



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

**IN THE COUNTY COURT at
Central London, sitting at 10
Alfred Place, London WC1E 7LR**

Case Reference : **LON/00BG/LSC/2018/0390 &
FooCL004**

Court claim number : **FooCL004**

Property : **Jamestown Harbour Estate,
London, E14**

Applicant/Claimant : **Mulberry Management Limited**

Representative : **Mr Vanderman of Counsel**

Respondents/Defendants : **Freeholders and Leasehold
Owners of Jamestown Harbour
Estate
Mr Nigel Alexander Moore in
person (7 Bridge House Quay)**

Representative : **No other Respondents appeared
or were represented**

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

Tribunal Members : **Tribunal Judge I Mohabir
Mr Jarero FRICS**

In the County Court : **Judge Mohabir, with Mr Jarero as
Assessor**

**Date and venue of
Hearing** : **20 June 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **2 September 2019**

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be:

- (a) If an application is made for permission to appeal within the 28-day time limit set out below – 2 days after the decision on that application is sent to the parties, or;
- (b) If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties

Introduction

1. Jamestown Harbour, the subject property, is a private estate comprised of 53 leasehold flats and 20 freehold houses located within three cul-de-sacs, namely, Lancaster Drive, Bridge House Quay and Landons Close. The freeholder of Bridge House Quay and Lancaster Drive is Chime Properties Limited. The freeholder of Landons Close is Landons Close Freehold Limited. The Applicant is the freeholder of the Amenity Lands within the estate. The estate is managed by the Applicant and each leaseholder and freeholder owns one share in the company.

2. In 2015, the Applicant consulted the residents to seek approval for the installation of electronically operated entrance gates to each of the three entrances to the estate. The reason for doing so is to prevent anti-social behaviour, crime and unlawful parking. The gates would be located on Amenity Lands with the exception of the gate at Bridge House Quay. This is because the land between the entrance to Bridge House Quay and down to the Jamestown Harbour properties belongs to the owners of Bridge House who support the proposal to install the gates. However, the Applicant has a right of easement over this land and is required to maintain and manage it.

3. 50 residents were in favour of the proposal with 13 against it. As a consequence, the Applicant submitted three planning applications to the Tower Hamlets Council Planning Department in respect of the proposed gates, which was refused. The Applicant submitted a test appeal in respect of the Lancaster Drive application, which succeeded. Revised planning applications in respect of Bridge House Quay and Landons Close were also then approved.

4. By an application to the Tribunal dated 23 October 2018, the Applicant sought a declaration as to the reasonableness and payability of the proposed expenditure.

5. The Tribunal indicated that it did not have jurisdiction in respect of the freehold properties and invited the Applicant to issue proceedings in the County Court and, in turn, have them transferred to the Tribunal to be consolidated with the application. This was done.
6. As a matter of jurisdiction, the Tribunal application in relation to the leasehold properties is dealt with under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”). The County Court proceedings in relation to the freehold properties (with the Tribunal Judge sitting as a Judge in the County Court) are dealt with under Part 40.20 of the Civil Procedure Rules 1998.

Hearing

7. The hearing took place on 20 June 2016. The Applicant was represented by Mr Vanderman of Counsel. The only Respondent who appeared was Mr Moore who did so in person on his own account.
8. Mr Moore confirmed that he was not challenging the estimated cost of the gates, which is placed at approximately £110,000. He was content to limit his challenges to (a) that the cost was not recoverable under the leases and/or (b) that the gates were not needed. These are dealt with in turn below.
9. The Tribunal heard evidence from Mr Gosling who is the resident at 27 Lancaster Drive and is a Director of the Applicant company. He confirmed that in the last 10 years, the estate has had experienced unauthorised parking and anti-social behaviour. The former mostly occurred outside Bridge House Quay and Lancaster Drive at night. The latter was concerned with drug parties, which are otherwise known as “pop parties”, which have become worse since 2013.
10. In cross-examination, Mr Gosling confirmed that he had sent an email and a letter in March 2013 confirming that there was not a problem with parking on the estate. However, he qualified this by saying that he was

referring to the residents' parking and not the unauthorised parking on the estate. He said that once the gates had been installed access could only be gained to the estate by the use of a fob. However, he conceded that the gates would only have a deterrent effect and that, for example, a determined burglar would be able to gain access to the estate.

