First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**LON/00AX/LSC/2020/0394**
Property	**:**	**Charter Quay, Kingston-upon-Thames, KT1 1HS**
Applicant	**:**	**CQRA Ltd.**
Respondents	**:**	**All long leaseholders of residential flats at the property as listed in the application ("the leaseholders")**
Date of Application	**:**	**14th October 2020**
Type of Application	**:**	**to determine payability of service charges (Sub-section 27A(3) Landlord and Tenant Act 1985 ("the 1985 Act"))**
The Tribunal	**:**	**Bruce Edgington (Lawyer Chair)** **Marina Krisko FRICS**
Date and Decision	**:**	**14th April 2021**

DECISION

Crown Copyright ©

1. The Tribunal determines (and notes the absence of any opposition by the leaseholders) that the reasonable cost of the works set out in the 98 page report of Façade Remedial Consultants dated 17th February 2020, and which are to be carried out to the property, are service charges payable by the leaseholders in the contractual proportions set out in the long leases to each flat.

Reasons

Introduction

2. This is a claim relating to a large development of residential and commercial properties built about 20 years ago. It follows the understandable concern of the public about the risk of harm to residents and the dramatic effect on lease values and insurance premiums in large residential blocks following the Grenfell disaster.

3. The Applicant owns the freehold of the site which consists of 237 leasehold flats across 4 blocks. 230 of those 237 leaseholders jointly own and control the Applicant. There are also 8 commercial units and 5 town houses on the site but none of them are involved in this application.

4. The Applicant commissioned the report described in the decision above which made detailed determinations as to whether the construction of the residential blocks complied with the latest Building Regulations concerning risk assessment. Recommendations were made concerning remedial works now needed to comply. In essence, this application simply asks the Tribunal to confirm that the cost of such works are payable as service charges under the terms of the long leases.

5. It should be made clear from the outset that the Tribunal has not been asked to determine (a) who is the relevant landlord (b) whether the works required will be reasonable and (c) whether the service charges will be reasonable. Having said that, it is right to say that the Applicant has started the consultation process required by section 20 of the 1985 Act. The Tribunal has not been made aware of any comments made by the Respondents either in respect of the consultation or, indeed, the current application.

6. Directions orders have been made on the 8th February 2021 by Judge Walker as amended on the 15th February 2021 by Mrs. Helen Bowers. They timetable this determination by ordering the filing of evidence, the service of relevant documents on the Respondents and the provision of a bundle. As far as the Tribunal is aware, all directions have been complied with and any page numbers quoted in the decision are from the bundle supplied.

The Leases

7. The Tribunal has seen copies of the headlease the terms of which are not particularly relevant. It has seen samples of the long leases from the blocks of flats which, for the purpose of this decision are in similar terms and can be discussed as one.

8. In the detailed and helpful statement of case provided by the Applicant as part of the application, an analysis of the lease provisions commences at page 19. It is clear that work to the structure of the buildings including the windows and the balconies and terraces is covered by the service charge provisions provided that such work is reasonable. It is also clear that work to the common parts such as the car parks is covered on the same basis.

9. Some items of work to include the spandrel/glazed panels (in Location Examples 1-4), the timber pergolas and rigid combustable insulating boards are considered by the Applicants to come within the definition of Maintained Property in paragraph 12 of Part VI of the Second Schedule i.e. "*All other parts of the Development which are from time to time intended to form part of the Maintained Property*". The Tribunal agrees with that interpretation.

10. If it were to be determined that there was some ambiguity in that wording, it seems to the Tribunal that the work, for example, to the pergolas is needed to protect the building and its occupiers from possible fire damage and would therefore not come within the *contra preferentem* rule of interpretation which would normally interpret ambiguities in favour of the tenant.

The Law

11. Section 18 of the **Landlord and Tenant Act 1985 (**"the 1985") Act defines

service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'. Under section 27A, this Tribunal has the jurisdiction to determine whether service charges are payable including service charges claimed for services not yet provided.

The Inspection

12. As was made clear in the directions orders referred to above, the Tribunal has not inspected the property. No-one has said that this is necessary. The work has not been done and much of the testing and assessment undertaken by the expert is not visible.

The Hearing

13. As was also made clear in the directions orders, no hearing has taken place. The Applicant said in its application that an oral hearing was not necessary and none of the Respondents has asked for a hearing. If they had, then that would have been considered.

Discussion

14. As has been said, this is actually a very straightforward application dealing with very complicated proposed works to be undertaken, Fortunately, it appears that the Respondents are not being incurred in any fire watch expenses and from the expert's report referred to above, the necessary work to comply with Building Regulations appears much less than many older blocks of flats.

15. Sadly, however, it is said that the Applicants have considered whether any of the work can be met by public funds and it appears not. However, if the service charge provisions cover the work, this then becomes a matter of enforcement. In other words, a county court may be asked to enforce the lease provisions against a leaseholder who may be able to argue that an application should have been made to the post-Grenfell public fund for payment of the expenses. The Tribunal has not considered that, as an issue.

Conclusions

16. Taking all these matters into account and doing the best it can, the Tribunal's conclusions are that the lease terms apply and cover the works being proposed as set out in the expert's report.

.....
Judge Edgington
14th April 2021

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.