FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BD/LSC/2018/0441**
Property	**:**	**1- 35 Earls House, Strand Drive, Kew Surrey, TW9 4DZ**
Applicant	**:**	**Kew Riverside Park Residents Company Limited**
Attendance on behalf of the Applicant	**:**	**(i)Mr B Green-Property Manager (ii)John Oxley, Director Kew Riverside Park Residents Company Limited**
Respondent	**:**	**The 35 Long Leaseholders of Earls House**
Type of Application	**:**	**Liability to pay service charges**
Tribunal	**:**	**Judge Daley** **Mr H Geddes**
Date of Decision	**:**	**8 April 2019**

DECISION

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1. The applicant, sought a determination under section 27A(3) of The Landlord and Tenant Act 1985 in respect of the respondent's liability to pay service charges in respect of the costs of the major works of "remodelling the entrance foyer".

2. Directions were given by the Tribunal on 29 January 2019. The Tribunal at the Directions hearing identified the following issues in paragraph 5 which stated-: "Although not entirely clear the issues raised by this application appear to be (a) whether and the extent to which the projected cost is recoverable under the terms of the lease and (b) whether the projected cost is reasonable in amount."

3. The Directions provided that by 22 February 2019 the applicant should send to each respondent a statement setting out i) the relevant service

charge provisions in the leases on which it relies and ii) any legal submissions in support of its assertion that a service charge is payable in respect of the proposed cost.

The inspection

4. The Tribunal Directed that an inspection should be carried out prior to the hearing and an inspection was held on 8 April 2019 at 10.15 am. The inspection was attended by John Oxley Director for Kew Riverside Park (for part of the time) also in attendance on behalf of the Applicants was Michael Gibbons the Development Manager. Dr Mahen Tampoe attended on behalf of the leaseholders

5. The premises Earl's House is a three storey block of flats within a private residential estate comprising 5 blocks. The tribunal inspected the entrance lobby of Earl's House and also Dorchester House. Dorchester House had been constructed with its fire door before the lift, which was the proposed improvement for Earl's House. Both Mr Gibbons and Dr Tampoe remained with the Tribunal throughout the inspection.

The hearing

6. The hearing was attended by Mr B Green property manager for the premises of Premier Block Management. Also in attendance on behalf of the landlord was Mr John Oxley who is a Director of Kew Riverside Park. There was no one in attendance on behalf of the leaseholders.

7. The Tribunal noted that the applicant had not complied with the Directions by providing a Statement of Case neither had it provided details of the specific terms of the lease upon which reliance was sought. Mr Green informed the Tribunal that the application had been brought as a leaseholder had objected to the cost of the major work. The applicant hoped to receive a steer from the Tribunal decision as to whether the proposed work was permitted under the terms of the lease.

8. The Tribunal was concerned that the applicant had not complied with the Directions, and also indicated that it was not the role of the Tribunal to provide legal advice to the parties concerning the interpretation to be applied to the lease, nevertheless the Tribunal invited Mr Green to set out his case.

9. Mr Green informed the Tribunal that the development was approximately 15 years old. It had been built in phases with the last phase having been completed approximately 11 years ago. There were five blocks which made up the estate. He informed the Tribunal that his company had managed the premises for approximately 2 years. Mr Oxley then set out the history of the proposed work.

10. He stated that approximately 3 years ago some of the leaseholders started to complain that the block was not as well laid out as other blocks in the estate in that the fire door to the flats obstructed the lift;

this meant that the entrance was smaller, and that it was less convenient to access and egress the building as you had to hold open the fire door. The Tribunal was provided with a copy of the specification: *Alteration to Entrance Lobbies at Earls House and Farringdon House (undated) Paragraphs* 1.03, and 1.04 stated:-" The alteration works include the removal of the fire doors from the Entrance Lobbies to the Lift lobbies and the re-positioning of the same further away from the lift within new stud partitions. The existing door openings are to be enlarged. 1.04 The floor tiling complete with bedding to the Entrance Lobbies and the carpet and underlay within the new Lift Lobby areas are to be taken up and replaced with 45x900x11 mm porcelain floor tiling re-bedded to slight falls as necessary to marry in with the lift thresholds."

11. The Tribunal was informed that the section 20 consultation had been carried out and that 3 quotes had been obtained in the sum of £25,274.25, £24,139.21 and £21,034.94. The applicant was proposing to use the lowest tender.

12. The applicant stated that there had been one objection, and a detailed observation from Dr Frederick Tampoe dated 19 June 2018. In his letter Dr Tampoe queried whether the lease allowed for improvements.

13. The Tribunal was provided with a copy lease for the building and were referred to the fifth schedule clause 3.1 and 3.2, which provided the right to the landlord to carry out building and alterations of the building and access ways. Clause 3.1 and 3.2 states-: " *To build or rebuild or alter or permit or suffer to be built or rebuilt or altered any buildings or erections upon the Development or upon any neighbouring or adjoining property…in such manner as the Lessor shall think fit notwithstanding that such buildings as so built or altered may obstruct any lights windows or other openings in or on the Demised Premises 3.2 To alter the layout of the Access ways and the Common Parts and the Communal Areas and Facilities…and to vary the extent thereof but not so as to prejudice access to the Demised Premises."*

14. In respect of the charging clause, the Tribunal was referred to the Sixth Schedule section 3 Block Costs in particular clause 1 and 2. Clause 1 of *Sector 3 Block Costs* provided for-: " *1. Inspecting repairing maintaining resurfacing rebuilding renewing replacing cleaning redecorating or otherwise treating the Main Structure the Common Parts and all other parts of the Maintained Property forming part of the Block so often as in the opinion of the Manager shall be reasonably necessary. 2. Repairing maintaining inspecting and as necessary reinstating or renewing the Service Installations forming part of the Common Parts."*

15. The Tribunal asked for details of whether the applicant was intending to charge the costs of the Tribunal proceedings as a service charge item,

and the application and hearing fee. Mr Green indicated on behalf of the applicant that it was not his intention to do so.

The Decision of the Tribunal

16. The Tribunal having inspected the premises decided that the work to be undertaken was an improvement of the premises, as the premises is in fair to good condition, and the repositioning of the door and the subsequent retiling could not be considered repairing or maintenance within the meaning of the lease.

17. The Tribunal noted that although clause 5 gave the landlord a wide discretion to carry out alterations of the layout of the Access way and the common parts, there was nothing in the lease which provided that such work was recoverable by way of service charges. Accordingly the Tribunal determined that such costs were not recoverable as a service charge.

18. However nothing in the lease prevents the landlord carrying out such work, if he is either prepared to forgo the recovery of such cost, or the leaseholders enter into a separate agreement to pay for the costs of the same.

Section 20 C and application and hearing costs

19. The Tribunal has considered the wording of the lease, and has decided that the costs of the hearing should not be recovered as a service charge. As the lease does not appear to make provision for the recovery of such costs. If the Tribunal is wrong about this it has decided that given the merits of the case, an order under section 20c of The Landlord and Tenant Act 1985 should be made preventing the landlord from recovering its costs

20. The Tribunal has also determined that the hearing and application fee should not be charged to the leaseholders.

Name: M Daley **Date:** 08 April 2019

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(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.

Section 19

(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 provisions 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.

Section 27A

(1) An application may be made to the appropriate 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.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.