



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

<b>Case Reference</b>	:	CHI/29UN/LIS/2020/0047
<b>Property</b>	:	Northumberland Court, Northumberland Avenue, Margate CT9 3BS
<b>Applicant</b>	:	Mark Blooman, Manager
<b>Representative</b>	:	
<b>Respondents</b>	:	The long under-lessees and head leaseholder
<b>Representative</b>	:	-
<b>Type of Application</b>	:	Determination of Service Charges section 27A of the Landlord and Tenant Act 1985
<b>Tribunal Members</b>	:	Judge Tildesley OBE Mr D Banfield FRICS
<b>Date and venue of Hearing</b>	:	Determination on the papers
<b>Date of Decision</b>	:	8 December 2020

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**DECISION**

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## **Summary of Decision**

1. The Tribunal determines a service charge on account of £217,235.00 for the period 1 July 2020 to 30 June 2021.

## **The Proceedings**

2. The Applicant tribunal-appointed manager seeks a determination, pursuant to section 27A Landlord and Tenant Act 1985 that the lessees should be required to pay on account service charge for the year 1 July 2020 to 30 June 2021 in the sum of £217,235.00 including repairs and maintenance budgeted at £160,500.00 inclusive of professional fees.
3. On 22 September 2020 the Tribunal required the Applicant to send copies of the application and directions to the under lessees and head leaseholder. On 26 September 2020 the Applicant confirmed that he had notified the under-lessees and head leaseholder of the application and directions.
4. The Tribunal considered that the Application was likely to be suitable for determination on the papers alone without an oral hearing unless a party objected in writing within 28 days. The Tribunal received no objections.
5. The Tribunal directed the Respondents to complete a pro-forma indicating whether they agreed or disagreed with the Application, and if they disagreed to provide a statement of case setting out grounds of objection. The Tribunal stated that if a Respondent did not return the pro-forma it would be assumed that the Respondent agreed with the Application.
6. The Tribunal gave the Applicant a right of reply and required him to provide an electronic bundle of documents by 16 November 2020. Judge Tildesley reviewed the hearing bundle and decided that the Application was still suitable to be determined on the papers. Only two Respondents had objected to the Application and their objections were capable of being considered without evidence in person. The Tribunal would also consist of members who were fully conversant with the issues raised in previous proceedings and with the specific challenges posed by the property's construction.

## **Background**

7. The freehold of the property is owned by Northumberland Court (2008) Limited which is registered at HM Land Registry under title number K21230. The Tribunal understands that the members of the Company comprise 26 under lessees of the flats in the building.

8. Northumberland Court Residents (Cliftonville) Limited (“The Residents’ Company”), holds a head lease of the property for a term of 999 years from 25 December 1950.
9. The Residents’ Company has granted under leases for terms of 999 years less one day from 25 December 1950 to the owners of the flats<sup>1</sup>. Under the terms of those leases, the Residents’ Company is required to insure the property, to keep the property in a good state of repair and decoration, to keep the hall stairs, landings and passages properly carpeted and cleaned and keep the lifts in good order. In return for the services the leaseholders are required to contribute to the costs of the Residents’ Company by way of a service charge.
10. The property comprises a former hotel constructed in the 1920’s which was later extended and converted into a block of flats. It is located overlooking the sea on a corner plot at the junction of Palm Bay Avenue, Northumberland Avenue and Beresford Gardens. To the rear is a block of garages accessed from Beresford Gardens.
11. The property incorporates the main four storey block containing the entrance hall, a three-storey section known as the annexe facing Beresford Gardens partly over a vehicular entrance (the underpass) together with single storey areas. The various roofs are flat and whilst most originally had asphalt finishes some have been overlaid with felt.
12. The elevations are largely brick faced with balconies at three levels on the main block. The balconies and some other areas are smooth rendered with a painted finish. The brickwork to the annexe section has been painted. The majority of windows appear to be replacement double glazed units.
13. There have been recent proceedings in connection with the property. On 25 April 2019 the Tribunal issued a summary decision determining the interim service charge for the year ended 30 June 2019 at £192,230 which was followed by a fully reasoned decision on 8 May 2019 (case ref. CHI/29UN/LIS/2018/0058).
14. The Tribunal in its decision recorded that the building required substantial investment to prevent further deterioration to the fabric of the building, caused by its construction and exposed position overlooking the Thames Estuary and North Sea. The Tribunal described that since 1988 the directors of the Residents’ Company had commissioned ten reports on the condition of the property which had highlighted priority works to be carried out but the directors had not acted on those reports. The Tribunal highlighted that budgets had been prepared during those years but there had

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<sup>1</sup> The under lease for Flat 12 is for 99 years less one day from 31 May 1961

been ongoing arrears which meant there was not the funding for the intended works. The difficulties over funding had been compounded because the terms of the underleases did not allow the Residents' Company to maintain reserves.

