



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

Case reference : LON/00BD/LSC/2018/0063

Property : 28 Handel Mansions, 94 Wyatt Drive, London SW13 8AH

Applicant : Barnes Waterside Estate Management Company Ltd

Representative : Sheridan and Stretton, Solicitors

Respondent : Mr Richard Seeley

Representative : Dale and Dale, Solicitors

Type of application : Liability to pay service charges

Tribunal members : Mr A Harris LLM FRICS FCIArb
Ms S Coughlin MCIEH

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearing : 3 May 2018

Date of decision : 24 May 2018

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £594.44 is payable by the Respondent in respect of the service charges for the years 2016, 2017 and 2018.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (4) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Wandsworth County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the Respondent in respect of the service charge years 2016, 2017 and 2018.
2. Proceedings were originally issued in the Money Claims Business Centre under claim no. D5QZ9W3Y. The claim was transferred to the Wandsworth County Court and then in turn transferred to this tribunal, by order of Deputy District Judge Shelton on 26 January 2018.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The case was considered by a tribunal on the papers on 3 May 2018 at 10 Alfred Place London. Written submissions were received from each party.

The background

5. Barnes Waterside is a development of 118 houses and 203 flats surrounded by communal grounds. The communal grounds are those parts of the estate which are not included in any leases of freehold titles

of properties on the estate. The estate roads are adopted. This case concerns the maintenance charges for the communal grounds on the Barnes Waterside estate (the Estate).

6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Respondent holds a long lease of 28 Handel Mansions for a term of 999 years from 25 June 1995 at a ground rent of 1 pound per annum. The lease requires the lessee to contribute to a buildings maintenance charge and to a separate estate maintenance charge. This case is only concerned with the estate maintenance charge. The Estate maintenance is the responsibility of the Barnes Waterside Estate Management Company Ltd. (the Company). The lessees share of the Estate Maintenance Fund means a 1/321 share. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability of estate maintenance charges from 24 December 2015 to date. Particulars of claim dated 7 September 2017 claim arrears of £525.49 plus interest. A witness statement of Michael Henry Whale dated 19 March 2018 shows arrears of £659.25 with the addition of a further year's interim service charge and reserve fund contribution.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The lease

10. The lease is dated 30 March 1998 under title number TGL91311 between the lessor, Thames Water Developments Limited and the lessee, Rayman Justin Perera and Natalia Cheong Perera. Other parties to the lease include the Company. The Contractor and Building Management Company. They are not concerned in this case.
11. In paragraph 22 of the particulars to the lease, Estate Maintained Property is defined as

“those parts of the estate described in the first schedule to the lease the maintenance of which is the responsibility of the Estate Management Company.”

12. The first schedule defines the Estate Maintained Property as

“all those parts of the estate which are not within the curtilage of any dwelling houses or flats on the estate and which are not the responsibility of other Management Companies incorporated at the date hereof and which includes all communal areas gardens grounds gates parking spaces woodlands open areas wetlands and all other amenities intended for use by the lessee and all other purchasers and lessees of the estate”

13. Paragraph 30 of the particulars to the lease provides that the lessees share of the estate maintenance fund is a 1/321 share unless varied as provided in the clause. There does not appear to have been any variation.
14. Paragraph 32 of the particulars provides for an interim estate maintenance charge of £100 or such other sum to be paid on account of the Estate Maintenance Fund for each maintenance year as the Company managing agents or accountants from time to time shall specify at its or their discretion to be a fair and reasonable sum.
15. Under clause 4 of the lease the Company covenants to provide the services set out in the fifth schedule of the lease subject to payment of the lessees share of the Estate Maintenance Fund.
16. Clause 7 provides for payment of the maintenance charge for each year ending on 24th December being the share set out in paragraph 13 above of the expenses which the Company shall reasonably and properly incur in relation to the Estate in each maintenance year.
17. Under clause 7(4) the lessee is *“within 14 days after the accounts of the Estate Management Company... for the maintenance year have been audited and a certificate signed by the auditors stating the amount of the maintenance charge is attributable to the premises for that year (or a certified copy thereof) has been served on the lessee (such certificate to be final and binding on the lessee to pay to the Estate Management Company... the amount (if any) by which the maintenance charge is payable in respect of the demised premises for such year exceed the amount paid on account... and if less than the amount paid in advance thereof any excess shall at the discretion of the Estate Management Company... either be repaid to the lessee or retained by the Estate Management Company... on account of payment due from the lessee in future years.*

