



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

Case reference : **LON/00AF/LSC/2021/0283**

Property : **Clandon Court
69 Burnt Ash Lane
Bromley
Kent BR1 4DJ (“ The Property”)**

Applicants : **Naomi Rowland (Flat 9) Lead Applicant
Thelma Perkins (Flat 1)
Rosie Beamish (Flat 2)
Adam Winch (Flat 3)
Roy Sampson (Flat 4)
Mehta Sashikant (Flat 5)
Elizabeth O'Grady (Flat 6)
Robert Hubbucks (Flat 7)
David Garnson (Flat 8)
Craig Barker (Flat 10)
Kate Emore (Flat 11)
Emma Martin (Flat 12)
and
All members of Clandon Court
Residents' Association**

Representative : **Naomi Rowland (Lead Applicant)**

Respondent : **Constant Estates Limited
Mr Coates**

Representatives : **Acorn Estate Management
(Ms J Bunting) &
Eves Property Management Services
(Ms Eves)**

Type of application : **Determination of the reasonableness
and payability of service charges
pursuant to s.27A Landlord & Tenant
Act 1985**

Tribunal members : **Mr I B Holdsworth FRICS MCI Arb
Mr Johnson MRICS**

Date & venue : **17 August 2022
10 Alfred Place, London WC1E 7LR**

Date of decision : **5 September 2022**

DECISION

Decisions of the Tribunal

- 1 The Tribunal determines that the 12 Leaseholders of Flats at the property are due a total refund of £3,365.18 for overpaid insurance service charges made in the years 2016 to 2021. They are also due a total refund of £759.82, the sum charged by Eves Property Management for insurance services provided in year 2022.
- 2 The Tribunal makes an Order under s.20c for the reimbursement by the Respondent in respect of the application and hearing costs paid to Tribunal which amount to £300.00.
- 3 The total sum to be reimbursed to the Leaseholders is **£4,425.00**.

The Application

- 4 The Applicants seek a determination pursuant to s.27A of the Landlord & Tenant Act 1985 ('the Act') as to the amount of service charge, major works' costs and administrative charges payable in respect of the service charge years 2016-2021. The Applicants also seek a determination of the administrative charges payable in respect of the service charge for the years 2016-2021 and the estimated service charge for 2022 in respect of Flats 1-12 Clandon Court, 69 Burnt Ash Lane, Bromley, Kent BR1 4DJ.
- 5 The total value of the dispute when made was £146,133.08. The disputed sum was revised at the Hearing.
- 6 On 16 September 2021, the Tribunal gave initial Directions on this matter, these were subsequently reviewed by Judge Dutton and reissued on 19 November 2021.
- 7 The Directions identified the following issues to be determined:
 - Whether the fee charge by the Freeholder to arrange the buildings' insurance and recover premium costs was reasonable and payable.

- Whether the liability for the proposed costs of removal of asbestos from the garages should be borne by the Leaseholders.
- The reasonableness and payability of the charges made by the freeholder for major works undertaken in 2018.
- The payability of ground rent and garage rents at the premises.
- Whether the failure by the Freeholder to report the potential sale of the freehold to the leaseholders breached his obligations to offer a first right of refusal under the provisions of s.5 of the Landlord & Tenant Act 1987.
- Whether an Order under s.20c of the 1985 Act and/or paragraph 5A of schedule 11 to the 2002 Act should be made and whether an Order for reimbursement of application/Hearing fees should be made.

The Hearing

- 8 The Applicants were represented by the Lead Applicant, Ms Rowland (Leaseholder of Flat 9) and Ms O'Grady (Leaseholder of Flat 6). Ms Emore, Secretary to the Residents' Association also attended.
- 9 The Applicants prepared the Hearing bundle.
- 10 The Respondents were represented by Ms Jenifer Bunting of Acorn Estate Management and Ms Eves of Eves Property Management Services.
- 11 The Tribunal is told that Ms Eves and her property management company Eves Property Management were instructed by the freeholder some 18-months ago to arrange the buildings' insurance and collect the premiums. She represented the Respondent in the matter of insurance charges only. The Respondent was represented by Ms Bunting in all other matters.
- 12 The Hearing was held at Alfred Place and all parties attended except Ms Bunting who participated by video link.
- 13 Neither party requested an inspection and the Tribunal did not consider one was necessary, nor would it have been proportionate to the issues in dispute.