15. On 27 August 2019 the Tribunal appointed Mr Mark Blooman MRICS of B2 Chartered Surveyors of 9/27 The Broadway, London N8 8DR as Manager of the Property for a period of two years in accordance with section 24(1) of the Landlord and Tenant Act 1987.
16. The Tribunal decided it was just and convenient to make an Order under section 24(1) of the 1987 Act because it considered the property to be a complex building which had been extended and converted to residential accommodation since its construction as an hotel in the 1930's. As far back as 1988 severe cracks appeared in the external structure which were investigated by structural engineers who made various recommendations. In 2013 Peter Holliday and Associates identified high priority works (action now) for the external structure, some of which remained to be carried out. There have been subsequent reports of structural engineers and building surveyors emphasising the urgency of works to the roof, steel frame, and the concrete and external render. The planned maintenance schedule prepared for the Board in 2017 recommended a spend of about £840K over 10 years (2018 -2028) to bring the building back into repair.
17. Further the Tribunal decided that the challenges posed by the current disrepair of the building were magnified by the high service charge arrears compounded by the problems posed by serial non-payers and genuine cases of hardship, and by the factional conflict and mistrust that existed within the leaseholder community.
18. Finally the Tribunal found that the current Board was ill-equipped to deal with the immense challenges that prevailed at Northumberland Court.
19. On 25 February 2020 the Tribunal determined a service charge on account of £155,000.00 (£100,000 for repairs and maintenance + £55,000 for standing items) for 2019/2020.

### **The Applicant's Case**

20. The Applicant requested the Tribunal to confirm a budget of £217,235.00 as the service charge for the year ended 30 June 2021.
21. The Applicant provided the Respondents with the budget under a covering letter dated 30 July 2020.

22. The proposed budget is set out in the table below.

<b>Expenditure Item</b>	<b>Amount (£)</b>	<b>Explanation</b>
Accountancy	720.00	Cost comparable with FTT approved budget for year ended 30 June 2020.
Management Fees	24,000.00	Fee set by FTT inclusive of VAT in decision of 27 August 2019.
Buildings Insurance	20,000.00	An additional cost of £1,862.29 over and above the current policy cost of £18,814.71 due to a new claim that had been made in respect of Flat D.
Lift Insurance	615.00	Cost comparable with FTT approved budget for year ended 30 June 2020.
Cleaning	4,000.00	An increase of £500.00 for a new cleaner on the cost approved by FTT in respect of year ended 30 June 2020.
Communal Electricity	2,000.00	Cost comparable with FIT approved budget for year ended 30 June 2020.
Gardening	4,000.00	An increase of £1,000.00 for a new cleaner on the cost approved by FTT in respect of year ended 30 June 2020.
Regulatory Testing	1,400.00	Cost comparable with FTT approved budget for year ended 30 June 2020.
<b>Total (Excluding Repair and Maintenance)</b>	<b>56,735.00</b>	Cost comparable with FTT approved budget of £55,000 for year ended

		30 June 2020
Repair and Maintenance	160,500.00	See [23-24] below. The FTT approved budget was £100,000 for year ended 30 June 2020
<b>Total Budget</b>	<b>217,235.00</b>	The FTT approved budget was £155,000 for year ended 30 June 2020.

23. The Applicant explained that in respect of the repairs and maintenance budget he had treated repairs regarding water penetration as a priority because it was affecting many flats and some flats were not being occupied at the moment.
24. The repairs and maintenance budget of £160,500.00 was broken down as follows:
- Works to underpass and annexe (Inc VAT and fees): £13,000.00.
  - Repairs re water penetration (inc VAT and fees): £97,500.00.
  - General repairs and maintenance (Inc VAT and fees): £50,000.00.
25. At the hearing in February 2020 the Applicant questioned the conclusions of the McFarlane report which recommended a proprietary solution to the potential disrepair of the concrete and steel structure including future monitoring of the property by McFarlane. The Applicant considered the solution proposed by McFarlane inappropriate and expensive and instead advocated an interpretative approach for the concrete repairs employing techniques to arrest corrosion and to allow deferment of repairs over time at a lower cost than the proposed proprietary solution. The Applicant said at the previous hearing that in order for him to take forward his preferred solution he would need to carry out a survey of the concrete and steel structure.
26. The Applicant instructed Corrosion Engineering Solutions (CES) to undertake a Steel Frame Corrosion Assessment of the building. CES' Assessment is dated 12 June 2020 [85-134] and recommended at [125]:

