lease and all costs incurred in the recovery, whether company costs, legal costs or other costs will be administration charges for that purpose."

21. The Tribunal asked if this credit control policy was distributed as a matter of course to all lessees. Mr Warren replied that it was not; it was held in the office and was distributed to tenants on request. Mr Warren further cited the *Barrett* case to the effect that the tenant doesn't need to know that the landlord is contemplating forfeiture proceedings and following this, it was his opinion that every time a service charge demand was sent it was in contemplation of forfeiture proceedings.
22. In response, Ms Witt gave the Tribunal a breakdown of the dealings between herself and Watson Property Management in respect of the service charge arrears. She indicated that during the previous matter she had made offers to settle which Watson did not accept but instead simply allowed costs to accrue to substantial levels. She indicated that it could be demonstrated that her offer to settle was fair and reasonable as it was identical to that determined by the Tribunal. Ms Witt said she had done everything possible to prevent costs escalating and that she felt that the more recent charges incurred by Watsons when the sale of the freehold was being negotiated were particularly unreasonable.

## **The Law**

23. The Landlord and Tenant 1985 Act provides:

### *19 Limitation of service charges: reasonableness*

*(a) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period – only to the extent that they are reasonably incurred, and 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;*

*(b) and the amount payable shall be limited accordingly.*

*(c) 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 of subsequent charges or otherwise.*

### *27A Liability to pay service charges: Jurisdiction*

*(1) An application may be made to the First-tier 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 the First-tier 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 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*

*(4) No application under subsection (1) or (3) may be made in respect of 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 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 as having agreed or admitted any matter by reason only of having made a payment*

*(6) An agreement by the tenant of a dwelling (other than a post – dispute arbitration agreement) is void in so far as it purports to provide for a determination-*

- (a) in a particular manner, or*
- (b) on particular evidence*

*(7) The jurisdiction conferred on the First-tier Tribunal in respect of any matter by virtue of this section is in addition to any to any jurisdiction of a court in respect of the matter*

#### *20c Limitation of service charges: costs of proceedings*

*(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.... the First-tier Tribunal ....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 person specified in the application.*

24. An "administration charge" is defined in paragraph 1(1) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as:

*"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 applications for such approvals,*
- b) *for or in connection with the provision 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." Paragraph 2 states that "A variable administration charge is payable only to the extent that the amount of the charge is reasonable."*

*A "variable administration charge" means "an administration charge payable by a tenant which is neither - (a) specified in his Lease, nor (b) calculated by reference to a formula in his Lease"*

Paragraph 5(1) provides:

*"An Application may be made to the First-tier Tribunal for a 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."*

Sub-paragraphs (2) and (4) make it clear that the Tribunal has jurisdiction in this regard whether or not any payment has been made unless, *inter alia*, the matter has been agreed or admitted by the tenant.

## **Determination**

### **Service Charges**

25. Initially the Tribunal considered the Lease in the context of the Respondent's liability to pay a service charge. The obligation for the Tenant to pay a service charge

is contained within clause 2 (2) (a) of the lease whilst clause 2 (2) (b) outlines the accounting principles relating to the same.

26. The Tribunal therefore determines that the Respondent has a liability to pay the service charge.
27. At their inspection of the Building, the Tribunal found that it was generally in poor condition. There was no evidence either internally and externally of any cyclical or regular maintenance. The condition of the internal communal areas was particularly "tired". Coincidentally contractors arrived to repair the communal entrance door at the time of the Tribunal's Inspection.
28. The Tribunal does not accept the comments of Mr Warren that the location of a type of property denotes what standard of management it should receive. The management of Sherwood Lodge is, on the basis of the inspection carried out by the Tribunal and the evidence provided by the Respondent, desultory. Considering this in terms of the service charge budget for the year ending 30 June 2015 the Tribunal finds it appropriate that the management fee be reduced by 50% to £112.13.
29. The service charge budget for that period is therefore reduced to £795.77. With the exception of the management fee, the Tribunal did not note any other items within the budget that looked unreasonable.

### **Administration Charges**

30. The Tribunal notes that the administration charges claimed by the lessor are itemised in the revised Scott Schedule. In each case the lessor relies on clause 2(8) of the lease. This states as follows –

*"To pay unto the Lessor all costs charges and expenses (including legal costs and fees payable to a Surveyor) which may be incurred by the Lessor in or in contemplation of any proceedings under sections 146 and 147 of the Law of Property Act 1925."*

31. On behalf of the Applicant, Mr Warren submitted that costs were incurred in contemplation of forfeiture proceedings as such contemplation was in the mind of the lessor and therefore such costs could properly be claimed under clause 2(8) of the Lease. He submitted the evidence in support of "contemplation" was shown by the Watson Property Management - Credit Control Policy quoted above.

32. The view of the Tribunal is that this statement is simply a standard document and no consideration is given to each individual case. The Tribunal considers it unlikely that for every property that Watson Property Management manages, forfeiture is contemplated from the first reminder they issue. Mr Warren confirmed that the details of their credit control policy are only forwarded to tenants on their request; it is not circulated with service charge demands.
33. The first seven items in the Scott Schedule relate to costs associated with the matter determined by the Tribunal in January 2014. This application was referred to the Tribunal by the County Court. There has been no evidence presented to the Tribunal that forfeiture was cited either in the claim form or in the statement of claim. The application to the County Court appears simply to be a money claim. If forfeiture was contemplated one would have expected it to be included in the County Court proceedings.
34. Following the reasoning in paragraph 46 of the *Barrett* decision, a clause of the type set out in 30. above does not give a general indemnity against all legal costs that may be incurred by the lessor. In the previous Tribunal case, the determination made serious inroads into the lessor's service charge claim. The Tribunal found that agreement had been reached between the lessor's solicitor and the leaseholder for payment of £3,278.94 in settlement of service charges up to 31 June 2007 and that such monies had been paid. Thereafter the Tribunal reduced the claim in respect of management charges by one half. The Tribunal considers it would be contrary to the interests of justice for the lessor to be able to claim for any additional costs relating to those proceedings.
35. Considering then the remaining items in the Scott Schedule which relate to the present proceedings, again the Tribunal does not believe that appropriate "contemplation" was given to forfeiture. The present proceedings are running alongside the lessor's offer of disposal of the freehold in accordance with section 5 of the Landlord and Tenant Act 1987. At the Hearing, both parties asked the Tribunal to consider the additional items, together with the agreed remaining items on the Scott Schedule to facilitate the sale of the freehold to the leaseholders. The parties acknowledged that "contracts had been exchanged" and it appeared to the Tribunal that the parties were working towards completion not undertaking proceedings in contemplation of forfeiture.
36. The Tribunal therefore determines that the administration charges claimed are not payable.

## **Costs**

37. The Lessee has applied for an Order in accordance with section 20C of the Landlord and Tenant Act 1985 relating to the service charge application. The purpose of an application under section 20C is to prevent a landlord from recovering his costs in Tribunal proceedings through the service charge. The guidance given in previous cases is to the effect that an order under section 20C is to deprive the landlord of a property right and it should be exercised sparingly see *Veena SA v Cheong Lands Tribunal* [2003] 1 EGLR 175.
38. However, in this case, the Lessee has enjoyed some success in her challenge. Therefore it would not be just and equitable to allow the Applicant to recover the costs of proceedings via the service charge. Accordingly, the Lessee's section 20C application succeeds and the Landlord may not recover the cost of the service charge proceedings by way of the service charge.

## **Appeal**

39. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. The application must be received by the Tribunal no later than 28 days after the date the Tribunal sends this decision to the party making the application. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Mr Vernon Ward

(Chairman)