



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

<b>Case Reference</b>	:	<b>LON/OOAG/LSC/2020/0223</b>
<b>Property</b>	:	<b>Flat 2 260 Finchley Road, London ("The Premises")</b>
<b>Applicant</b>	:	<b>Bijal Shah and Amit Shah ("the Applicants")</b>
<b>Representative</b>	:	<b>Mr Shah senior</b>
<b>Respondents</b>	:	<b>Galliard Homes ("the Respondents")</b>
<b>Representative</b>	:	<b>Property Partners</b>
<b>Type of Application</b>	:	<b>Determination as to payability and reasonableness of service charges.</b>
<b>Judge</b>	:	<b>Judge Jim Shepherd</b>
<b>Tribunal Member</b>	:	<b>Alison Flynn MRICS</b>
<b>Date of Decision</b>	:	<b>7<sup>th</sup> April 2021</b>

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice Cloud Video Platform with all participants joining from outside the court. A face to face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in two bundles, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions.

1. In this case the Applicants, Bijal Shah and Amit Shah seek a determination from the tribunal as to the reasonableness of service charges for the period between 2016 and 2021. The application stated that the Applicants were challenging a reserve fund increase from £10,000 per annum to £50,000 per annum for the years. The

Applicants question why there has been such a marked increase in the reserve fund contribution over the years in question. They also challenge the lack of transparency in relation to the reserve fund.

2. The Applicants are the leaseholders of flat 2, 260 Finchley Rd, Hampstead NW378A (“The premises”) They purchased the property for £1 million on 21st of January 2016. The freeholder is Galliard Homes. Their managing agents are Property Partners. Originally the applicants were also challenging the apportionment applied to their service charge contribution. This matter was dealt with in a determination dated 21<sup>st</sup> December 2020. As well as making that determination the Tribunal issued further directions inviting submissions on the condition of the building, planned maintenance and the reserve fund contributions. The aim being to ascertain whether the level of reserve fund was justified.
3. The Applicants did not challenge the payability of the service of the reserve fund because there is provision within the lease allowing the respondents to recover sums in order to meet future recurring costs. The challenge was limited to the amount of the reserve fund. There is evidence in the bundle that the Respondents carried out a consultation exercise in relation to the internal works. There is a letter dated the 20th October 2020 stating that the cost for internal redecoration will be covered by the sinking fund. There was no specific challenge brought in relation to this consultation exercise.
4. In his witness statement, Mr Shah stated that had not been able to obtain information from the Respondents as to estimated costs and details of the proposed internal and external works at the property. He said that the reserve fund had increased since June 2018 from £10,000 per annum to £50,000 per annum. It is clear that there was considerable correspondence between the Applicants and the managing agents where the Applicants were seeking information from the managing agents. The response was its fair to say dilatory and poor. This was regrettable and eventually the Applicants had no alternative than to issue the current application in order to seek clarity and in order to require the Respondents to provide proper disclosure of all of the relevant documents.
5. At that stage the Respondents through their managing agents had not really obtained proper quotes for the external projected external works at the premises. They had

however obtained a verbal quote to the effect that the external works would cost about £80,000. A letter from FW Gap the previous managing agents dated 4th of July 2018 to the leaseholders stated amongst other things that a surveyor had looked at the building and subject to a full survey he estimated the cost would be in the region of £80,000 plus VAT assuming a reasonable amount of repairs due to the windows walls and roofs. Attached to this letter was an estimated service charge for the year ending 30th of June 2019, this included the estimated contribution to the reserve fund of £50,000.