The property

- 14 The subject property is a purpose-built block of eight two bedroom maisonettes and four one bedroom flats.

The law

- 15 The relevant legal provisions are set-out in the Appendix to this Decision.

The issues

- 16 At the beginning of the Hearing the Tribunal asked the Applicants to review the matters in dispute. The Tribunal explained to the Lead Applicant that it

was unclear from the submitted bundle the issues that remained in dispute and for the Tribunal to determine.

- 17 After some deliberation the following matters were confirmed as those to be determined by the Tribunal They are the reasonableness and payability of :
- insurance fee levied by the Freeholder over the years 2016-2021 and the sum charged for the building stability survey.
 - the charges for the proposed s.20 works to remove asbestos panels (“ the Asbestos Works”) from above the entrance to the garages.
 - The charges for s. 20 Major Works undertaken in 2018 , in particular the supplementary supervision charges claimed by Miss Rowland. and
 - Whether a s. 20c Order should be made and/or the application and Hearing fees reimbursed.
16. The Applicants confirmed they did not challenge the reasonableness of the buildings' insurance premiums over the relevant years. The Applicants also confirmed they did not dispute in this application that satisfactory s.20 consultation had taken place either for the Asbestos Works or Major Works.
17. They also withdrew their challenge to the reasonableness of charges for ground rent or garage rents and accusation that the Landlord had failed to comply with the provisions of s.5 of the Landlord & Tenant Act 1987.

The lease provisions

18. Copies of the leases for Clandon Court are provided in the bundle at pp.418-578.
19. Although eight leases are provided, the relevant lease clauses are consistent throughout the leases supplied.
20. Under clause 4 (22) the lessee covenants with the lessor:
- 'to reimburse to the lessor a sum equal to one-twelfth of the costs expenses and outgoings and matters mentioned in the first schedule hereto the service charge to be due and payable on demand'*
21. Under clauses 6 (3) of the lease, the lessor covenants with the lessees to:
- 'keep the roof and external walls of the building in a thorough condition of repair and in good weatherproof condition and also to keep the retained parts in good repair and as often as in the opinion of the lessor shall be proper and necessary to paint all the outside wood and ironwork of the building'*
22. At clause 6 (2) the lessor covenants with the lessees:
- 'to insure and unless the insurance so effected shall become void through or by reason of any act or default of the lessees keep insured the*

building from loss or damage by fire storm tempest and comprehensive risk and two-years' loss of rent during reinstatement in some insurance of repute to the full reinstatement value thereof including architect's and surveyor's fees and to pay all premiums necessary for that purpose within 15-days after the same shall become due and to permit a note of the respect interests of the lessees ... and to produce for inspection by the lessee the policy or policies of such insurance and the receipts for any premiums paid in respect thereof

23. At the first schedule, subsection 8, the lessee covenants to pay:

'the fees of the lessor's managing agents and any fees and disbursements properly incurred by them for the collection of the aforementioned costs and for the general management of the building'

Insurance matters

24. Ms O'Grady represented the Applicants in this matter.
25. She explained that the service charge includes the costs of the buildings' insurance plus a 15% charge made by the Freeholder representing the costs incurred in arranging this insurance.
26. She told Tribunal that Eves Property Management Services were instructed to carry out this work approximately 18-months ago but, prior to this, the placement of the insurance was undertaken by Mr David Coates the Freeholder of the property.
27. Miss O'Grady explained that despite enquiries having been raised, the Applicants had not been provided with evidence of the freeholder obtaining multiple quotes for the insurance. The Applicants were not convinced that they had received good service comparable to the fees paid in respect arranging the buildings' insurance.
28. Miss O'Grady also referred to a payment of £250 plus VAT made to the managing agent for a Building Insurance stability survey described as a "Commercial Property Subsidence Questionnaire". This is required by the insurer. Ms O'Grady claimed the invoice was not clear and failed to detail Clandon Court as the property on which the survey had been undertaken.
29. Ms O'Grady referred the Tribunal to p.336 of the bundle. Miss Lisa Kapper had confirmed by e-mail that Acorn Property Management included procurement of buildings' insurance for the premises within the remit of their management rôle. Ms Kapper further confirmed no additional charge would be made for carrying out this work on behalf of the Freeholder.
30. Ms Eves told the Tribunal that Eves Property Management are solely responsible for arranging the buildings' insurance and collection of the premiums from the Leaseholders on behalf of the Freeholder.
31. Ms Eves said Eves Property Management were instructed by Mr Coates approximately 18-months ago to do this work. Eves Property Management has no other rôle in respect of Clandon Court.

