FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CQ/LIS/2020/0005**
HMCTS (paper, video, audio)	**:**	**V: SKYPEREMOTE**
Property	**:**	**1 – 81 Kenilworth Court Coventry CV3 6HZ**
Applicant	**:**	**Kenilworth Court (Coventry) Limited**
Representative	**:**	**JB Leitch Limited**
Respondents	**:**	**The Leaseholders of Kenilworth Court**
Type of Application	**:**	**An application under section 27A of the Landlord and Tenant Act 1985 for a determination of liability to pay and reasonableness of service charges.**
Tribunal Members	**:**	**V Ward BSc Hons FRICS** **Judge N Gravells**
Date of Decision	**:**	**18 June 2020**

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing which has been consented to by the parties. The form of remote hearing was Video (V: SKYPEREMOTE). A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined in a remote hearing. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Introduction

1. By an application received on 18 March 2020, the Applicant landlord of the Kenilworth Court development sought a determination of liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985. The Respondents are the leaseholders of the development.

2. The application related to urgent fire safety works including the replacement (where required) of flat and communal area doors, ancillary works to frames surrounding panels and separate parcel boxes.

3. Specifically, the Applicant landlord asked the Tribunal to determine the following questions:

    a) Are the costs for the changing of the doors, frames and surrounding joinery within the communal area payable via the service charge and are [those costs] reasonable?

    b) Are the costs for the changing of the doors, frames, parcel boxes and/or side panels to the individual flats payable via the service charge and are [those costs] reasonable?

4. By directions issued on 23 March 2020, the Applicant was instructed by 3 April 2020, to send the following documents to each Respondent leaseholder and the Tribunal:

    a) A copy of the application form and accompanying documents.
    b) A copy of the Directions of 23 March 2020.
    c) A statement in support of the application with particular reference to the relevant lease provisions. The statement should also include colour photographs of the development for context and examples of the works proposed.
    d) A copy of the Fire Risk Assessment report and any other relevant reports.
    e) Copies of any specifications and costings of the proposed works including tenders received.

5. The Directions invited any Respondent leaseholder who wished to oppose the application to notify the Tribunal, and also the Applicant, and also to advise if they required an oral hearing, by 24 April 2020.

6. The Directions also stated that if any of the Respondent leaseholders wished to apply for orders for the Limitation of Service Charges: Costs of proceedings under section 20c of the Landlord and Tenant Act 1985 and/or Limitation of Administration Charges: Costs of Proceedings under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, that Leaseholder should apply to the Tribunal with a copy of the application to the Applicant.

7. By way of a letter dated 2 April 2020, the Applicant confirmed that they had complied with the instruction in 4. above.

8. The Tribunal received a request for a hearing. Due to the current Covid-19 Public Health Emergency, the Tribunal arranged for this to be conducted via the Skype Video Platform.

9. Prior to the hearing, the Tribunal reviewed the documentation submitted by the parties and issued the following questions to the Applicant and Respondents (who had objected) for consideration at the hearing on 10 June 2020.

    i. Whether the costs for the following works would be recoverable from the leaseholders under the service charge provisions of their leases:

        a) The replacement of the doors, frames and surrounding joinery within the communal area;

        b) The replacement of the doors, frames, parcel boxes and/or side panels to the individual flats.

In connection with (b) above, the parties were referred to the decision of the Upper Tribunal in *Thierry Villes Fivaz v Marlborough Knightsbridge Management Ltd* [2020] UKUT 138 (LC).

ii. The Applicant a sought a determination that the costs for those works (based on the quotations from SSG Limited and NA Fair Electrical Services Limited) would be reasonable. However, the Tribunal considered it would be premature for the Tribunal to make such a determination at this stage due to the following:

a) The Applicant has confirmed that the statutory consultation procedure under sections 20 and 20ZA of the Landlord and Tenant Act 1985 will begin if the Tribunal determines that the costs of the works referred to in paragraph 1 above are recoverable under the service charge provisions of the leases;

b) That procedure necessarily involves obtaining estimates from any contractors proposed by the leaseholders;

c) Since other contractors may estimate lower costs than the existing quotations, the reasonableness of the existing quotations may be questioned.