- Although a detailed forensic assessment was not envisaged, the provisions/attendances from the client allowed a relatively good coverage of testing and inspection, which has allowed a diagnosis within reasonable confidence levels.
  - The columns of the building, and the beams of the western extension are being affected by Regent Street Disease and significant aesthetic and structural degradation can be expected within 10 years if there is no intervention.
  - Due to the nature of the building and the advanced state of corrosion, the only intervention that is likely to be effective is an “Impressed Current CP system”.
  - The CP system should cover the columns of the whole building, and also the beams of the western extension.
  - The CP system can be designed as one but installed in a phased/modular manner to spread the cost. The first phase should be the sides of the two northern facing columns which remain in contact with the masonry.
  - The cementitious re-pointing is likely to be having a detrimental effect on the fabric of the building and its removal should be considered. That exercise will have an impact on the cost of CP as extensive re-pointing is required where the anodes, cables and sensors are buried in the masonry joints.
  - The defects to the balconies appear to be mainly visual and the result of multiple low quality repairs and paint coatings. Any future repairs should be carefully considered and coordinated, and should be carried out in accordance with BS EN 1504.
27. Following receipt of the Assessment the Applicant prepared a five year maintenance plan which was circulated to the Respondents on 4 August 2020. The Applicant stated that the pricing within the plan was based on 2020 prices with no allowance for inflation.
28. The Applicant explained that the defects identified and works required in the maintenance plan have been suitably considered from a constructional perspective and that wherever possible works have been phased or deferred to allow for minimisation of cash flow.

29. The Applicant stated that annual inspection and review would be required to maintain appropriate prioritisation of the repairs identified, and that the plan would not extend beyond five years.
30. The Applicant said that there were many elements of the building that were in need of maintenance. Further the Applicant emphasised that it was important to focus the repairs on those matters that provided immediate structural security, protection from wind and rain, health and safety and accessibility in order to mitigate the effect on cash flow to achieve the programmed repair requirements.
31. The Applicant pointed out that there were also consequential repairs which arose out of a failure of the structure and exterior fabric causing damage to other parts of the property that would ordinarily fall outside of the landlord's repairing obligations
32. The five year plan identified repairs to seven main elements of the building: main roof coverings (£162K); secondary roof coverings (£78K); balconies (£12K); main walls (£109.45), internal repairs (£30K); structure steel frame (£130K), and roads and drains (£15K)<sup>2</sup>.
33. The five year plan identified a projected budget of £172,326.60 for 2020/21 in respect of planned and cyclical maintenance which was £12,000 more than the proposed service charge budget for 2020/21. The figure of £172,326.60 included property management costs for cleaning the common parts, gardening and services, and a sinking fund payment to balance the budget.
34. The Applicant explained that the service charge budget of £217,235.00 would be funded first by a transfer from cash reserves of £40,000.00 and then by an interim service charge of £177,235.00.

### **The Respondents' submissions**

35. Three Respondents completed the pro-forma. The leaseholders of Flats 27 and 36 disagreed with the application. The Resident's Company in its capacity of head leaseholder agreed with the Application. The Tribunal also received an email dated 14 October 2020 from the leaseholder of Flat 14 who was complaining about the lack of progress with proposed works to the building.
36. Mr Abbott of Flat 27 was the only leaseholder who made substantive objections to the Application.

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<sup>2</sup> The figures in brackets represent the total spend over 5 years.



37. Mr Abbott pointed out that since the last Tribunal decision in February 2020 the Applicant had collected the majority of owed service charges from the residents and it was, therefore, no longer the case that works could not be undertaken due to a lack of funds. Mr Abbott lamented on the lack of progress with works to the underpass and other proposed works.
38. Mr Abbott said that he had experienced unexpected reductions in disposable income because of the Pandemic. Mr Abbott asserted that if the Applicant could overcome the various procurement difficulties associated with construction works there was sufficient money to allow the Applicant to progress the necessary works. Mr Abbott stated that if this was done it would leave him and other residents with some additional disposable income which would be most welcome in these unchartered and difficult circumstances.
39. Mr Abbott submitted that the service charge should be fixed at the level as determined by the Tribunal for 2019/2020 (£155,000.00). Mr Abbott considered £155,000.00 to be a very full figure and would doubtless continue to provide more than enough funds for all the necessary works which could conceivably be undertaken in the coming year.
40. Mr Abbott concluded by asserting that there was an obligation upon the Applicant to take into account the financial position of leaseholders when determining service charges including the impact of the global Pandemic on their finances.

### **Consideration**

41. The dispute in this case turns on the reasonableness of the service charge on account of £217,235.00 for the period 1 July 2020 to 30 June 2021.
42. Under the terms of the Management Order dated 27 August 2020 the Applicant is authorised to prepare an annual service charge budget with an accounting year 1 July to 30 June and make provision for interim payment in advance. The Applicant is also given specific authority under the Order to demand payments in advance and balancing payments at the end of the accounting year, to establish a sinking fund to meet the Landlord's obligations under the lease and to allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund.
43. The test for the reasonableness of on account costs is governed by sub section 19(2) of the 1985 Act which provides that

“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”.

