



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

Case Reference : **MAN/00BN/LSC/2020/0053**

Property : **Moho Building, Ellesmere Street, Castlefield,
Manchester, M15 4FY**

Applicant : **Moho Management Company Limited**

Respondent : **Moho Building Leaseholders
(see Annex A)**

Type of Application : **Section 27A, Landlord and Tenant Act 1985**

Tribunal Members : **A M Davies, LLB
J Jacobs, MRICS**

Date of Decision : **5 October 2020**

**Date of
Determination** : **9 October 2020**

DECISION

1. The Applicant has leave to adduce in evidence the witness statement of Kate Magill dated 15 September 2020.
2. The service charge payable by the Respondents (in their respective proportions) shall include the Tender Sum Option B specified in the tender of Barlows UK Ltd dated on or about 1 July 2020.

REASONS

BACKGROUND

1. The Applicant is a management company owned by the Respondents (its shareholders) and is responsible for maintenance and repair of the Moho Building, Ellesmere Street, Castlefield (“the Building”) in which the Respondents own flats. The company’s sole source of funds (other than borrowing and any available grants) is the “maintenance charge” payable by the Respondents under clause 3(i) of their leases and any other sums payable under the terms of the leases. The Applicant employs Mainstay Group Limited as its agents to manage the Building.
2. The maintenance charge is a service charge as defined by section 18 of the Landlord and Tenant Act 1985 (“the 1985 Act”).
3. Pursuant to section 27A of the 1985 Act, an application may be made to the Tribunal for a determination as to what service charges are payable, by whom and to whom.

THE S.27A APPLICATION

4. In February 2019 a small fire occurred on a balcony of the Building. Upon investigation it was discovered that the Building lacked protection against the spread of fire internally and externally, and that consequently the Respondents and their tenants living in the Building were at risk.
5. The Applicant with the assistance of the Greater Manchester Fire and Rescue Service (GMFRS) arranged for a manned “waking watch” to protect the Building temporarily. Having taken appropriate advice, the Applicant sought tenders for an integrated fire alarm system to be installed in the Building which would offer full protection pending changes to the combustible parts of the external facade. The Applicant hopes to obtain a government grant to cover the cost of fire retardant works and to begin those works as soon as possible. On completion of those works, a “stay put” instruction is likely to be issued to residents of the Building in case of fire, whereas currently activation of a fire alarm system requires evacuation of the Building.
6. The cost of the proposed fire alarm system exceeds £250 per leaseholder, and the Applicant has consequently put in hand a consultation procedure under section 20 of the 1985 Act. As various tenders have been received from contractors for the installation of the new system, the Applicant applied on 28 May 2020 to this Tribunal for a determination as to what addition to the service charge would be reasonable and payable in respect of this work.

APPLICATION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

7. On 16 September 2020 the Applicant sought leave to adduce the evidence of Kate Magill, an associate director of Mainstay Group Limited, who has managed the Building on behalf of the Applicant since February 2019 or thereabouts.
8. The application was served on all Respondents, and no objections have been received.
9. The Tribunal finds that the additional and more detailed information provided by Ms Magill in her witness statement is a helpful clarification of the original application. It does not introduce anything new, and its inclusion in the evidence considered by the Tribunal is beneficial to all parties. Ms Magill's evidence has therefore been considered by the Tribunal, as part of the Applicant's case.

THE ALTERNATIVE PROPOSALS

10. On receipt of 5 detailed tenders, the Applicant took professional advice and considered which of the two lowest prices to accept. Each contractor had been asked to tender for two alternative types of installation.
11. Option A is a genuinely temporary heat detector system which would require evacuation of the whole building on activation. It complies with all requirements of the GMFRS, and would become redundant on removal of combustible elements of the structure and the installation of protection against the spread of fire.
12. Option B is a heat and smoke detection system which is capable of being turned off for a limited time by the occupier of the flat in which the alarm originates, thus obviating the need for evacuation of the Building in the event of a false alarm. It is also a system which can be de-activated throughout the Building as and when a "stay put" fire response strategy is adopted but could be re-activated in the event that government guidelines change and require an "all out" strategy. The Applicant advises that in any event there is a possibility that in future it may become mandatory for such a building to have this sort of fire alarm installed.
13. The Tribunal has been provided with details of Options A and B, and with a breakdown of the two lowest tenders received. The tender submitted by Barlows UK Ltd was the most competitive and the price is not deemed to reflect any reduction in quality. Option B, as tendered by Barlows UK Ltd is the Applicant's preferred option.

