



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

Case Reference : CHI/24UE/LIS/2015/0019

Property : 5, Hamble House, Redlands Lane,
Fareham, Hampshire PO16 0UE

Applicant : Fareham Borough Council

Representative :

Respondent : Mr Paul Bannon

Type of Application : Service charge

Tribunal Members : Judge D Agnew
Mr P Turner-Powell FRICS

**Date and venue of
Determination** : By paper determination
on 15th July 2015

Date of Decision : 21st July 2015

DETERMINATION

above. The lower maisonettes all have their own front door at ground level. The upper maisonettes are reached by entering one of two security doors and then climbing a concrete staircase to an external balcony to reach their front doors.

8. One of the security doors is approached from the front of the building and the other from the car parking area at the rear. In order to open the security doors a visitor would need to press a button for the maisonette they were visiting and the owner would then release the door lock from their property. The maisonette owners can operate the lock by showing an electronic fob to a particular spot on the door entry key pad. These fobs were offered to all maisonette owners but only those on the upper level chose to have one. There is a button on the key pad for tradesmen to use. If this is pressed during the hours of 8a.m. to 11a.m. and 3p.m. to 6p.m. anyone can press this button and unlock the security doors, although this is intended for use only by trades people.

9. There is a large area for unallocated parking for occupiers and their visitors at the rear of the Property. In order to gain access to a lower maisonette from the car park one either has to walk around the side of the building or, if one had a key fob or pressed the tradesman's button during the period 8am to 11am and 3p.m. to 6p.m. one could pass through the two security doors and this would be a shorter route (at least to the Respondent's property).

10. In the car parking area there is a bin store but this is solely for the upper maisonettes. The lower maisonette owners can either store their dustbin adjacent to their front door or in the brick storage shed which is situated near to their front doors. There is a further concreted walled-off area adjacent to the car park which is used for recycle bins.

11. The Tribunal took the opportunity of looking at the other four blocks of maisonettes which are of a similar style to Hamble House and are situated in close proximity to the Property. None of these had security door entry systems so the stairwells were open to anyone who wished to enter.

The Applicant's case

12. It was the Applicant's case that the door entry system was installed at the Property in response to complaints over a considerable period of time from residents that youths were gathering in the stairwells at night causing a nuisance from noise and bad language. Further, graffiti had been applied to the walls of the stairwell which the residents had tried to rub off and damage had been occasioned to the bannisters. The Council had tried to combat the nuisance by writing to the parents of those whom they suspected of causing the nuisance but it had persisted. It was considered that the only way of trying to deal with the problem was to enclose the entrance to the stairwells and install a security door entry system.

13. The Council had already gone through a consultation procedure for a qualifying long term agreement for works to their properties and so the shortened form of consultation only was required for these works. A Notice of Intention was issued on 9th May 2008. This stated that the intended works were the installation of vandal resistant main security doors to the block, a door

18. The Respondent, who is a senior level building surveyor for a national construction consultancy practice, made a number of objections to the charge for the installation of the door entry system, which may be summarised as follows:-

a) although the lease does permit the landlord to carry out improvements to the property, nowhere, on a true construction of the lease, does it provide for the landlord to be able to recoup the cost of those improvements from the lessees through the service charge

b) the security entry system cannot be regarded as an "improvement". It is certainly not an improvement for him but is detrimental to his enjoyment of his property. He says that he is now precluded from using a shorter, more direct route to his home from the car park area which is an inconvenience to him and his family which includes two young children. He is disturbed by people trying to gain access through the locked doors and people tend to throw down rubbish whilst their progress through the door area is impeded. He now has to carry rubbish round the side of the building to the collection point rather than being able to take the shortcut though the stairwell

c) the doors "arguably" impede the only means of access to and egress from his property and breach building regulations

d) the enclosure of the ground floor hallway encourages articles such as children's buggies to be left in this area causing a potential fire hazard

e) the new cover over the electrical installations in the hallway to the building blocks off ventilation to the Respondent's gas meter and gas cooker in breach of health and safety regulations.

f) none of the lower maisonette owners benefit from the installation

g) there was an issue at Hamble House of anti-social behaviour from youths in the vicinity and those connected with the occupants of 2 Hamble House, but the installation of a security entry system did not address that issue. It dealt with a "knock-on effect", a secondary factor and not the primary cause. Other options could and should have been investigated and pursued.