44. The language of subsection 19(2) suggests that the statutory ceiling applies at the time the leaseholder’s liability arises. If, at that date, the on-account payment is greater than a reasonable sum, the leaseholder’s contractual obligation is to pay only the lesser reasonable sum<sup>3</sup>. Under sub-section 19(2) the Tribunal is concerned only with the reasonableness of the proposed amount.
45. In the Upper Tribunal decision of *Charles Knapper and others v Martin Francis and Rebekah Francis [2017] UKUT 3 LC Para 30*. Martin Rodger QC Deputy Chamber President indicated:
- “In principle it seems to me that the FTT was correct in disregarding matters which became known only after the appellants’ contractual liability arose. Those facts did not turn what had been a reasonable sum into an unreasonable sum. The question of what sum ought reasonably to be paid on a particular date, or ought reasonably to have been paid at an earlier date, necessarily depends on circumstances in existence at that date, and should not vary depending on the point in time at which the question is asked”.
46. The Tribunal finds that the Applicant in arriving at the costs of £56,735 for the expenditure heads excluding repairs and maintenance had based them on the approved budget for the previous year. Further the Tribunal is satisfied that the Applicant gave a plausible explanation for increases from the 2019/2020 budget for specific expenditure heads, such as insurance.
47. The Tribunal considers that the Applicant’s five year maintenance plan was directed at the appropriate repairing priorities for the building and that the Applicant had applied his expertise as a building surveyor to provide realistic costs for the proposed repairs. Further the Tribunal holds that the Applicant had had regard to the leaseholders’ abilities to pay the increased service charge by phasing the works over time.
48. The Tribunal finds that the five year maintenance supplied a firm and rational foundation for the proposed budget of £160,500.00 for repairs and maintenance.

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<sup>3</sup> UT Decision in *Charles Knapper and others v Martin Francis and Rebekah Francis [2017] UKUT 3 LC Para 30*.

49. The Tribunal observes that Mr Abbott who was the only leaseholder to make substantive submissions did not challenge the Applicant's rationale for the setting the amount of the budgets for the individual expenditure heads. Mr Abbott's challenge focussed on whether the Applicant had taken proper regard of the leaseholders' abilities to pay particularly in the challenging environment of the Pandemic.
50. The Tribunal places weight on the fact that none of the leaseholders except for the leaseholders of Flats 17 and 36 objected to the Application. The Tribunal considers this significant in view of the opposition from a substantial number of leaseholders in respect of the previous application to determine the on account service charge for 2019/20.
51. The Tribunal notes that the Applicant intended to use £40,000.00 of reserves to fund part of the proposed budget of £217,235.00. This meant that the leaseholders' total contribution to the 2020/21 budget would be £177,235.00 which was comparable to their total contribution of £155,000.00 in 2019/20. The Tribunal considers the Applicant's use of £40,000.00 cash reserves demonstrated that he was mindful of the leaseholders' financial capacities to meet the service charge liability for 2020/21 which in turn addressed Mr Abbott's objection to the amount of the budget. The Tribunal also records that the Applicant decided to deal with the Application himself in order to keep the costs down for the benefit of the leaseholders.
52. The Tribunal observes that the principal difference between the 2019/20 and 2020/21 budgets was the amount allocated to repairs and maintenance, £100,000.00 as against £160,500.00. The Tribunal in February 2020 had significantly reduced the budget allocation for repairs and maintenance in the 2019/20 service charge from £240,000.00 to £100,000.00. One reason for the significant reduction was because the Applicant himself expressed doubts about the reliability of the costs of the proposed works that he had inherited on his appointment as manager in August 2019. The Tribunal considers that this situation does not apply to the 2020/21 budget. In the Tribunal's view, the Applicant having been in post for over 12 months is now better informed of the problems facing the building and that the costs put forward for the repairs are realistic.
53. The Tribunal is satisfied that the Applicant's rationale for the proposed budget of £217,235.00 for the 2020/21 service charge is sound and based on his thorough understanding of the challenges posed by the building in its current state of disrepair. The Tribunal finds that the budget of £217,235.00 is no greater amount than is reasonable.

## **Decision**

54. The Tribunal determines a service charge on account of £217,235.00 for the period 1 July 2020 to 30 June 2021.
55. The Tribunal will send a copy of the decision to the Applicant and the two leaseholders and head leaseholder who responded to the Application. The Tribunal asks the Applicant to notify the leaseholders who are no longer Respondents of the decision, and advise the Tribunal that he has done so.

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making application by email to the First-tier Tribunal at the Regional office at Havant ([rpsouthern@gov.uk](mailto:rpsouthern@gov.uk)).
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.