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

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| **Case Reference** | **:** | **CHI/00HN/LIS/2018/0035** |
| **Property** | **:** | **Kelly Lodge, 7 Walpole Road, Bournemouth, Dorset, BH1 4HA** |
| **Applicant** | **:** | **Tyrrel Investments Inc** |
| **Representative** | **:** | **Napier Management Services Ltd** |
| **Respondents** | **:** | **The Seven Lessees** |
| **Type of Application** | **:** | **Determination of liability to pay and reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985** |
| **Tribunal Member** | **:** | **Judge Professor David Clarke** |
| **Date of determination** | **:** | **14 December 2018** |

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**DETERMINATION**
**and STATEMENT OF REASONS**

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## DETERMINATION

**The Tribunal determines that under the Application made on 29 July 2018, the Respondents are liable to pay the sum of Seventeen Thousand Seven Hundred and Forty Eight Pounds (£17,748) as part of the service charge levied for the accounting year 2018 and that the sum so charged is reasonable.**

## STATEMENT OF REASONS

### The Application

1. This is an application by Tyrrel Investments Inc., ("the Applicant"), the freeholders and landlords of a property known as Kelly Lodge, 7 Walpole Road, Bournemouth, Dorset BH1 4HA ("the Property"), for a determination of the liability of seven leaseholders of flats within the property to pay a sum of £17,748 as part of the service charge levied in respect of the Property for the accounting year commencing 25 June 2018. The charge is in connection with major repairs planned to be undertaken to remedy disrepair to the Property. The Applicant is represented by its managing agents, Napier Management Services Ltd ("the Agents")**.** The Applicant did provide with its application a list of the seven leaseholders, none of which give their address as at the property and they were all served with this application.

2. The application was made on 29 July 2018 and Directions were issued on 15 August 2018. The Directions ruled that the matter was to be determined without a hearing and there was no objection made by any party to that ruling. Provision was made for disclosure of the estimates for the work proposed, for service of the tenant's case followed by service of the Applicant's case, and for preparation by the Applicant of a bundle of documents for the hearing. The Applicant has fully complied with those Directions but no statement of case or documents have been filed by any of the Respondent leaseholders. There has simply been no response to the Tribunal office.

3. The Applicant has however quite properly disclosed to the Tribunal correspondence with one of the leaseholders, Alan and Rhona Farley. This was by way of email exchange between 8 and 10 July 2018 in response to a notice under section 20 of the Landlord and Tenant Act 1985. Mr Farley had sent a letter asking for elucidation of the proposed charge of £17,748 and a reply was sent by a Mr Dean Quinton, an employee of the agents. The correspondence does include a statement by Mr Farley that the work 'is not accepted by the leaseholders'.

### The Facts

4. The Property, which was constructed as a semi-detached dwelling in the early 1900s, was converted into seven flats on three floors. The Tribunal was provided with a copy of the lease of Flat 1 ("the Lease") which is dated 11 October 1991 and grants a lease for a term of 125 years from 24 June 1989 at a ground rent.

5. Following a site visit in relation to a programme of external decorations, the Agents were informed of evidence of vertical cracks in the brickwork piers to the ground floor cornice window. A specialist structural report was obtained (from IW Price and Partners) who recommended reconstruction of the outer leaf ground floor bay brick mullions, work which would require temporary removal of the window frames and support during the work.

6. The recommendations were accepted by the Applicant, a schedule of works prepared and the notice procedure for consultation with the Respondent leaseholders was initiated. The notices under section 20 of the Landlord and Tenant Act 1985 were sent out on 29 March 2018. Four building firms were approached but only two submitted tenders. A tender analysis and the further notice under section 20 was issued to all leaseholders on 4 July 2018. The only written response from any of the Respondents was the e mail exchange set out in paragraph 3 above.