6. There are photographs in the bundle which show the window frames of some of the properties in the block looking in an appalling condition. One photograph shows somebody's hand coming out of the window and lifting the deteriorating wooden frame of the window. Another photograph shows that a number of the tiles from the roof had become detached and fallen off. Overall the photographs show that the external fabric of the building was in a poor condition although it is fair to say that it's not entirely clear which part of the building they are taken from.
7. Following the Tribunal directions dated the 21st of December 2020 the Managing Agents, Property Partners Management Limited submitted a statement from Colleen Zaninello in which it was confirmed that her firm had taken over management of the property in September 2018 and that at that time the previous managers FW Gap had already issued a demand for a reserve fund of £50,000 for the period July 2018 to June 2019 in relation to the reserve fund. It was intended to carry out internal works in 2020 and external works in 2021. Unfortunately, COVID-19 had intervened and the Respondents were behind on their plans.
8. Miss Zanninello also stated that a planned preventive maintenance report and external work specification had now been completed. They had previously been informed by the surveying firm instructed that the cost of the external works was likely to be between £130k and £160k plus VAT accordingly they had kept the reserve fund at the existing amount of £50,000.
9. Ms Zanninello stated that the external condition of the premises was in a poor state of repair. Judging by the photographs that the Tribunal have seen this is correct. She also stated that the reserve fund for future years would be reviewed and planned in line with the planned preventive maintenance report that they had received. She

confirmed at the tribunal hearing that once the works had been carried out the reserve fund would be reduced.

10. The Applicants produced a paragraph by paragraph response to Ms Zanninello's statement. Essentially it was alleged that the Respondents were not being entirely truthful in their statement and that the only thing that had driven the Respondents to obtain more detailed estimates in relation to the proposed works was the forthcoming tribunal hearing. Pausing there, the Tribunal considered that Ms Zanninello was entirely truthful in her evidence and accepted that the Applicants had not had a proper response to their queries. She said that a former colleague had managed the property badly and had not responded to the Applicants' queries properly. She had now taken over direct management of the scheme and the management was being improved.
11. Despite submitting this detailed response to Ms Zanninello's statement the Applicants did not attend the hearing but instead sent Mr Shah's father to represent them. Despite his best efforts Mr Shah's father was unable to give detailed evidence at the hearing and the Tribunal were rather unimpressed that the Applicants had decided not to attend although accept that there may have work and other commitments. However, this was their application. One would expect them to attend.
12. The Respondents submitted to the Tribunal a report by Building Logic on the external decorations and associated works that were planned at the building. The project was to include external decorations of windows and doors including repairs and remedial work to the brickwork facades and tiled roofs and also remedial works to the external landscaped areas. As already indicated the photographs submitted on behalf of the Respondent's demonstrated that the property was in a poor condition externally.
13. The Respondents also provided a planned preventive maintenance schedule produced by Building Logic. The Tribunal found this document to be extremely helpful and Ms Zanninello took the Tribunal through the document which outlined proposed works for the next 10 years. Essentially there are catching up works in 2021 - 2022 followed by smaller amounts of work over the next five years and then a further fairly substantial series of works readdressing the roof and external areas. In other words, now that the management of the property had been properly taken control of by Ms Zanninello some beneficial steps have been taken. In particular it

now appeared that the future maintenance of the building was being properly planned.

14. It is remarkable that this was not done before. The previous managing agents were clearly concerned about the state of the property and rightly so. Yet they had not sought to prepare a proper planned preventive maintenance report and had essentially relied upon verbal quotes. Also Ms Zanninello's predecessor at her firm had not apparently taking hold of the matter and properly planned the maintenance of the property for the future. It is remarkable that a proper maintenance schedule was not prepared because on external appearance and location alone this is an exclusive building divided into expensive flats. One would have expected that a proper maintenance schedule would have been prepared a long time ago.
15. It is regrettable that there was a delay in preparing the maintenance schedule. Nonetheless the Tribunal is satisfied that the managing agents are genuine in their intention to improve this property and bring it to a standard which one would expect in its current location.

## **Summary**

16. The Tribunal determines that the application should be dismissed because the planned preventive maintenance schedule demonstrates clearly that the Respondents were justified in seeking to recover a reserve fund in order to address the problems at the premises. As already indicated ,it's regrettable that there wasn't greater transparency and planning. Nonetheless it is considered that the application should be dismissed.
17. In relation to the application pursuant to section 20C of the Landlord and Tenant act 1985 the Tribunal considers that the bringing of the Tribunal proceedings and directions given by the tribunal were necessary to motivate the Respondents to take the issue of maintenance of the building in hand and formalise their planning. In light of this and despite the fact that the Tribunal were not impressed by the Applicants' failure to attend the hearing it considers that an order pursuant to section 20C should be made. The effect of this is that the Respondents are not at liberty to add the costs of defending the application to the service charge liability.

## **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).