The Hearing

10. A hearing was held on Wednesday 10 June 2020 by way of the Skype Video platform. Participants were as follows:

For the Applicants:

Simon Allison – Counsel
Katie Edwards – Solicitor of J B Leitch
Jonathan Astle – Rendall & Rittner Limited – managing agents.

Respondents:

Ingrid Buecheler Flat 63
Maria Cartagena, Flat 69 (on behalf of herself and Shadi Bokaee Flat 79 and Tim Boorer Flat 74)

Submissions of the Parties

11. The submissions of the parties both in writing and during the hearing were as follows.

The Applicant

12. On behalf of the Applicant, Mr Allison led the Tribunal, and those present, through the Applicant's submission. Mr Allison confirmed, that the Applicant is the freeholder and manager of the Property. The Property is comprised of 81 residential apartments with underground and external parking areas and has 10 floors. The exterior has been constructed with a concrete frame, together with concrete floors and staircases.

13. Rendall & Rittner Limited ("R&R") manage the Premises on behalf of the Applicant and are appointed as agents to collect the sums due under the Leases and carry out the management functions of the landlord in respect of maintenance of the Premises.

14. The Applicant has been made aware that works are required due to issues relating to the fire rating of the doors, frames and/or surrounding joinery within the communal areas (the "Communal Door Sets") and the doors, flames, letter boxes, parcel boxes/serving hatches and/or side panels to the individual flats (the "Flat Door Sets").

15. The Applicant instructed Worksafe Solutions Consultancy Limited ("Worksafe) to carry out a fire risk assessment for the Premises. Worksafe provided the Fire Risk Assessment dated 18 July 2019 (the "FRA"), which highlighted several issues with the Communal Door Sets and the Flat Door sets. The Applicant also instructed Salus (Building Control & Fire Safety Consultants) Ltd ("Salus") to carry out an inspection of the Property for the purpose of producing an action plan with priorities for the improvement of fire safety measures at the Property.

16. The Applicant explained that every fire door is required to act as a barrier to the passage of smoke and/or fire. Consequently, works are required to ensure that the common areas of the Property meet the requirements of the Regulatory Reform (Fire Safety) Order 2005 ("FSO"). The Applicant, therefore, proposes to carry out works to the Communal Door Sets and the Flat Door Sets to meet the action plan set out within the Salus Report and address the concerns specified within the FRA.

<u>The Works proposed by the Salus Report.</u>

The Communal Door Sets

17. The Salus Report was prepared following a site visit on 12 June 2019 and a meeting on 2 July 2019 with West Midlands Fire Service. The Report confirms:

"The doors accessing the staircases and the central core are the original doors which have recently been upgraded with smoke seals. Even with the upgrade these would not be considered adequate".

18. On behalf of the Applicant, Mr Astle explained that approximately 20% of the communal doors were damaged but, in any event, none were compliant. The Salus Report specifies that replacement of all doors on all levels to certified FD30s (Fire Door) offering at least 30-minute protection with self-closing mechanisms was required. Such doors were to be fitted by a competent person.

19. The Salus Report also required that the doors to the central core are changed to FD30s self-closing doors on every floor. Service routes are to be protected/fire stopped where they pass under the doors accessing the central core.

20. The Applicant wishes to carry out works to all Communal Door Sets to ensure that they meet adequate fire and smoke resistance, as recommended to FD30s.

