



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

**Case Reference** : **MAN/00CA/LSC/2019/0100V**

**Property** : **Marine Gate Mansions, The Promenade, Southport, Merseyside, L35 9EF**

**Applicant** : **Marine Gate (Southport) Management Co. Ltd.**

**Representative** : **Butcher & Barlow LLP**

**Respondents** : **see annex.**

**Type of Application** : **Under the Landlord and Tenant Act 1985 s.27A**

**Tribunal Member** : **Judge P Forster**  
**Mr J Faulkner MRICS**

**Date of Decision** : **15 February 2021**

**Date of Determination** : **18 February 2021**

---

**DECISION**

---

---

© CROWN COPYRIGHT 2021

---

## **Decision**

The costs of the proposed fire safety works are recoverable as a service charge and payable in accordance with the provisions in the leases.

## **Introduction**

1. This is an application under s.27A of the Landlord and Tenant Act 1985 (“the Act”) to determine whether the costs of proposed fire safety works are payable as a service charge and the reasonableness of the proposed works under the leases that apply to Marine Gate Mansions, The Promenade, Southport, PR9 0EF (“the Premises”). The relevant service charge years are: 2019, 2020 and 2021.
2. Marine Gate (Southport) Management Co. Ltd. (“the Applicant”) is a right to manage company, is party to the leases and is liable to maintain the Premises and keep it in good and substantial repair and condition. The Respondents are the leasehold owners of the individual apartments that make up the Premises and they are liable through a service charge to pay the costs incurred by the Applicant in performing its obligations under the leases.
3. The leases are in a common form. The parties to the leases were (1) Blackthorn Estates Ltd. as “Lessor” and (2) the Respondent as “the Company” and (3) the original lessees. A specimen lease was provided.

## **Case Management Hearing**

4. The purpose of the case management hearing held on 20/02/20 was to clarify the facts and identify the issues in dispute. Mr Byrne represented the Applicant and Ms Early represented Mr Ball, the leasehold owner of Apartment 44. A number of the other lessees attended the hearing. Mr Wynne, the joint owner of Apartment 80, made submissions to the Tribunal. All the parties acknowledged that fire safety improvement works of some kind were required but there were differences about the nature and extent of the works to be done.
5. The Tribunal explained its role to the parties: to examine whether the costs of the proposed works were payable, and who would be liable to pay them, within the terms of the leases, and whether the works and costs are reasonable. The Tribunal’s role is not to determine the extent or nature of the works that should be done. It does not have any authority to order works to be done.

6. The Applicant confirmed at the case management hearing that it was seeking a declaration to clarify whether the proposed expenditure on fire safety works would be payable under the service charge provisions of the leases, and who would be liable to pay them. The Applicant was not seeking a decision as to whether or not the charges were reasonable. The Applicant's case is that the costs of the proposed works would be payable under the service charge provisions of the leases and consequently be payable by all the lessees in accordance with the percentage contributions stipulated in their leases.
7. Mr Wynne outlined the concerns of some of the leaseholders about the proposed works. There are a number of different types of ceiling, including a suspended ceiling, and it was believed that the proposed works will not provide the necessary firebreak and compartmentalisation required.
8. Mr Byrne and Ms Early, on behalf of their clients, agreed draft directions. Mr Wynne requested an oral hearing, and Mr Byrne, in the light of the concerns raised, agreed that it would be sensible to hold a hearing.
9. Directions were issued on 28/02/20 that provided for the Applicant to file and serve a statement of case together with relevant documents in respect of each relevant year, to include a detailed specification of the proposed works and the estimated total service charges to be paid by the lessees, with an explanation, by reference to the leases, of the basis on which the charges have been applied, calculated and apportioned. The Respondents were to file and serve a statement of case in response, setting out their reasons for opposing the application, to identify in respect of each year, the items or costs in dispute. The directions made provision for the Applicant to make a supplementary statement, if so advised.

### **The hearing**

10. The hearing was delayed by the Coronavirus pandemic and took place by a video link on 11/02/21. The Tribunal did not inspect the Premises. The Applicant was represented by Mr Byrne, and Mr Wynne, Mr Ball, Mr Ruttle and Mr Pearmain, respondents to the proceedings, represented themselves.