18. Schedule five of the lease sets out the Company's covenants which include
- employment of managing agents,
 - repairing conduits and service installations and the grounds and gardens,
 - payment of existing and future rates,
 - employment of such persons as it considers appropriate,
 - insurance against third-party claims,
 - anything else which the Company deems necessary for the proper maintenance safety and administration of the Estate Maintained Property
 - provision for payment of legal and other costs and expenses incurred by the Company in the running and management of the estate and enforcement or attempted enforcement of the covenants...
19. Clause 8 of the fifth schedule allows the Company to set aside each year an appropriate amount as a reserve fund (which is deemed to be an expense incurred by the company in carrying out its obligations for the purposes of clause 7) towards those matters referred to in the schedule which are likely to give rise to expenditure after such year or other period being matters which are likely to arise either only once during the unexpired term or at intervals of more than one year during such unexpired term... With the intention of ensuring that the maintenance charges shall not fluctuate unduly from year to year. The Company is entitled to apply towards the cost of its responsibilities such part of the reserve fund as the Lessors auditors shall certify to be appropriate. Any un-applied part of the reserve fund to be carried forward as a reserve for future years.
20. The accounting year of the company ends on 25 December or such other date as the Company decides and the company is to keep proper books of accounts of costs and expenses incurred in carrying out its obligations and in maintaining proper records of the reserve fund.

The Applicant's case

21. The case for the Applicant is set out in a witness statement of Michael Henry Whale, a director of the Company who speaks to arrears totalling £659.25 made up of interim service charges £572.62, reserve fund

contributions of £21.82, arrears administration charges £50.00 and interest of £14.81.

22. The respondents last payment was made on 23rd of July 2015. In December 2015 the respondent was sent a request for payment of the next six months interim charge with a copy of the budget and minutes of the last AGM. There is nothing in the minutes to show the respondent had any disputes relating to the accounts, the level of reserve fund or the method by which service charges were asked for. Respondent was chair of the company at the time and significantly involved with its running. He proposed a budget for 2015 and personally signed off the 2014 accounts.
23. On 13 December 2016 the respondent was sent a request for payment of the interim charge from December 2016 to June 2017 with a summary of the long-term maintenance plan. This plan was prepared in October 2013 and is reviewed annually. The original document is over 100 pages long and lessees had asked for it to be supplied in summary form and this was sent to all lessees. The full plan can be seen at the managing agent's offices. The demand for the second interim payment was made on 7 June 2016.
24. On 26 May 2017 the respondent was sent accounts signed by the auditor for the year ended 31 December 2016 and the minutes of the 2016 AGM. An explanatory letter was sent to all leaseholders regarding the reserve fund and the justification for keeping a healthy reserve.
25. On 18 December 2017 the respondent was sent the budget for the year 2018 and the demand for the first half-year interim service charge. Interest is payable on arrears at 4% above Barclays bank base rate under clause 2(30) of the lease.
26. Mr Whale states that he understands the respondent's reasons for non-payment are
 - a) company secretarial fees directors and officers insurance and accountancy fees are not recoverable under the lease and he received no certificate from the accountant;
 - b) the applicant could not use sale proceeds of land it had sold as reserve funds as these belong to the company and should be divided among leaseholders. The reserve fund is trust money and company money cannot be intermingled with it;
 - c) the level of reserve funds had not been justified to the respondent's satisfaction.

27. In response to a) Mr Whale refers to the demands set out above and that while a director and chair of the Company no such matters had been raised by the respondent or brought to the auditors attention.
28. In response to b) the Company took the view there would be no distribution and the Respondent was and is aware of that.
29. In response to c) the level of reserve fund and the updating and justification of the long-term plan were both matters discussed and decided at a properly convened annual general meeting and a decision taken by the majority.

The Respondent's case

30. The respondent bought 28 Handel Mansions on 8 November 2013 and has paid his estate maintenance charges up to and including the interim charge for June to December 2015.
31. The respondent asserts that the applicant should prepare accounts for the company in order to comply with Company Law legislation (sic) and separate accounts to comply with the leases with regard to estate management charges.
32. The respondent asserts that the applicant has
 - (i) failed to provide the requisite certificate required by paragraph 7(4) of the lease
 - (ii) failed to ensure that in any financial year where the amount paid on account exceeds that actually incurred there is a credit to the respondent and that credit has been put to the respondents account in respect of future years expenditure was being repaid to the respondent
 - (iii) has incurred expenditure which is not set out as items of expenditure to be incurred by the applicant under the terms of the lease. These are partial accountancy fees, partial audit fees, company secretarial fees, company expenses and insurance for directors and officers of the Company. These are company expenses as opposed to estate maintenance charge expenditure and should be borne by the Company and not by the Estate Maintenance Charge.