RESPONDENTS' RESPONSE

14. There has been no response to the application from all but one of the Respondents. Mr Stefan Shaw, a leaseholder at 201 Moho Building, responded by email dated 19 August 2020. He claimed that the cost of installing a fire alarm system in the common parts was not a "maintenance charge" permitted by the lease. He referred the Tribunal to clause 7(5) of the lease, which requires the Applicant to accept liability for any defect in the common parts of the Building, and to indemnify the Landlord Urban Splash Limited against any consequential loss or expense.
15. There has been no response from any Respondent relating to the amount of the proposed service charge.

DECISION

16. Clause 7(5) of the lease only governs the relationship between the Applicant and the owner of the building. In it the Applicant does not provide an indemnity against the cost of remedial work for the benefit of the Respondent leaseholders.
17. Clause 4 of the lease contains the Applicant's covenant to keep in a good state of repair the common parts of the Building, including an obligation to improve and replace as required. Clause 4(2) refers specifically to the main structure of the Building. Schedule 4 requires the Applicant to maintain the common parts (Fourth Schedule, Part I, paragraph 5), and to carry out all work required by clause 4 including repair and improvement of the main structure (Fourth Schedule, Part II).
18. At clause 3(i) of the lease, each leaseholder agrees to pay the maintenance charge, which includes all sums spent by the Applicant under the terms of Schedule 4. It follows that the Applicant is entitled to recover the cost of the new fire alarm from the Respondents through the service charge account.
19. The Tribunal considers that the Applicant's preferred option, namely Option B as tendered by Barlow UK Ltd, is the appropriate tender to accept for the installation of a fire alarm in the Building. The proposed installation is robust and capable of use in future years should an "all out" policy be imposed and/or the presence of a fully integrated fire alarm system become mandatory. Meanwhile until the defects in the Building have been remedied it will provide safeguards for the occupants, and will enable the Applicant and GMFRS to stand down the temporary waking watch service. It will also enable residents, by using the "hush button" situated in each flat, to prevent a wholesale evacuation of the Building where there is in fact no danger from fire. The cost of this system is some £20,200 more than Barlow UK Ltd's figure for Option A, and the additional expense is, in the circumstances, justified.

Mr R Bastl
Rosenallis Properties
Mr J G Robson and Ms J E Boyd
Mr Matthew James Leese
Mr C E Fell & Ms R E White
Mr M W Halkon
Xiaoling Xie
Mr P G Connor
Adam Fenton
L1 UK Property Nominee A1 Pty Ltd & L1 UK Property Nominee A2 Pty Ltd
Mr R Cavallaro
Mr J A S Kearns & Mrs W L Kearns
Stefan Pushkin Shaw
Mr M J Boardman & Mrs C A Boardman
Mr M Neasham & Mr K James
Planet Properties Ltd
Ms A J Potts
Quatrefoil Ventures Limited
RS Property Holdings Limited
Mr B Khaliq
Mrs J Arnold
Manchester Methodist Housing Association
Tessa Rebecca Sewell
Mr Luke Anthony Ong
Mr D J Knowles
Ms S Huddlestone
Mr B J Dunkley
Gary Joseph Tuffy
J M Harper & G Kuperan
Marco Bucci
Chun Ho Fan
Mr G M P Chapman
Martyn Steadman & Helen Steadman
Mr B Dixon
Mr B B Lancashire & Ms S R Moxon
Blakethorne Estates Limited
Mr D M Ajuh
Miss M Hazelwood & Mr H J J Sheriff
Mr L Daley & Mrs C Daley
Sandown Place Limited
Mr R Sethi and Mrs B Sethi
Mr P D Quinn & Miss S Salvart
Mr T Nancollis
Mr R C Stone and Mr S Leahy
Mr B Dixon
Dr Kishwer Iqbal
Ms C E Barrett
Mr J & Mrs R Ruparelia
Sabita Kumari Chumber

Ms J M Stopford
Ms H S R Lindloff
Mr T R Pelham-Dawson
Aaron James Saxton and Sarah Louise Saxton
Anthony James Yacoubian
Mr R G Lockett
Mr B Hodgkiss & Ms O H Hilton
Mr B Khaliq
Mr S Lee & Mrs Y Lee
Ms S Ghose
Chymoor Properties Limited
Mr A C Smith
K Evans
Ms Ka Man Cheang
Great Places Housing Association
Sarah Frances Barclay & Richard Lander
Mrs N Farag
Joseph Lau
BLO8 LLP
Mr D McGreevy
Joseph D Walsh
Simon John Coss
Rosie Julia Potter
Wai Lim Ng
SW Styles
Gavin John Reid
Mr S Cochrane