### **The Applicant's case**

11. The Application only relates to fire prevention measures that are thought to be urgently required to improve safety within the Premises. The Applicant was informed that the fire separation measures taken when the Premises was built were inadequate. An investigation by NHBC to the area above apartment 80 found that the floor construction did not meet the prevailing Building Regulation requirements in force at the time of construction. The Applicant commissioned its own report from Paul Ennis & Co ("Ennis") which confirmed the findings. All the apartments that have floors of a similar construction were inspected and were also found to be inadequate. There was

no question that remedial works were required and so the Applicant instructed Ennis to produce a schedule works. Fire safety improvement measures are required to the common parts of the Premises known as “Phase 3” (“the common parts”) together with 20 individual apartments. The works are required to upgrade the existing fire resistance of the ceiling structures.

12. The Applicant wishes to proceed with the proposed works, aware of its obligations under the leases, and its obligations to comply with the requirements, recommendations, and directions of any competent authority and to apply the provisions of any relevant statute or regulations. While the costs relating to the common parts are considered to be recoverable under the terms of the leases, the Applicant is concerned that part of the costs might have to be charged to individual leaseholders because the fire safety measures would be undertaken within the demises of their apartments.
13. The Applicant seeks the Tribunal’s determination that the costs are recoverable through the service charges under clauses 5.2, 5.8 and /or 5.9 of the leases. While the majority of the leaseholds appear content for the costs to be incurred and apportioned through the service charge, a minority have raised concerns as to whether they are properly recoverable on that basis.

### **The Respondents’ case**

14. Mr & Mrs Wynne were the only Respondents to provide a written statement of case and Mr Wynne represented himself at the hearing. Mr Ball, Mr Ruttle and Mr Pearmain also addressed the Tribunal.
15. The Wynne’s statement of case referred to a previous submission dated 10/02/20 prepared for the case management hearing, in which they identified additional fire safety issues which are not included in the Applicant’s proposed works. It was Mr & Mrs Wynne’s claim to the NHBC which gave rise to the initial investigation of the construction of the Premises. They criticize the Applicant for failing to obtain a specialist report before instructing Ennis to prepare a schedule or works. Mr & Mrs Wynne do not believe that the proposed works will be sufficient to rectify the fire risks that have been identified nor that they will satisfy the requirements of Building Regulations.
16. In this context, Mr & Mrs Wynne challenged the Applicant’s interpretation of clause 1.3 of the lease which defines the “demised premises” to include “ceiling materials”. They suggest this refers to the suspended ceiling materials, present in most apartments, but the clause goes on to say, “*but not any part of the structure as defined in subclause 1.7 of this clause*”. They say that the structural timber floor joists/fire protecting plasterboard are clearly part of the structure. The structural timber floor

joists on their own, cannot be totally regarded as the “*structure of the building*” without the appropriate fire protection fixed to them.

17. Mr & Mrs Wayne state that it is in the interests of all concerned that the Applicant urgently proceeds with the fire safety measures, but these must rectify and satisfy all the fire safety matters identified to ensure full compliance with the requirements of the Building Regulations. They say that this includes obtaining further advice and incurring costs and fees to ensure that the works when completed achieve compliance.
18. The Respondents accept that they are liable to pay a service charge under the terms of the lease. They agree that fire safety works are necessary. The Respondents seek confirmation from the Tribunal that costs of the works should be apportioned between all the leaseholders in accordance with the terms of their leases.

### **The Applicant’s response**

19. The Applicant points out that the Respondents have not produced a schedule or spreadsheet to identify the elements that are in dispute. The Applicant relies on oral advice given by Ennis who inspected the fire separation within the Premises and made recommendations in the report. It was reasonable and proportionate to adopt Ennis’ recommendation to produce a specification of works to particularize the required fire safety measures. The Applicant denies that it failed to undertake adequate investigations or obtain specialist expert advice to identify and comply with relevant Building Regulations or other requirements. The proposed works will comply with relevant Building Regulations. The purpose of the application was to determine whether the costs of the fire safety measures are recoverable through the service charge.

### **The Law**

20. The law relevant to the application is set out in the Annex to the decision.

### **Reasons for the decision**

21. The material provisions in the leases are:

Clause 2 of the Particulars: “Property” [each apartment]

#### 1 Definitions and Interpretation

- 1.1 The expression “the Estate” means the land shown edged blue on the attached site plan in the ownership of the Lessor comprising the Lessees development known as Marine Gate Mansions The Promenade Southport Lancashire ...