33. In 2013 the applicant sold part of the freehold for £34,049 and has shown this as part of the reserve fund. The respondent is not aware that there has been any board resolution or resolution at any AGM or EGM to retrospectively or otherwise treat the sale proceeds as reserve funds.
34. If the respondent is incorrect and the reserve sale proceeds are reserve funds, then the reserve funds demanded are excessive. If the reserve fund does not include the sale proceeds, then the reserve fund may be reasonable

The tribunal's decisions

35. The tribunal determines that the amount payable in respect of service charges is

year December 2015- December 2016	£ 216.44
year December 2016- December 2017	£ 227.10
year December 2017- June 2018	£ 129.08
	£ 572.62

Reasons for the tribunal's decision

36. The applicant Company was set up to manage certain communal areas forming part of an estate. Its sole purpose is to perform those functions and is run by a volunteer board of directors from among the various shareholders. It raises its funds by levying annual maintenance charges which may include a reserve fund. It has no other source of funds.
37. While the accounts and service charge demands could be presented in a better form making explicit on its face the level of charge from a particular shareholder the tribunal was able to relate the amount being demanded to the audited accounts without difficulty. The information is provided but could be presented in a better form. However, as the information was provided the first ground of objection fails.

Reserve fund

38. The tribunal considers that the accountancy presentation of the reserve fund accords with normal practice. The reserve fund is a single fund with contributions in accordance with individual leases or deeds. It is not an accumulation of individual accounts and the respondent has a 1/321th share. The demands show whether a shareholder has made the contributions due and the accounts show what reserve funds are carried forward or expended. The level of the reserve fund has been set by the directors and approved by an AGM or EGM of the Company and the tribunal has no information before it on which it can properly interfere with that assessment. The reserve fund contributions due are therefore

year December 2015- December 2016	£ 7.78
year December 2016- December 2017	£ 9.36
year December 2017- June 2018	£ 4.68
	£ 21.82

Proceeds of sale

39. The papers indicate that the applicant company sold some land in 2013 and that £34,049 was received. Even if it has jurisdiction, the tribunal has no papers before it relating to the original terms of ownership and makes no finding as to the application of those funds. The tribunal is however satisfied that the existence of these funds is not a ground on which to resist payment of the approved reserve fund contributions.

Form of accounts

40. The tribunal considers that the accounts provided by the company are satisfactory and in ordinary company format. The accounts contain records of the source and application of the company funds and of the expenditure in performing its maintenance obligations. The respondent has not made it clear what he would expect to see if two different sets of accounts were produced which does not appear in the accounts already prepared. These have been prepared with the approval of the board of directors and on advice from professional accountants.

Company operating expenses

41. The tribunal has considered the respondents objection to paying various items of expenditure including accountancy fees company secretarial fees company expenses and insurances. The respondent considers these should be a cost to the company rather than two leaseholders. Firstly, the company has no source of funds other than the maintenance charge and secondly these are provided for in the lease where the management company is obliged to keep proper books of accounts and do all things which it deems necessary for the proper administration of the maintained property. It is also entitled to make provision for payment of all legal and other costs and expenses incurred by the company in running and management of the estate and enforcement of covenants.
42. The tribunal is satisfied that the items complained of are proper items of expenditure under the provisions of the lease if the company is to fulfil its obligations. In relation to a resident -controlled company with volunteer directors the tribunal is satisfied that it is appropriate for directors and officers insurance to be in place for the protection of the individuals concerned and the company in general.

Administration charge £50.00

43. The tribunal determines that this amount is not due as there is no evidence before the tribunal of a demand in the proper form as required by the 2002 Act. The demands before the tribunal are for service charge and contributions to the reserve fund.

Application under s.20C and refund of fees

44. In the statement of case the Respondent applied for an order under section 20C of the 1985 Act. Having read the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for no order to be made under section 20C of the 1985 Act, so that the Applicant may pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge if the terms of the lease allow.

The next steps

45. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the Wandsworth County Court.

**Name: Mr A Harris LLM FRICS FCI Arb
Valuer Chair**

Date: 24 May 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 appropriate 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) the appropriate 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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means 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.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (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,
of any question which may be the subject matter of an application
under sub-paragraph (1).