The Entrances to the Individual Flats

21. The FRA confirms that the flat entrance doors should offer at least 30 minutes fire resistance and each have a self-close mechanism. The FRA confirms that "any replacement should meet the requirements set out in BS 476". BS 476 provides the British Standard for the minimum requirements for the prevention of the passage of smoke and fire. The Applicant has also been advised within the FRA that the flats entrance doors should, regardless of their age, be self-closing and fitted with a closing device. The general observations within the FRA also highlight a further major issue in that by the entrance doors, or within the wall between the flat and the communal corridor, there are metal flaps which contain parcel boxes/service hatches for deliveries. The FRA confirms that these parcel boxes lead directly into the flats and are not fire resisting and "therefore smoke from a fire in a flat may quickly spread to the communal escape route".

22. The Salus Report also states that:

"The fire resistance between the flats and common areas is not imperforate in that the entrance doors to each flat could not be classed as a robust, adequate fire door, as most are existing, but some doors have been changed and replaced with traditional external front doors that are UPVC and timber. All flats have access hatches, letter boxes and panelling/glazing that is not fire rated".

23. The action plan proposed by Salus recommended that the doors, frames, letter boxes and side panels be changed to allow for FD30s doors offering at least 30-minute protection with self-closing mechanisms (the same as the communal doors). The parcel boxes/service hatches should be made good to ensure at least 60 minutes of fire resistance between the flats and the corridors.

24. In order to achieve the level of fire resistance required, the Applicant wished to carry out works to all Flat Door Sets.

25. Mr Astle explained that following the works above, the Fire Evacuation policy for the Property would change from *Evacuation* to *Stay Put* in line with Fire Authority Guidance.

Pertinent clauses of the Leases and Service Charge Mechanism.

26. The Applicant states that they rely upon the whole of the Leases to their terms and effect but considers the pertinent terms are as below.

27. The Applicant's covenants

    Clause 4(3) provides:

    "That the Lessor will at all times during the term hereby granted maintain in good and substantial repair and condition (except as regards damage caused by or resulting from any act or default of the Lessee or the tenant or occupier of the demised premises) the external main walls (including therein the outer walls of the flat) the internal concrete walls (but not the plaster thereon) the main concrete floor (but not the wood block parquet or composition flooring) the girders foundations main hall staircases lifts landings and roof of the said Block and the pipes and wires and the water drainage gas and electricity services rubbish chutes televisions and radio aerial and booster apparatus and air extraction apparatus of the said Block (other than the pipes wires and services serving the flat alone) therein".

28. The Respondents' Covenants

    Clause 1 states that the Respondents are to pay:

    "...AND ALSO PAYING to the Lessors from time to - time such sum (hereinafter called "the maintenance payment") as shall be determined to be the maintenance payment under the provisions contained in the Fifth Schedule hereto the maintenance payment to be paid (subject to the provisions hereinafter contained) without any deduction on the annual day for payment of the rent first hereby reserved...and quarterly sums of such amount as may be determined by

the Lessor from time to time on the usual quarter days hereafter and so that when such annual maintenance payment falls due the Lessee shall be given credit for such initial and all such quarterly sums paid in advance and not previously taken into account".

Clause 2(1) provides for the Respondents to pay the service charge:

"2. AND the Lessee HEREBY COVENANTS with the Lessor that the Lessee will during the continuance of the term hereby granted: -

(1) Pay the said respectively yearly rents and other sums of money hereinbefore reserved and made payable at the time and in the manner at and in which the same are respectively herein before reserved and made payable without any deduction (except as aforesaid)"

29. The Demise

The First Schedule of the Leases provide a description of the demised premises to the Respondents:

"FIRST ALL THAT Flat known as Number X Kenilworth Court in the City of Coventry situated on the First floor of Point Block (herein referred to as "the Said Block") The Said Block is shown for the purpose of identification only and not by way of limitation or extension on the plan marked A annexed hereto and thereon edged blue The said Flat is for the purpose only shown on the plan annexed hereto marked B and thereon coloured red Together with the right at all times of the day and night to stand one private motor car only in the allotted position in the common garage space situated beneath the said Block for a period not exceeding forty eight hours".

