



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

Case Reference : CHI/40UB/LSC/2022/0025

Property : Oak Tree Place, 61a Fortescue Street,
Norton St Philip, Bath, BA2 7PE

Applicant : Shirley Elizabeth Gribbin

Representative :

Respondent : (1) Fortescue Fields Management
Company Limited
(2) Lochailort Investments Limited

Representative : (1) BNS Property Management

Type of Application : Determination of liability to pay and
reasonableness of service charges

Tribunal Member : D Banfield FRICS
Regional Surveyor

Date of Decision : 13 June 2022

DECISION

The Tribunal finds that the unitary method of apportionment is reasonable and permissible as such in accordance with the terms of the lease.

The application to return to a sq. footage basis of apportionment is therefore refused.

Background

1. The Applicant seeks a determination of her liability to pay and the reasonableness of service charges. Further she requests that orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 are made in her favour.
2. The issue in dispute is a discreet point. It appears that from January 2021 the management company has changed the apportionment of the service charge. The Applicant suggests from when her lease was first granted in 2016 she has paid a service charge based upon proportions calculated having regard to the square footage of the flats. However since 2021 the management company has apportioned service charges equally to all flats within the development. The Applicants flat is a one bedroom flat in a purpose built block of 6 flats 4 of which are two bedroom flats. The change has led to an increase in the proportion of the service charges payable by the Applicant. The Applicant does not look to challenge any specific items, only the apportionment.
3. Judge Whitney issued Directions on 22 April 2022 setting out a timetable for the provision of the parties' cases leading to a decision by the Tribunal on the papers received unless an oral hearing was called for.
4. No such oral hearing was requested and following my review of the papers on 30 May 2022 I determined that the Tribunal had sufficient information to decide the issue which is in accordance with Rule 31 of the Tribunal Procedure Rules 2013.

The Lease

5. The Applicant's lease is for a second floor flat known as 61a Fortescue Street, Norton St Phillip, Bath Somerset BA2 7PE together with a parking space. The term is for 999 years at a rent of £1 per annum.
6. The Sixth Schedule contains a definition of the maintenance expenses which form the basis of the service charge and which are divided into four sections; Block Costs, Estate Costs, Costs relating to the site (other than the estate) and Costs applicable to any or all of the previous parts of this Schedule. In this application it is only Part A, the Block Costs that are at issue.
7. Part A defines the various maintenance liabilities;
 1. Repairing and maintaining the internal common parts.
 2. Repairing and maintain the external common parts including cleaning windows inaccessible to lessees.

3. Maintaining, renting and insuring the lift, fire fighting appliances, electronic door entry system, the telecommunication reception system and other equipment relating to the internal common parts.

4.Repairing and maintaining the service installations.

5.Insuring the block.

8. The “Lessee’s Proportion” is defined at page 8 of the lease as “a fair and reasonable proportion or proportions (as determined by the Manager from time to time) of the Maintenance Expenses payable by the Lessee in accordance with the provisions of the Sixth Schedule”

The Parties’ cases

The Applicant

9. The Applicant says that when she bought the flat the details provided by Savills showed the service charges were calculated according to relative sq. footage and indicated the difference between the 1 and 2 bedroom flats. This method of calculation must have been recognised as “Reasonable and Proper” as required under Schedule 6(10) of the lease.
10. 2 bedroom flats have considerable extra facilities, in two cases for instance, possession of a private garden and nothing has changed since December 2020 up to which time she was charged on a sq. footage basis.
11. In her response to the Respondent’s case (see below) the Applicant, in adding to her initial submissions, points out that the majority of lessees had a vested interest in voting for equal amounts of service charges and gives a disproportionate gain to the owners of 2 bedroom flats. That the wider estate costs are allocated on a unitary household basis is of no relevance given that the block costs are the responsibility of just six owners.

The Respondent

12. In a statement from Dr Hodge, the Chairperson of the Management Company he makes the following submissions;
- 1.Fortiscue Fields comprises 52 households including Oak Tree Place, a stand alone block of 6 Leasehold flats.
- 2.Collective services are run by a residents controlled Management Company initially run by the developers but transferred to the residents in January 2019.

3. An annual service charge covers maintenance of shared roads, paths and drainage the costs being divided equally between the 52 households. Oak Tree Place has a specific schedule for those flats alone such as their lift, front secured door and building insurance.

4. In 2019 and 2020 the Management Company corrected the misallocated costs inherited and created accounting schedules for each part of the estate being; The General Estate, Courtyards, Church View Cottages, Fleur de Lys Flats and Oak Tree Place.

5. Other than Oak Tree Place all costs have been allocated on a unitary household basis the Directors feeling that this was more equitable. This was supported by the two Oak Tree Place Directors who recommended that a vote should be held.

6. Two votes were conducted and on the basis of the results service charges for 2021 and 2022 were costed and invoiced on a unitary basis.

Discussion and Decision

13. The allocation of expenditure between lessees by way of service charges is always a contentious issue. Where lessees do not use facilities that are provided e.g. a lift, gym or common room, they are understandably reluctant to meet the costs.
14. In this case the Applicant argues that as the service charge allocation when she bought the flat was reasonable it must therefore be unreasonable to make a change.
15. The Respondent has given details of the democratic vote taken but, given that lessees of two bedroom flats were in the majority, the outcome is unsurprising.
16. In this case two different methods of apportionment have been employed both of which have advantages and disadvantages for the lessees and I accept that the change disadvantages the lessees of the one bedroom flats.
17. The task for the Tribunal however is not to examine the justification for the change, whether a lessee has been disadvantaged or whether it was reasonable to make such a change but to consider the lease and determine whether the method of charging now employed is compatible with the terms thereof.
18. The relevant section of the lease defines the “Lessee’s Proportion as “a fair and reasonable proportion or proportions (as determined by the Manager from time to time)”. The reference to “proportion or proportions” clearly enables different methods of calculation being employed for different elements of expenditure. The reference “as determined by the Manager **from time to time**” (the Tribunal’s

highlighting) also seems to allow for changes in those methods during the course of the term.

19. Given that the lease terms permit both different means of calculating the various heads of expenditure and for those means of calculation to be reviewed “from time to time” the only issue that remains is whether it is reasonable to levy the service charge on a unitary basis.
20. In deciding the issue it is not necessary for me to determine that the sq. footage method is unreasonable but simply that a unitary method is one that a landlord acting reasonably could arrive at.
21. **For the reasons referred to above the Tribunal finds that the unitary method of apportionment is reasonable and permissible as such in accordance with the terms of the lease.**
22. **The application to return to a sq. footage basis of apportionment is therefore refused.**

Costs applications and reimbursement of Tribunal fees

23. The Applicant has made applications for an Order under Section 20C and Para 5A of Schedule 11 written representations on any such applications being included in the parties’ statements of case.
24. Such representations were not made and before making any determination on the matters the Tribunal invites both parties to make any submissions for its consideration.
25. **By 28 June 2022 both parties are to send to the other party and electronically to the Tribunal any submissions regarding costs and reimbursement of fees that they wish the Tribunal to consider when making its determination.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.

4. 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.