



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

Case reference : LON/00AN/LSC/2021/0016

Property : Flats 2-8 & Two Commercial Units,
309-311 New Kings Road, London
SW6 4RF

Applicants : Residential Leaseholders in the building

Representative : In person

Respondents : Mr and Mrs Wallis

Representative : In person

Type of application : Payability and reasonableness of service
charges

Tribunal : Jim Shepherd
Kevin Ridgeway MRICS

Date of Determination : 21st September 2021

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice Cloud Video Platform with all participants joining from outside the court. A face to face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in two bundles, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions

1. In this case Sarah Ibrahim and other leaseholders at 311 New Kings Road London SW64RF (the building) are seeking a determination as to the payability and reasonableness of service charges sought by the respondent freeholders Mr and Mrs Wallis.
2. The building consists of seven flats and two commercial units in a converted building. The two commercial units are on the ground floor and the seven flats are above.
3. The service charges challenged in the application are for the years 2016 - 2019 inclusive. The other leaseholders involved in the application are Elener Chambers of flat 3, Cara Howards of flat 4, Corelia Orrewing of flat 5, Neha Sood of flat 6, Philip Jones of flat 7 and Emily Jenner of flat 8. The tribunal is grateful for the assistance of Miss Ibrahim who lives at flat two and acted as the lead leaseholder.

The sums challenged

Restaurant works

4. The leaseholders challenge expenditure incurred in 2018/2019 in relation to repairs to the restaurant on the ground floor. The cost of the repair to the restaurant was £7680. It is said that the owner of the restaurant advised that the leak was never fixed and the work was never finished. In addition, he was told that insurance would be paying for the works required. The leaseholders also challenge the reasonableness of these works.

Managing agents' specific fees

5. The leaseholders challenge a charge of £6000 made by Urang the managing agents for preparation for major works that did not proceed. They also challenge surveyor's fees of £2016.

Insurance and management fees

6. For the period 2015 to 2019 the leaseholders challenge generally the cost of insurance and the management fee cost. They say in their application that the management fee increased by 45% . They also say that the insurance costs are very high in their opinion.

Flat repairs

7. The leaseholders also challenge the cost of repairs to two of the flats (flat 3 and 5) which were carried out in 2016. The total cost was £4140. The leaseholders say that they were not served with any form of section 20 notice in advance of the repairs and they do not consider the cost to be reasonable.

Reserve fund

8. The leaseholders also challenged the management of the reserve fund by the freeholder over the period 2015 to 2019. It was said that there was £10,768 in the reserve fund at the start of the period. The sum of £24,000 was paid during the period 2015 to 2018 yet at the year end the reserve fund for 2018 was only £5655.44 .

General challenges

9. The leaseholders argue that the property has been seriously mismanaged for over a decade with costs charged being wholly unreasonable and sums not accounted for or simply mislaid without reasonable explanation. They also state that under clause 2(6) of the lease the freeholder can only demand payment after expenditure has been incurred.

The freeholders' response to the challenges

10. In the Scott schedule the freeholders state the following in response to the various challenges:

Restaurant works

11. In relation to the repairs to the restaurant they say that these were emergency plumbing repairs to the drains that serve the whole property. They assert wrongly that in the case of emergency works no section 20 notice was required. It was apparent that no application for dispensation had been made by the freeholder pursuant to section 20ZA of the Landlord and Tenant Act 1985.

Managing agent's specific fees

12. As regards the major works preliminary cost of £6000 which the managing agents Urang sought to recover the freeholders state that charge was central to their dispute with the managing agents which eventually led to the

termination of the contract with Urang. Similarly, the surveyor's cost of £2016 formed part of the same dispute.

13. A detailed description of the dispute between the freeholder and the former managing agents, Urang is given in the freeholder's written submissions. Essentially Urang had prepared estimates and schedules of works which the freeholder had not approved. The complaint from the freeholder was that the managing agent did not comply with the architect's advice on how to present the tender. This was why the major works were not commenced. Pausing here, it is somewhat perplexing that in these circumstances where the freeholders themselves have fallen out with their agent how they can justify seeking abortive costs from the leaseholders.

Insurance and management fees

14. In terms of the allegation that the insurance costs for the period 2015 - 2019 were excessive the freeholder states that there is no comparable evidence provided by the leaseholders that the insurance costs were excessive and that the premiums each year were based on previous claims for the property.
15. As regards the claim that the management fees had increased significantly over the period 2015 to 2019 by a proportion of something like 45% the freeholder states that the building is a complicated property with two commercial units and seven flats each flat only pays 1/11 of the total sum per annum and the individual sum of £364 per annum was not unreasonable for the management of the building.

Flat repairs

16. In relation to the repairs to flats 3 and 5 at a cost of £4140 the freeholders say that flat 3 was suffering from water damage and the works were urgent. They say that the cost of the work was 'very close' to the section 20 limit so the managing agents felt it was not worth incurring extra administrative expenses to deal with consultation. Again, it was clear that no application had been made for dispensation either by the freeholder or the managing agents.