- 1.4 The expression “the Building” means the building of which the demised premises forms part
- 1.6 The expression “common parts” means the pedestrian areas footpaths and drives ....
- 1.7 The expression “structure” means the parts of the Building comprising the foundations all concrete floor slabs (but not the floor screed and insulating material on them) all exterior and other load bearing walls ... the ceiling joists immediately above the demise premises the roof (with the timbers and any other beams supporting it ) and all drains cisterns ...

Clause 4 The Lessee hereby covenants ...

- 4.2 To pay the Interim Charge and the Service Charge to the Company at the times and in the manner provided in the Fourth Schedule...

Clause 5 The Company covenants are separate covenants with each of them the Lessor and the Lessee that the Company shall at all times (subject to contribution and payment in accordance with clause 4.2 hereof)

- 5.2 Take all reasonable steps to maintain and keep in good and substantial repair and condition
  - 5.2.1 The structure (except for any glass ...) of the Building and all other buildings on the estate
  - 5.2.3 All common parts and only other structures constructed on or under over the same.
- 5.9 Without prejudice to the foregoing do or cause to be done all such works installation acts matters and things as may in the absolute discretion of the Company be necessary or advisable for the proper maintenance safety and administration of the Estate and pay a reasonable proportion of the expense incurred for or towards the making supporting repairing cleansing and amending of all walls and structures common sewers public sewers and drains serving or belonging or which shall or may belong to the Estate or any part thereof (but excluding those exclusively comprised in or serving the demised premises) or which shall be used in common with other premises adjoining or near thereto

The Fourth Schedule - The Service Charge

- 1.1.3 The cost of providing and carrying out such other or additional services and such other works in connexion with the Building and/or the Estate as the Company in its absolute discretion may desirable or necessary
- 1.1.7 Any costs and expenses (not referred to above) which the Company may incur in providing such other services and carrying out such other works as the Company in its absolute discretion may deem desirable or necessary for the benefit of the Building and/or the Estate

- 1.2 “the Service Charge” means such percentage of the Total Expenditure as is specified in paragraph 5 of the Particulars or such other percentage as may be notified to the lessee by the Lessor or the Company pursuant to clause 10 of this Schedule
- 10 The Company may from time to time at its discretion in the event of any circumstances which it reasonably regards to be relevant vary the service charge percentage by the lessee in such manner as the Company reasonably deems fair and appropriate upon giving to the Lessee written notice to that effect in which event the new service charge percentage specified in such notice shall forthwith take effect in substitution for the service charge percentage specified in paragraph 5 of the Particulars”.
22. Under the terms of the leases the Applicant is obliged to carry out works to improve the fire safety of the Premises. That is agreed by all the parties. The issue to be determined by the Tribunal is how the costs of the proposed works are to be apportioned between the leaseholders. That turns on the interpretation of the relevant provisions in the leases.
23. The document: ‘Timber Separating Floors, Overview of Proposed Works’ prepared by Ennis describes the proposed works. Beneath the timber floor joists, which are defined in the leases as being part of the structure of the building, there is one layer of 12.5mm fireline plasterboard, one layer of 12.5 mm wallboard and a 3 mm plaster skim. This construction provides approximately 50 minutes of fire protection to the timber joists instead of the required 60 minutes of fire Protection required by Building Regulations. In order to achieve the minimum required 60 minutes of fire protection, Ennis propose that a coat of intumescent paint should be applied to the underside of the plaster skim. However, as the plasterboard is defined within the leases as forming part of the demised premises, one interpretation of the leases would be that the costs of the proposed works would have to be met by the individual leaseholders of the effected apartments rather than be shared by all the leaseholders.
24. Mr Wynne, who is an experienced surveyor and project architect took issue with the scope and extent of the works proposed by Ennis. He does not believe that the works will be sufficient or meet relevant building Regulations. His apartment was originally designed as a duplex but that plan was changed to create more apartments in the building. The floor above Mr Wynn’s apartment is a concrete slab on metal joists. This demonstrates the need to provide a range of solutions to meet the requirements of the building.