28. In the opinion of the Applicant, it is clear from the terms of the Leases specified above that the Respondents are to pay service charge to the Applicant as per clause 2(1). The service charge provisions within the Leases provide that the service charge is to consist of the services as stated within the clause 4 which includes for the Applicant to "maintain in good and substantial repair and condition" the main walls, including the outer walls of the flats, the main hall, staircases and landings. The Applicant has been advised that the entrances to the individual flats and the communal doors are not adequate in resisting the spread of smoke and fire to current BS 746 testing standards.

29. The requirements as set out require the Applicant to carry out works as recommended by the FRA and the Salus Report. The Premises within the Applicant's responsibility are to be in "substantial repair and condition". This can

only be done by way of changing the doors and frames making good the lack of fire resisting qualities within the panels and parcel boxes/service hatches etc.

The Quotations received.

30. The Applicant had compiled a specification of works and sought quotes in respect of the works required. The Applicant requested that the quotes be provided in separate phases so that the costs can be split between differing areas requiring works. Quotes were received from SSG Limited and Oakleaf Doers and Windows.

31. Based upon the cheapest quote, being from SSG Limited, the Applicant has calculated the following sums which will be demanded from each leaseholder should the works he carried out. This has been split as follows:

a. Costs for all doors	£231,221.80	
Contribution per apartment	£2,854.59	
b. Costs for communal doors only	£120,881 .80	
Contribution per apartment	£1,492.37	
c. Costs for the apartment doors only parcel boxes)	£110,340.00	(incl
Contribution per apartment	£1362.22	

32. The Applicant had indicated before the hearing that a full section 20 consultation would be carried out. Hence the Tribunal's letter prior to the hearing, above. During the hearing, Mr Astle confirmed that the intention was to begin the consultation process as soon as the Tribunal had delivered its decision. For the benefit of the Respondents, Mr Allison briefly outlined the consultation process.

The Applicant's Conclusion

33. The Applicant confirmed that the works to the Communal Door Sets and/or Flat Door Sets will be carried out as soon as possible to comply with the FRA and the Salus Report.

34. The recommendations submitted within the FRA and the Salus Report are from professional advisors. The FRA and the Salus Report identify that the current issues increase the risk of the spread of smoke and fire.

35. In summary, Mr Allison invited the Tribunal to:

a) Determine whether the cost of the works to the Communal Door Sets can be charged back to the leaseholders by way of the service charge provisions contained with the lease?

b) Determine whether the cost of the works to the Flat Door Sets can be charged back to the leaseholders by way of the service charge provisions contained with the lease?

c) Confirm that the cost of the works adduced by the consultation procedure could be considered reasonable?

d) Confirm that the tender bid from SSG Limited would be a reasonable amount to demand as a payment on account as permitted by the terms of the lease?

The Respondents

36. Statements were received from the following Respondents:

a) Henrietta Radonjic (Flat 80)
b) Ingrid Buecheler (Flat 63)
c) Maria Cartagena (Flat 69), Shadi Bokaee (Flat 79) and Tim Boorer (Flat 74) (By way of a joint submission)
d) Beverley Samways
e) Martin and Sorina Millson

37. The Tribunal details the nature of the observation made by the Respondents both at the hearing and in writing, in italics, below. The Tribunal permitted the Applicant to make a statement in reply to the Respondents and finds it convenient to list their response beneath. As some of the queries related to management issues, Mr Astle provided many of the responses.

a) Henrietta Radonjic

Ms Radonjic raised queries regarding the quotes received by the Applicant, the expertise of the contractors proposed and their location. Ms Radonjic also claimed that local contractors specialising in fire door sets could provide a quotation and queries the tender process.