Reserve fund

17. In the Scott schedule the freeholders state that they have provided information regarding the balance of the reserve fund and expenditure during the relevant years in the annual accounts.

18. They state that it is standard practice amongst managing agents to build up a reserve fund for dealing with maintenance and repairs. They accept that since the appointment of Wilmot as managing agents it had become clear that the leases on this property and the adjacent property at 313 New Kings Rd were defective in that they they did not allow provision for building up funds in advance for dealing with repairs and maintenance. They state therefore that because the leaseholders had challenged the ability to raise a reserve fund under the lease, they were moving towards abolishing the reserve fund.

The lease provisions

19. Clause 2 (6) states the following:

At all times during the said term (upon proper evidence of expenditure being provided by the lessor) to pay to the lessor on demand 1/11 of the reasonable

cost including surveyors fees and legal costs and any other expenditure reasonably incurred including administration expenses by the lessor in carrying out in particular its obligations under clause 3 (4) (5) and (6) hereof but also any other obligations imposed on the lessor under the terms of this lease and also any expenses incurred in employing agents to collect the ground rent payable hereunder and to permit the lessor its servants or agents at reasonable times of the day upon prior appointment to enter upon the demised premises for the purpose of carrying out its said obligations causing nevertheless as little disturbance as possible and making good all damage caused.

20. Clause 3 (4) of the lease states the following:

That the lessor will also often as it is necessary rebuild repair cleanse point maintain support and replace the exterior of the said property and the main structure roof and footings of the said property and all party walls party structures gutters wires drains pipes watercourses cisterns tanks stop cocks gas electricity and water supply installations entrance hall passageways pathways and other easements or appurtenances used or to be used or capable of being used in common by the occupier of the demised premises and the other flats.

21. Clause 3(5) of the lease requires the freeholder to *ensure and keep insured the said property in the full value thereof against loss or damage etc*

The hearing

22. Mr Wallis represented himself as did Ms Ibrahim. Mr Wallace provided some useful background to the building saying that his father was an architect and he had designed and built the building. Urang had been employed from 2015.

They identified that major works were needed. The works in the view of the freeholders were excessive and Urang would not reconfigure the scheme and there was a falling out. Therefore, the major works were not carried out despite the fact Urang claimed that they had incurred fees of £6000. Mr Wallace's father was in his mid-90s and is not well therefore matters were not properly dealt with.

23. Both sides made submissions in relation to the items identified above in dispute.

Determination

24. These disputed items can be dealt with in short order:

Restaurant repairs

25. The sum of £2750 is allowed for these repairs. This sum is limited to £250 per unit because no section 20 notice was served.

Repairs to flats 3 and 5

26. The sum of 2750 is allowed for these repairs. The sum is limited to £250 per unit because no section 20 notice was served.

Managing agents' specific fees

27. The sums of £6000 and £2016 are disallowed. It would not be fair for the leaseholders to bear the cost of wasted fees which resulted from a dispute between the managing agents and the freeholder.

Insurance costs

28. The tribunal were provided with no comparables and the leaseholders failed to satisfy the tribunal that the insurance costs were excessive accordingly these charges are payable in full.

Management fees

29. Again, the tribunal were provided with no comparables and the leaseholders failed to satisfy the tribunal that these costs were excessive, accordingly the management charges are payable in full

The reserve fund

30. The tribunal regrets that a decision has been made to abandon the reserve fund as generally a reserve fund is a sensible and prudent mechanism for managing unforeseen expenditure. It would be better in the Tribunal's opinion if the lease was modified to allow for a reserve fund. The determination of the tribunal in regard to the reserve fund is limited save that the tribunal determines that the use of reserve fund monies to cover the arrears of service charge owed by the restaurant unit is not an acceptable practice.

Late major works challenge

31. The leaseholders raised an issue of flat roof costs and whether they were reasonable. The tribunal were not provided with sufficient information in order to determine this challenge.

The payability of prospective service charges

32. The leaseholders sought to argue that there was no ability under the lease to recover costs which had not already been incurred. The tribunal viewed this as a general challenge which did not form part of the specific challenges made by the leaseholders in the Scott schedule. The tribunal is unwilling to make a determination with regard to this question. Any decision made by the tribunal about the service charges and whether prospective charges are due would be a significant decision particularly in relation to previously recovered sums. The tribunal considers that if the leaseholders want this challenge to be dealt with they would need to make a separate application enabling both sides to obtain legal advice in relation to the interpretation of the lease.

Section 20 C Landlord and Tenant Act 1985

33. As Mr Wallis carried out the work himself and represented the freeholder at the tribunal it seems unlikely that he will seek to recover any costs under the lease. If however he did seek to recover any costs the tribunal considers that on balance the leaseholders have been successful therefore it is appropriate to make an order pursuant to section 20 C to the effect that the freeholder is prevented from recovering any costs incurred in the tribunal hearing including the preparation costs for the tribunal under the service charge.

Judge Shepherd

21/9/21

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).