32. Miss Eves provided a breakdown of the charges for the current year: the premium was reported as £5,065.46; administration charge was £759.82; Eves Property Management took 6% of the premium, amounting to £419.41 to offset the costs of recovering the premium from the 12 flat Leaseholders; this left a residual sum of £340.41, equivalent to £28.36 per flat for the Freeholder. Ms Eves argued this was a reasonable sum for the work undertaken by Mr Coates.
33. Ms Eves had no comment about the charges incurred in respect of the Commercial Property Subsidence Questionnaire.

Major works

34. The Lead Applicant told the Tribunal she was a qualified architect and had been instructed by the Residents' Association to act on their behalf in monitoring the major works, which were undertaken in 2018, but initial consultation commenced in 2016.
35. The Lead Applicant provided the Tribunal with invoices reflecting the time she had spent in providing advice to the contractors and the Contract Administrator. She contended this reflected a failure of the contract supervisor instructed by the managing agent to conduct their work satisfactorily.
36. The Tribunal asked the Lead Applicant if there were some specific works she had considered fell below a minimum standard or were not justified. She replied the painting of railings was not necessary at the date of the works were undertaken. No details of sub-standard works is provided.
37. The Lead Applicant also explained that the initial request for repayment of the costs of the major works was less than nine-months.
38. The Lead Applicant told the Tribunal that the short notice period imposed upon Leaseholders in respect of their liabilities had caused hardship. The Lead Applicant claimed that the initial demands sought payment within less than 90-days of service. This was subsequently extended after representations were made by the Residents' Association.
39. Ms Bunting responded on behalf of Freeholder. She told Tribunal the major scheme of 2018 works was prepared after a detailed survey prepared by independent surveyors Fulker Consultancy Limited. The major works were competitively tendered, the lowest price tender was adopted and there was full compliance with s.20 statutory procedures. She also told Tribunal that payments by Leaseholders were scheduled over almost 2 years
40. Ms Bunting explained several leaseholders made a request to phase the Major works. The managing agents sought the opinion of the Leaseholders about phasing and seven of nine responding Leaseholders confirmed their approval for all works to be carried out in a single scheme, rather than being staged over three-years. The managing agents relied upon this outcome and implemented the scheme of works in a single phase.

41. The Lead Applicant had commented in her submission on the adequacy of the consultation about phasing the works. It was her contention that the failure to provide a breakdown of costs together associated with the phases reduced the effectiveness of the supplementary consultation.
42. This was contradicted by Ms Bunting who claimed that cost figures for each element of the works was available. No Leaseholders made any queries at the consultation about phase costs or any other relevant matter.

Asbestos containing material (ACM) and removal

43. The Lead Applicant explained to Tribunal that a survey, undertaken by Vital Property Solutions in May 2017 on behalf of the managing agent, had recommended the removal of an ACM located in panels immediately above the 12-garage.
44. The Residents' Association commissioned an independent report from accredited asbestos consultant – NS UK on 22 October 2020. Their advice (p.125 of the bundle) recommended the panels remain insitu after encapsulation to prevent potential contamination.
45. The managing agents obtained cost estimates for removal of the panels in and issued a s.20 Notice of Intention to carry out the removal works. The cost of the works included in the Notice is £22,364.80 inclusive of vat equivalent to £1,863.66 per leaseholder.
46. The NS UK report was obtained in October 2020 and since then no further asbestos management works have been undertaken.
47. Ms Bunting explained that in May 2017 Vital Property Solutions carried out a refurbishment and development asbestos survey and recommended controlled asbestos removal to the gable end roof soffits and panels above garage doors. The upper-level asbestos content removal was completed as part of the external works but to reduce costs the ACM above the garage doors was encapsulated. On receipt of advice from the Residents' Association that NS UK had recommended continued encapsulation of the panels, Ms Bunting sought further advice from Vital Property Solutions, and they responded with a recommendation that the panels be removed to reduce risk to third-parties.
48. After several exchanges between the parties at the Hearing, they agreed that they would seek further independent advice on the treatment of the ACM that remain at the property. Ms Bunting, on behalf of Acorn Management, agreed to allow the Residents' Association to nominate accredited asbestos specialists to provide this further advice. The Tribunal noted this resolution.