Mr Astle stated that a total of 6 contractors were approached including SSG Limited and Oakleaf Commercial Services. Ms Radonjic did not detail the contractors she proposed would be able to complete the Works or whether they could provide a quote. Ms Radonjic referred to other works completed or to be carried out to the building in respect of a fire alarm system upgrade,

vent works and previous work to, the soil stacks resulting in higher service charge payments for 2017/2018. These issues are outside the ambit of this application however it is confirmed that plans for installing a fire alarm and (potentially) a smoke extract system were underway.

Ms Radonjic requests additional time to obtain her own quotes and requests a full specification of works.

The specification of works provided to the contractors were the Salus report, the Fire Risk Assessment and the tender document in the form of the spread sheet prepared by R&R regarding the doors that require works was sent to the contractors. The tender document was passed by Salus as being appropriate.

It is further confirmed that consultation pursuant to section 20 of the Landlord and Tenant Act 1985 will be carried out after this matter has been determined by the Tribunal. This will allow Ms Radonjic, along with the other Respondents, the opportunity to nominate a contractor.

b) Ingrid Buecheler

Billing queries.

Ms Buecheler raised issues regarding her service charge payments in respect of alleged double billing and processing of payments, which were not necessarily relevant to this application, but in any event R&R will be arranging to meet with Ms Buecheler when lockdown restrictions, are lifted in this regard.

Colour photographs of the development.

The Applicant states these are provided within the reports.

Examples of the works proposed and what the new door sets would look like.

If the works proceed, the successful contractor will fit a sample door set in each case) so all Respondents can view what will provided.

Specification of works.

The Applicant states these are provided within the reports

Confirmation that the self-closure mechanism will allow for the doors to be opened fully to remove furniture etc.

The doors will be able to work efficiently with the self-closure mechanism. The compartmentation of the Premises and the inclusion of the fire doors with self-closers is- necessary.

Details of the specific cost of the door set to her property.

As the Tribunal are determining whether the cost of the door sets are an item of service charge expenditure the cost will be split as per the service charge proportion provided within the leases and not on an individual basis.

The FRA refers to Kenilworth Court (Battersea) Limited.

The Applicant attached an amended copy of the FRA as reference to Kenilworth Court (Battersea) Limited was a typographical error which has been corrected to reference the Applicant.

The relocation of the consumer units to the apartments' door sets with side panels.

The Applicant confirms that the relocation of the consumer units has been quoted at £700 per property. A copy of the quote received from N A Fair Electrical Services Limited was attached to the bundle. The relocation of the consumer units will be required for 60 apartment door sets.

Based upon the cheapest quote, being from SSG Limited and the N A Fair Electrical quote, the Applicant has recalculated the following sums which will be as follows:

a. Costs for all doors	£231,221.80	
Contribution for relocation of consumer unit	£42,600.00	
Contribution per apartment	£3,415.27	
b. Costs for communal doors only	£120,881 .80	
Contribution per apartment	£1,492.37	
c. Costs for the apartment doors only	£110,340.00	(incl
parcel boxes)		
Contribution for relocation of consumer unit	£42,600.00	
Contribution per apartment	£1,904.25	

c) A joint response from Maria Cartagena, Shadi Bokaee and Tim Boorer raised the following issues and the Applicant responded to each as follows:

A Section 20 consultation should be carried out.

This is noted by the Applicant who confirmed the consultation process will begin once a determination has been made as to whether the charges to be incurred are payable under the service charge provisions within the leases.

Other blocks within the development have not been included within the application.

These works concern this building only. The other low-rise blocks are not affected by the works to the flat and communal doors within the Premises.

The Salus Report is in draft format.

The Salus report is in draft form so that it can be amended if any further issues come to light at the Premises which requires amendment to the report. The report provided is the most recent received from Salus. This was confirmed at the hearing.

No evidence of the requests for quotes with the contractors has been provided.

The Applicant provided correspondence with the contractors.

The Respondents requests for details of this year and last year's budget and expenditure. A full breakdown is requested of all expenditure.