25. The leases in the present case are in a standard form where the maintenance responsibility is transferred to a third party, the management company, controlled by the lessees who have a capital interest in the building. Under clause 5 the Applicant covenants to take all reasonable steps to maintain and keep in good and substantial repair and condition the structure and common parts. The Applicant's obligation to carry out the proposed works and the Respondents' obligation to contribute to the Applicant's costs are contained in different clauses in the leases and are defined by different words. The present circumstances were not in the contemplation of those who drafted the leases. There is the prospect that the Applicant carries out the fire safety works and cannot recover all the costs from all the lessees or that not all of the works are carried out which leaves all the lessees in a potentially dangerous building.
26. A common sense approach is needed when construing the leases. The Tribunal is satisfied that the cost of coating the plasterboard with intumescent paint is recoverable under clause 5.9 of the leases at the discretion of the Applicant and subject to the Tribunal's oversight, to do what is "necessary or advisable for the proper maintenance, safety and administration of the estate". The Respondents corresponding obligation to pay the Applicant's costs of carrying out the works is found within paragraphs 1.1.3 and 1.1.7 of the Fourth Schedule. This is consistent with the approach adopted in *FirstPort Property Services Ltd. (LON/00AH/LSC/2017/0435)* and *Pemberton Reversions (5) Ltd. (MAN/00BR/LSC/2018/0016)*. The costs of applying the intumescent paint come well within the scope of "the general benefit of the apartments" in the building and follow principles of good estate management.
27. It was reasonable and proportionate to adopt Ennis' recommendation to produce a specification of works to particularize the required fire safety measures. The purpose of the application was to determine whether the costs of the fire safety measures are recoverable through the service charge. The Tribunal has no power to order particular works to be done. The works will be subject to consultation when the scope and extent of what is proposed to be done can be scrutinised. The reasonableness of what is done and how much it costs is not within the terms of the current application.
28. The Tribunal allows the application.

**Dated 15 February 2021.**

**Judge P Forster**



## **RIGHT OF APPEAL**

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

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.

If the person wishing to appeal does not comply with the 28-day time limit, that 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.

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.

## **ANNEX 1**

S.18 of the Landlord and Tenant Act 1985 defines “service charges” and “relevant costs”:

- (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.

S.19 of the 1985 Act deals with limitation of service charges:

- (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 provision 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.

S.27A of the 1985 Act deals with the liability to pay service charges:

- (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.

## ANNEX 2

Mr TG Horrocks  
Mr & Mrs Price  
Mrs A Davies  
Mr & Mrs Silverwood  
Mr AJ Heaton & Ms AL Yates  
Mr J Howard  
Mr JMS Ball  
Mr AJ Sephton  
Mr Franks  
Mr NJ Douglas  
Mr & Mrs Pearmain  
Mr D Hall  
Mr R Winter & Ms C Gorick  
Mr & Mrs Bewley  
Mr & Mrs Russell  
Ms I Johnson  
Mr M Thornley  
Mr & Mrs Hunter  
Mrs M Graham  
Mr MJ Karani  
Mr IT McDonald  
Mr & Mrs Mulroy  
Mrs J Hewitt  
Mr PJ Mulroy  
Mr LAD Mentha  
Property Letting & Development Limited  
Mr JM Pedan & Ms A Rimmer  
Mr NC Orr  
Ms R Corcoran  
Mr & Mrs Stanley  
Mr & Mrs Flynn  
Mr AJ Houghton  
Mr & Mrs Baker  
Mr FA Murray  
Mr JR McAllister  
Mr M Yaseen  
Mr SA Russell  
Mr CJ Collinson  
Mrs K Geraghty  
Mr & Mrs Holmes  
Mr & Mrs Wynn

Mr P Gilroy  
Mr & Mrs Patrick  
Property Letting & Development Ltd  
Southport Real Estate Ltd  
Mr & Mrs Graham  
Mr & Mrs Crawshaw  
Mr & Mrs Christian  
Mr D Brown  
Mr & Mrs Bell  
Mr & Mrs Atkins  
Mrs L Bell  
Mrs JE Crawford  
Mr NC Daly  
Mr & Mrs Bridge  
Mr RW Cropper  
ST Property Developments Ltd  
Mr DC Hampton  
Mr & Mrs Orme  
Mr DJ Thompson  
Ms G Slater  
Mr P Coyle  
Mr SJ Coyle  
Mr JA Coyle  
Mr MT Ruttle  
Ms HL Kenrick  
Mr TJ Bamber