20c Order

49. The Applicants claim a total lack of willingness by the Freeholder, to engage with the Residents' Association about the issues in dispute. They allege a lack of cooperation by Freeholder and the managing agent to supply the

necessary information to appraise and consider the appropriateness of any of the disputed charges.

50. The Lead Applicant said this was the underlying reason for the application and subsequent Hearing with the associated costs.
51. Ms Eves on behalf of Eves Property Management explained that she was instructed 18-months ago. She was not aware of any requests for detailed information in respect of the insurance premiums and charges. She did explain that the Freeholder found dealing with technology difficult and this might explain some of his failure to engage with the Residents' Association.
52. Ms Bunting emphasised the engagement she and her company had had with the Residents' Association on all matters in dispute. She evidenced this by reference to e-mails contained in the Hearing bundle and a detailed chronology of events provided in the skeleton argument.

Tribunal Decisions

Insurance charges

53. The Tribunal has considered representations made by both parties on this issue. They have considered the scope of services offered by management company Acorn Estate Management, together with the service provided by Eves Management Limited.
54. The Tribunal has also had regard for the covenants and the rights contained in the lease to make charges for management services. It is not disputed that Acorn Estate Management include within their management service the procurement of buildings' insurance for the properties they manage together with recovery of premiums.
55. The Freeholder had until 18-months ago carried out this work himself and made specific charges, which were supplementary to those made by Acorn Estate Management.
56. The charges currently made by Eves Management Limited are in addition to those made by Acorn Estate Management.
57. The Applicants under the lease provisions Clause 6(2) and the first Schedule (8) of the lease are required to pay management charges for the insurance service. This does not include duplicate building insurance management costs to satisfy the preference of the Freeholder.
58. It is the opinion of the Tribunal that the additional insurance charges are not permitted under the lease terms and are thereby not recoverable from the leaseholders
59. For this reason the Tribunal deemed the 15% fees charged between 2016 and 2022 on the buildings' insurance premium was not payable and should be reimbursed to the Leaseholders. The Tribunal acknowledges the management charges for arranging the insurance are payable in accordance

with Clause 6(2) and the first Schedule (8) of the lease. It is common ground between the parties the insurance service is already available from the managing agent. The Freeholder and more recently his agent have undertaken this role without any consultation with the leaseholders and made a supplementary charge for providing the service. This role falls beyond the relevant lease provisions and the charges are not payable.

60. Neither the Respondent nor his agent, Eves Property Management challenged the sums claimed by the Applicants as insurance service charges for the period 2016-2021 in their submission. In the absence of any alternative evidence these charges are accepted by Tribunal as paid by the leaseholders. Eves Property Management provided details to Tribunal of the charges made in 2022. All insurance charges to be reimbursed are shown in table 1 below.

Table 1

Insurance Administration Charges								
Year	2016	2017	2018	2019	2020	2021	2022	Total
Amount charged and reimburseable	£498.96	£510.34	£577.43	£577.43	£600.51	£600.51	£759.82	£4,125.00

61. The Tribunal also direct that all future Building Insurance Survey Charges are correctly demanded, specifically all invoices clearly show the address of the property inspected.

Major works

62. Ms Bunting of Acorn Estates Management confirmed that the contract managers, Construct & Consult supervised the Major works. The Works Scheme was based on an independent surveyor's inspection and repair schedule.
63. The Tribunal is cognisant of the effort made by Acorn Estate Management to undertake further consultation in respect of the timing and phasing of the works, following representations made by the Residents' Association about the works programme. The outcome of this consultation was definitive, with seven Leaseholders in favour of option one, that was to proceed with the scope of works as set out in the surveyor's specification.
64. The Lead Applicant failed to convince the Tribunal that there were any specific works which fell below the minimum standard expected of a competent contractor. When questioned by the Tribunal the Lead Application was unable to provide any detailed response in respect of the works that should not have been included within the scheme or were undertaken to an inadequate standard.
65. It is for these reasons the Tribunal accepts the charges for the works were both payable and reasonable.

RIGHTS OF APPEAL

- 1 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.
- 2 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.
- 3 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.
- 4 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.

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.