The Applicant provided the accounts for year ended 31 May 2018 and 2020 Financial Statement and stated that accounts for the year end 31 May 2019 are not yet completed but will be circulated to the Respondents once finalised.

Will a financial plan be proposed to assist leaseholders in making payment of these charges?

The Applicant stated that the leases do not allow for payments by way of instalment. However, the Applicant confirmed that payment arrangements will be considered upon request and on a case by case basis with each Respondent. There are no reserve funds for the Property as the Leases do not allow for the same.

Upgrades to all doors with smoke seals was carried out previously. These works are now inadequate.

The Applicant commented that those works concerned all doors in the corridors and those protecting the stair cases. The works were done in good faith at the time, but it has since come to light that the doors are still not certified even if the cold smoke seals had been installed correctly. The FRA confirms this and states that in many cases there are still significant gaps and several doors are warped

There has been an increase of service charge over the last few years compared with other properties in the area.

The Applicant. This is not relevant to the current application. Furthermore, no evidence comparisons were provided to allow the Applicant to consider and comment upon this.

The Joint Response requests input from the fire brigade.

It is confirmed that West Midlands Fire Service attended the Property and Salus amended their report after these site visits. The majority of the correspondence between R&R, Salus and West Midlands Fire was carried out in person on site.

The lack of a report in respect of an inspection of all individual doors.

A representative sample was taken against doors that are the same and were installed at the same time. This is a standard procedure and saves a huge amount of duplicated cost. Salus has further confirmed that following their inspection of the doors, they require replacement or upgrade to minimise the chance of spread of fire.

d) Beverley Samways

Previous upgrades to the communal doors and smoke seals.

The Applicant reiterated the information given above.

The increase of service charge payable as compared to other flats in the local area is high.

The Applicant repeats that no evidence of comparable charges was provided and, in any event, is not evidential.

The Respondent requests the fire service to do a safety assessment.

The Applicant again confirmed the involvement of West Midlands Fire Service as above.

Full compartmentation is requested.

Such works are impractical but also extremely expensive. The Applicant, working with Salus put forward the fire alarm and smoke vent proposal to West Midland Fire Service, which has been accepted as appropriate.

e) Martin and Sorina Millson

Confusion as to why the application has been made, these Respondents appear to be of the view that if works are required, they should be done.

The Applicant agrees that the works should be done but has made this application to ensure that the costs are payable via the service charge before incurring the same. The Applicant is the landlord but is also a residents' management company and therefore requires certainty of the costs to be incurred and wishes to be transparent by making this application.

The works will not be able to commence during current lockdown.

The Applicant confirms that after a determination has been received, the consultation process will begin. It. is hoped that by the time these processes have been completed, there would not be any delay in commencing works due to the lockdown restrictions potentially being reduced or lifted. This will need to be assessed further.

38. The relevant provisions of the Landlord and Tenant Act 1985 are as follows:

19 Limitation of service charges: reasonableness

(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 of subsequent charges or otherwise.

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contribution 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 by 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 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 in 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, 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, 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.

27A Liability to pay service charges: jurisdiction

(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 may be made 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 a 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)- (7) not relevant to this application

Decision and Reasons

39. The principal issue for determination is whether the replacement of doors (and associated joinery) in the block is covered by the service charge provisions of the lease – that is whether under the terms of the lease the Applicant is required to replace the doors and is entitled to include the costs in the service charge, which the Respondents are required to pay.

40. It is necessary to determine whether any distinction is to be drawn between (i) the 'communal door sets' (the double doors protecting the staircases and within the inner corridors and the doors providing access to the site office, the staff room, the bin chutes, the meter room and the car park) and (ii) the 'flat door sets' (the doors, the door frames, parcel boxes and/or side panels of the individual flats in the block).