11. Mr Gosling's complaints about anti-social behaviour and the need to install the gates were corroborated by Mr Gibson who is the freeholder of 2 and 3 Bridge House Quay.
12. In cross-examination, he confirmed that tradesmen were parking on the estate unauthorised on a daily basis and that the gates would prevent this from occurring. The purpose of the gates was not to prevent legitimate tradesmen or visitors.
13. Similar evidence was given by Mr Patmore who is the Company Secretary of Landons Close Freehold Limited. It is the landlord and freeholder of 6-16 Landons Close. Mr Patmore has lived on the estate since 2006. He has personally witnessed many incidents of anti-social behaviour including drug use and has been physically threatened. The police are unable to effectively patrol the area due to a shortage of manpower. Other local estates that have installed gates have seen a prevention of crime and anti-social behaviour. He concluded that the little public parking within the locality has led to this problem on the estate which was only going to get worse and at present the residents had no meaningful way of preventing this.
14. Again, similar evidence was given by Mr Hawkes who is the Company Secretary of the Applicant. A witness statement made by Mr Samuel was tendered on behalf of the Applicant. Although, he did not attend to give evidence his evidence supported the allegations of anti-social behaviour on the estate despite his earlier support for the position taken by Mr Moore.

15. Mr Moore's evidence was that the installation of gates was not needed because he had never seen anyone drive on to Bridge House Quay in 21 years. He accepted that vehicles do park on The Bridge House land, but that was not part of the land on his property. If anything, the gates would make the situation worse because drivers would assume that all of the properties in the gated area were part of the same estate and park there also.
16. In cross-examination, he said that although he did not dislike Mr Hawkes, he strongly distrusted him. He was referred to the comments by in an earlier Tribunal decision dated 15 April 2018 involving a service charge dispute concerning him when the Tribunal said that he had "*developed a strong personal dislike of Mr Hawkes, and that this issue was at the root of much of the Respondent's case*". It was Mr Moore's view that the current parking permit scheme was not being run effectively or honestly by Mr Hawkes.
17. Although there was some discussion with Mr Moore about the history and location of the gates in the planning applications, the Tribunal here was not concerned with this as his primary case was that the gates were not needed at all.

Are the Costs Recoverable?

18. The Tribunal was satisfied that the costs of installing the gates are recoverable under the residential leases in the following ways.
19. The Tribunal accepted the submission made on behalf of the Applicant that the costs fell within the definition of "managing, maintaining and upholding" the Amenity Lands in clause 3(b)(ii) of the residential leases (granted on the same terms). As was stated by the Supreme Court in ***Arnold v Britton & Ors*** [2015] UKSC 36¹, it was incumbent on the Tribunal to have regard to the intention of the parties when construing clauses in a lease. The Court concluded that clauses should not be

¹ at paragraphs 14–23

construed restrictively thereby effectively overruling the Court of Appeal decision in *Gilje & Ors v Charlgrove* [2001] EWCA Civ 1777. The Tribunal accepted the submission made that given these are long residential leases (125 years), it must have been the intention of the parties that unforeseeable threats to the estate and amenity lands should be dealt with under this clause. This would include anti-social and criminal behaviour, property damage, threats and intimidation of tenants and waste accumulation complained of by the Applicant.

20. Therefore, the Tribunal concluded that it should adopt a broad construction of clause 3(b)(ii) in the residential leases and found that the cost of installing the gates was recoverable as service charge costs under clause 3(A)(a).
21. Further, and in the alternative, the Tribunal found that the cost of installing the gates is also recoverable as relevant service charge expenditure under clause 3(b)(vii) as being ‘such other expenses as (the Applicant) may incur in the exercise of its objectives set out in the Memorandum of Association’. The Tribunal found that paragraphs 3(A), (F), (G) and (U) of the Applicant’s Memorandum of Association variously permitted it to recover the cost as part of its overall management of the estate and amenity lands generally.
22. In relation to the freehold properties, the Tribunal found that the cost of installing the gates is recoverable by the Applicant under clause 5(A)(b) and/or 5(A)(f) and/or 10(ii)(d) of the Transfers.

Need for the Gates?

23. From the overwhelming nature of the evidence before the Tribunal, it had little difficulty in finding that the estate, including the amenity land, was subject to the unauthorised parking, drug use and general anti-social behaviour complained of by the Applicant and this had been the position for several years. The Tribunal accepted the evidence of Mr Gosling, Mr Patmore, Mr Hawkes and Mr Samuel on this point and also that the

installation of the gates would have the effect of deterring these activities.

24. Therefore, in relation to the residential leases, the Tribunal found that the need and cost of installing the gates was reasonable under section 19 of the Act. In relation to the freehold properties, for the same reasons set out above, Tribunal Judge Mohabir (sitting alone as a judge of the County Court (District Judge)) makes a declaration in the same terms.

Tribunal Judge I Mohabir

2 September 2019

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

Appealing against the decisions made by the Judge in his/her capacity as a Judge of the County Court

5. Any application for permission to appeal must arrive at the tribunal offices in writing within 28 days after the date this decision is sent to the parties.
6. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.
7. If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in

either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down date.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.

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.

Declaratory Judgments

40.20 The court may make binding declarations whether or not any other remedy is claimed.