7. That e mail exchange did raise the question of whether the problem was covered by the insurance policy. The Agents had already raised that as an issue to be addressed. By a report dated 8 August 2018 a loss adjuster reported that the damage was not consistent with subsidence (downward movement of foundations) but was rather the result of historical settlement of the arch exacerbated by weathering. His conclusion, which is consistent with the report of IW Price and Partners, meant that the cost of remedial work was not covered by the insurance policy.

8. The costs of the works were included in the budget for the year commencing 25 June 2018 and this was sent to all leaseholders on 4 July 2018. Mr Farley in his e mail exchange did contend that this should not have been included until the section 20 period of consultation ended on 7 August 2018.

**The Provisions in the Leases**

9. The relevant provisions in the Lease can be summarised quite shortly. The Applicant's statement of case largely consisted of setting out those provisions and submitting that, subject to the section 20 process, the Lease made clear that the costs of the works should be borne by the Respondent leaseholders under the service charge.

10. The Tribunal has no hesitation in upholding that primary submission. The brickwork piers containing the cracks (the Tribunal had the benefit of photographs) are clearly part of the external structure of the Property and part of the 'Reserved Property' as defined in the Second Schedule to the Lease. The Seventh Schedule provides that the Applicant must keep the Reserved Property in good and tenantable state of repair. Clause 19 of the Sixth Schedule contains a covenant by the tenant/leaseholder to pay a one seventh share of the costs incurred within the Seventh Schedule.

11. As is common in long residential leases, it is the leaseholders who bear the costs of repair to the external structure while the lessor undertakes the work. This Lease is in a fairly standard form and makes just such provision. The Respondents are liable to pay the costs provided the property is indeed in disrepair and all procedures have been followed correctly.

**Determination**

12. The Tribunal is satisfied that the Property is in disrepair. It has the benefit of professional reports and photographs of the problem to support that conclusion.

13. The Tribunal is satisfied that the Applicant have served notice on the Respondents in accordance with section 20 of the Landlord and Tenant Act 1985. Copies of the notices and letter to each Respondent were in the bundle. The Applicant sought four tenders for the work but were only able to secure two. They proposed accepting the lower of the two tenders. At no stage did any of the Respondents suggest any other contractor who could be approached nor did they raise any objections to the procedure carried out.

14. The Tribunal is satisfied that the Lease places liability on each of the Respondents to pay one seventh of the costs of the repair works.

15. The Tribunal considers the costs of £17,748 to be reasonable. This sum is made up of the quoted costs of the lower tenderer of £11,700, the costs incurred by the surveyor of £2,040 (which include preparing the Schedule of Works, producing the drawings, undertaking the tendering process and, in due course, supervising the works). There is a Building Control fee of £300 to pay and the final sum within the total is £750, the costs of the Agents in undertaking all the related work including service of the section 20 notices. The Lease specifically permits the employment of managing agents and the inclusion of costs reasonably necessary to fulfil the Applicant's obligations. The Tribunal considered carefully whether the fee of £750 was reasonable and considered that, though at the higher end of what is acceptable, given that the charge was in addition to their management fee, it was reasonable. The Tribunal considered that the charge, amounting to about 6.4% of the contract value, was acceptable. The balance of the costs consist of VAT.

16. The Tribunal is satisfied that the notices required under section 20 of the Landlord and Tenant Act 1985 were properly prepared and served and that the Respondents had the opportunity which such notices afford to be involved in the decisions about the repairs needed and the contractors to be selected..

17. The Tribunal considers that it was not improper for the Applicant to include the proposed works in the 2018 budget sent out in July even though the time limit for responses under section 20 was later, namely 7 August. The work was planned for the 2018/2019 accounting year and was properly included in the budget.

18. Accordingly, the Tribunal determines that under the Application made on 29 July 2018, the Respondents are liable to pay the sum of Seventeen Thousand Seven Hundred and Forty Eight Pounds (£17,748) as part of the service charge levied for the accounting year 2018 and that the sum so charged is reasonable.

**Right of Appeal**

19. 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.

20. 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.

21. 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.

22. 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 that the party who is making the application for permission to appeal is seeking.

**Judge Professor David Clarke**
**14 December 2018**