41. The answer to those questions depends exclusively on the interpretation of the lease. It is important to emphasize that point because it appears from the low level of engagement in the current application by the leaseholders (only seven of the 80 leaseholders responded to the application and only four of those leaseholders were represented at the hearing) and from the observations of those who did engage with the application that the leaseholders would, subject to certain safeguards, be content for both the communal door sets and the flat door sets to be replaced and for the costs to be included in the service charge. The Tribunal would agree that that would be the most convenient way of addressing the issue but the question for the Tribunal is whether the lease allows for the issue to be addressed in that way.

42. Turning to the relevant provisions in the lease, clause 1 requires the lessees (the Respondent leaseholders) to pay to the lessor (the Applicant landlord) -

    from time to time such sum (hereinafter called 'the maintenance payment') as shall be determined to be the maintenance payment under the provisions contained in the Fifth Schedule [to the lease] …

43. According to the Fifth Schedule, the maintenance payment includes –

One eightieth part of the amount of the cost to the lessor during the year in question of complying with the lessors covenants contained in sub-paragraphs (3) (4) (5) (6) (7) and (8) of [clause] 4 [of the lease] …

44. Clause 4 of the lease provides, so far as relevant –

> The lessee herby covenants with the lessee –
> …
> (3) That the lessor will … maintain in good and substantial repair and condition … the external main walls (including therein the outer walls of the flat) the internal concrete walls (but not the plaster thereon) the main concrete floor (but not the wood block parquet or composition flooring) the girders foundations main hall staircases lifts landings and roof of [the block] and the pipes and wires and the water drainage gas and electricity services rubbish shuts television and radio aerial and booster apparatus and air extraction apparatus of [the block] (other than the pipes wires and services serving the flat alone) therein …

45. Mr Allison did not rely on any of the other sub-paragraphs of clause 4 and the Tribunal agrees that they do not assist.

46. The issue therefore is whether the replacement of the doors and associated joinery is covered by the terms of clause 4(3).

47. Mr Allison first addressed the question whether the replacement of the doors constituted 'maintenance in good and substantial repair and condition'. He submitted that that concept extended beyond mere repair and included the replacement of doors that were not necessarily in a state of disrepair, but which failed to meet modern fire resistance requirements. He relied on the observations of Lindsay J in *Credit Suisse v Beegas Nominees* [1994] 4 All ER 803 –

> Whilst I accept the inevitability of the conclusion of the Court of Appeal in *Post Office v Aquarius Properties Ltd* [1987] 1 All ER 1055 that one cannot have an existing obligation to repair unless and until there is disrepair, that reasoning does not apply to a covenant to keep (and put) into good and tenantable condition. One cannot sensibly proceed from 'no disrepair, ergo no need to repair' to 'no disrepair, ergo no need to put or keep in the required condition'. Leaving aside cases, such as this, where there is special provision for there to have been prior knowledge or notice in the covenantor, all that is needed, in general terms, to trigger a need for activity under an obligation to keep in (and put into) a given condition is that the subject matter is out of that condition.

48. Lindsay J identified the condition as being –

[S]uch condition as, having regard to the age, character and locality of the property, would make it reasonably fit for the occupation of a reasonably minded tenant ….

49. By reference to that test the Tribunal is satisfied that in principle the 'maintenance in good and substantial repair and condition' of the doors would include the replacement of doors (and associated joinery) to meet modern fire resistance requirements.

50. Mr Allison then addressed the second issue as to whether the covenant in clause 4(3) extends to (i) the communal door sets and (ii) the individual flat door sets.

51. He submitted that the communal door sets were covered by the composite description 'main hall staircases … landings' in clause 4(3) and the Tribunal determines that that is so.

52. However, it is far from clear that the covenant in clause 4(3) also extends to the individual flat door sets; and Mr Allison did not seek to argue vigorously that it does so extend. He submitted that the lease as a whole should be interpreted so far as possible to avoid gaps in the combined repair and maintenance responsibilities of the parties. However, he acknowledged (i) that the individual flat doors were not obviously included in the subject matter of clause 4(3); and (ii) that the lessee's repair and maintenance covenant in clause 2(6) of the lease did not appear in its terms to include the repair and maintenance of the flat door. Nor did the minimal description of the flat (the 'demised premises') in the First Schedule to the lease provide any assistance.