The lease

19. By clause 2(q)(i) of the lease the lessee covenants: "To pay to the Lessor in each year one equal part of the cost (calculated as provided in the Sixth Schedule hereof) of providing the services and things specified in the Seventh Schedule....."

20. By paragraph 1 of the Sixth Schedule "the cost of the repairs services and other things shall be the aggregate of:-

(a) The actual cost as certified by the surveyor of the Lessor of the repairs and of providing the services and other things specified in the Seventh Schedule....."

By Part II of the Seventh Schedule the "repairs, services and other things" specified are:

(1) "Maintaining decorating cleaning and securing the building and the remainder of the lessor's property or any part thereof or any equipment fixtures or apparatus therein and providing services of any kind whatever for the reasonable comfort and reasonable convenience of the Tenants of the Lessor and their servants agents and visitors

have to contribute, for example, to the maintenance of a lift or a communal staircase when they do not use the same. However, if the lease says that they are required to contribute to those costs they cannot be excused therefrom simply because they do not use the facility. Even if the Respondent does not have a direct benefit from the works, he has obtained an indirect benefit, from, for example, not having to contribute to the eradication of graffiti and damage to the stairs from youths congregating in the stairwell area.

27. Having decided that the works were an improvement, the Tribunal then considered whether the lease provides for the Applicant to be able to recover the cost of the improvement from the Respondent. In this respect the Tribunal does not disagree with the Respondent as to the approach to construction of the lease. However, it is clear that the effect of clause 2(q)(i), and Schedules 4, 6 and 7 when taken together do provide for the cost of improvements to be paid for by the lessee. The cost of repairs, services and other things (emphasis added) which the lessee has to pay for under clause 2(q)(i) is the aggregate of the items set out in the Seventh Schedule which specifically refers to the "improvements" provided for under Schedule 4.

28. The Applicant is, however, only permitted to recover the cost of improvements if they were reasonably incurred and of reasonable quality (section 19 of the Act). The Tribunal therefore next considered whether the works had been reasonably incurred. In this respect the Tribunal did wonder whether it could be said that the costs of installing a security door entry system for Hamble House when no similar installation was thought to be necessary for the four other similar blocks of the Applicant neighbouring Hamble House and on the same estate were reasonably incurred. Why were the other blocks not affected by the same problems as those said to affect Hamble House, or, if they were, why were the same works not carried out there? This did concern the Tribunal but there was no evidence as to the record of complaints at the other blocks, so it may have been that they were not affected to the same extent. More importantly, however, the Tribunal did consider carefully the evidence that it did have in respect of Hamble House and decided that there was more than sufficient evidence of problems caused by youths congregating in the stairwell of Hamble House, creating noise and other nuisance and causing damage to the property to justify the Applicants in seeking to overcome the problem and stem the complaints by carrying out the works to prevent unwanted people from entering the stairwell area. The Tribunal noted that there were several entries in 2007 and 2008 which specifically referred to this problem. (For example, document D80 on 1st July 2007, D82 of 27th October 2007, D90 of 27th November 2007 D92 of 20th December 2007) Not all these incidents concerned the residents of No 2, nor were all the complaints from No 4. The installation of security doors may not be a complete answer to anti-social behaviour in the area but the Tribunal is satisfied that this is likely to be part of the answer to the problems at Hamble House. It would appear that the complaints have ceased since the doors were fitted.

29. Another aspect as to whether costs have been reasonably incurred is the actual amount of the charges. The Respondent says they are too high but apart from a reference in an email to the Applicant that a quantity surveyor in his

Dated the 21st day of July 2015.

Judge D. Agnew.

Appeals

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