53. The Tribunal referred to the decision of the Upper Tribunal in *Thierry Gilles Fivaz v Marlborough Knightsbridge Management Ltd* [2020] UKUT 0138 (LC). In that case the Tribunal considered the 'status' of the entrance door of a flat in the context of an alleged breach by the leaseholder of a covenant against the removal of landlord's fixtures. Citing the decision of the House of Lords in *Elitestone Ltd v Morris* [1997] 1 WLR 687, the Tribunal found that the First-tier Tribunal had failed to consider whether the entrance door was neither a chattel nor a (landlord's) fixture but rather was part and parcel of the land itself.

54. Counsel for the leaseholder had argued –

An entrance door is, by its very nature, an integral part and parcel of the flat it serves. No flat within a block is built or complete without an entrance door; the door is self-evidently a fundamental element in its construction. A unit is not, in any meaningful sense, a flat without a front door. A front door is not added (by way of afterthought) as 'an accessory' to a flat; it goes with, and is part of the

essence of, the flat itself. Without a front door, the accommodation is not self-contained and enclosed; it is not a separate set of premises (an essential characteristic of a flat). A front door - which provides security and privacy to the owner - is essential to the use of the land as residential premises. A reasonable person does not conceive or speak of a flat, or a block of flats, if the unit(s) lack(s) front doors.

55. HH Judge Stuart Bridge observed –

> It is important to remember that the demised premises are not the building (the block of flats) but the tenant's individual flat. Each lease is a demise of one flat only, albeit with ancillary rights granted over the building as a whole. In that context, the entrance door to the flat assumes a far greater significance, and while the door may still not be part of the structure of the flat, the absence of a door would derogate significantly from the grant of the flat. Moreover, to paraphrase Atkin LJ [in *Boswell v Crucible Steel Ltd* [1925] 1 KB 119], the doors had been made part of the flat itself in the course of its construction.

56. In the light of the above observations and in the absence of any express allocation in the leases of the repair and maintenance obligation in relation to the individual flat doors, the Tribunal determines that, if only by default, that obligation resides with the leaseholders of the flats.

57. In summary, therefore, the Tribunal determines as follows.

58. That the replacement of the communal door sets is covered by the Applicant's covenant in clause 4(3) of the lease and that the Respondents are liable to contribute to the costs of those works through the service charge;

59. That the replacement of the individual flat door sets is not covered by the Applicant's covenant in clause 4(3) of the lease and that the Respondents are not liable to contribute to the costs of those works through the service charges.

60. If carried out correctly, the consultation requirements contained within section 20 of the Landlord and Tenant Act 1985 and the Service Charge (Consultation Requirements) (England) Regulations 2003 should produce a quotation for works that could be considered reasonable by the Tribunal. In addition, the process should allay many of the concerns raised by the Respondents; it would enable Respondents to engage with Applicant in respect of the specification and the contractors invited to tender.

61. The Tribunal confirms that the tender bid from SSG Limited would be a reasonable amount to demand as a payment on account *as permitted by the terms of the lease*.

62. Although the Tribunal has determined that the replacement of the flat doors cannot be carried out under the service charge provisions of the leases, there is no apparent reason why the work should be not arranged and co-ordinated by the Applicant landlord as a matter of separate contract between the Applicant and the Respondents. There seemed to be support for such an approach from those Respondent leaseholders who actively participated in the current application and such support might be implied from the lack of participation of the other leaseholders.

63. The Tribunal did not receive any applications for Orders for the Limitation of Service Charges: Costs of proceedings under section 20c of the Landlord and Tenant Act 1985 or Limitation of Administration Charges: Costs of Proceedings under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

APPEAL

64. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Name: Vernon Ward Date: 18 June 2020