

11544



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

Case Reference : CHI/00HN/LSC/2015/0067

Property : 13 Bryanstone Road, Bournemouth, BH3
7JE

Applicant : Tyrrel Investments Inc

Representative : Gail Drysdale, Napier Management
Services

Respondents : Mr G Pratt, Mrs M Pratt, Ms J L Chiesa,
Mr N C Goodfellow and Miss H J Olsen

Representative : Ms Julia Chiesa and Miss Hayley Olsen

Type of Application : Liability to pay service charges

Tribunal Members : Judge N P Jutton, Mr P D Turner-Powell,
Mr J Mills

**Date and Venue of
Hearing** : 7 March 2016
Tribunal Room 2, Poole Courts and
Tribunals Centre, Civic Centre, Park Road,
Poole, BH15 2NS

Date of Decision : 10 March 2016

DECISION

1 **Introduction**

2 The Applicant, Tyrrel Investments Inc, is the Lessor of 13 Bryanstone Road,
Bournemouth, BH3 7JE (the Property).

3 There are 3 flats at the Property. The flats are held on identical long leases. Mr
G Pratt and Mrs M Pratt are the Lessees of Flat 1, Ms J L Chiesa the Lessee of
Flat 2, and Mr N C Goodfellow and Miss H J Olsen the Lessees of Flat 3.

4 On 20 October 2015, the Applicant submitted an application to the Tribunal for
a determination as to whether a service charge would be payable in respect of
the costs of installing a new communal electricity supply and associated works
to the Property. The application is made pursuant to section 27A(3) of the
Landlord & Tenant Act 1985 (the 1985 Act).

5 The Respondents apply for an Order pursuant to section 20C of the 1985 Act
that all or any of the costs incurred by the Applicant in connection with these
proceedings are not to be regarded as relevant costs to be taken into account in
determining the amount of any service charge payable by them.

6 Directions were made by the Tribunal providing for the service of Statements of
Case and the preparation of a Hearing Bundle on 3 November 2015.

7 **Documents**

8 The documents before the Tribunal comprised a Bundle of documents of some
57 pages containing each party's Statement of Case, copy Lease, a Notice served
pursuant to section 20 of the 1985 Act and the said Directions.

9 **The Inspection**

10 The Tribunal inspected the Property on the morning of 7 March 2016. The
Property is an Edwardian house constructed with brick elevations under a
pitched roof converted into 3 flats. Flat 1 is on the ground floor, Flat 2 is on the
first floor and Flat 3 is a maisonette flat on the first and second floors. There is a
large Edwardian porch at the entrance to the property and then a communal
hall and staircase leading to the front door of each flat. There are 3 light fittings
in the communal hall/staircase. Just inside the inner front door is a meter
cupboard.

11 **The Law**

12 The statutory provisions relevant to applications of this nature are to be found in
sections 18, 19, 20C and 27A of the the 1985 Act. They provide as follows:

The 1985 Act

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.*
- 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 provision 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*
- 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.

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 leasehold valuation tribunal, or the First-Tier 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 –.....

(b)(a) in the case of proceedings before the First-Tier Tribunal, to the Tribunal.

(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.

13 The Lease

14 A copy of the Lease to Flat 3 at the Property appears at pages 12-34 of the Hearing Bundle and the parties confirmed at the hearing that the Leases of Flats 1 and 2 were in like form.

15 By clause 2(2) of the Lease, the Lessee covenants as follows:

“To pay to the Lessor without any deduction by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the Lessor in the repair maintenance renewal and insurance of the said building and the other heads of expenditure as the same are set out in the Third Schedule hereto such further and additional rent (hereinafter called ‘the service charge’) being subject to the following terms and provisions:”.

16 There are then provisions providing for, amongst other things, the service charge year, the provision of a certificate of expenditure at the end of each year, provision for anticipated expenditure and payments in advance on account.

17 Clause 3 of the Lease contains a maintenance and repairing covenant on the part of the Lessor. It provides:

“3. The Lessor hereby covenants with the Lessee as follows:-

- (i) *Subject to the payment by the Lessee of the rent and the service charge and provided that the Lessee has complied with all the covenants agreements and obligations on his part to be performed and observed to maintain repair redecorate renew amend clean repoint paint (such painting to take place every 5 years) grain varnish whiten and colour:*

- (a) *The structure of the said building and in particular but without prejudice to the generality thereof the roofs foundations external and other load-bearing walls (but not the interior faces of such parts of external or internal walls as bound the Flat) and timber (including the timbers, joists and beams of the floors and ceilings thereof) chimney stacks gutters and rainwater and soil pipes thereof and the common staircase entrance hall and ground floor entrance door.*
- (b) *The sewers drains channels water courses gas and water pipes electric cables and wires and supply lines in under and upon the said Building ...*
- (e) *To provide adequate lighting in the entrance hall and common staircase”.*

There are then provisions relating to the maintenance, repair etc of boundary walls and fences, the grounds and insurance.

18 The Third Schedule of the Lease provides as follows:

“Lessor's Expenses and Outgoings and other Heads of Expenditure in respect of which the Lessee is to pay a proportionate part by way of Service Charge

- 1. *The expense of maintaining repairing redecorating and renewing amending cleaning repointing painting graining varnishing whitening or colouring the said Building and all parts thereof and all the appurtenances apparatus and other things thereto belonging and more particularly described in clause 3(1) hereof.*
- 2. ...
- 3. *The cost of upkeep and of the lighting of other parts of the Building enjoyed or used by the Lessee in common with others and of keeping the other parts of the Building used by the Lessee in common as aforesaid and not otherwise specifically referred to in this Schedule in good repair and condition”.*

19 **The Issues**

20 At the start of the hearing it was agreed with the parties that the following issue fell to be determined by the Tribunal.

- 1. Whether if the costs of works which the Applicant proposed to carry out for the installation of a communal electricity supply and associated works were incurred would a service charge be payable by the Respondents in respect of those costs.
- 2. Whether an Order should be made pursuant to section 20C of the 1985 Act that all or any of the costs incurred by the Applicant in connection

with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.

- 21 At the start of the hearing, the Tribunal asked the parties that if the Tribunal were to determine that the said works could be recovered by the Applicant from the Respondents as service charge, did they wish the Tribunal to determine whether the proposed cost of such works were reasonable. Ms Drysdale for the Applicant suggested that the connection costs contained in the quotation from Scottish & Southern Energy at pages 41-49 in the Bundle were not open to negotiation on the basis that her understanding was that the only supplier that could connect the proposed new circuit was Scottish & Southern Energy.
- 22 The Tribunal referred Ms Drysdale to a note that appears on the Scottish & Southern Energy quotation at page 42 where it is stated "*There are independent connection providers (ICPs) and independent distribution network operators (IDNOs) who may be able to provide you with an alternative quotation to carry out some of this work*".
- 23 In light of that note, Miss Drysdale accepted that it may be possible to obtain alternative quotes for the work from other providers/suppliers. She further indicated that given the passage of time, the Applicant intended to start a fresh consultation process under section 20 of the 1985 Act. That in all the circumstances she agreed that there was insufficient information in the hands of the parties or before the Tribunal for there to be a determination as to whether the costs of the proposed works, if such costs could be recovered as part of the service charge, were reasonable.
- 24 The Respondents agreed. It was therefore agreed that the only issues for the Tribunal to determine were those set out above.
- 25 **The Applicant's Case**
- 26 At the invitation of the Tribunal, Miss Drysdale took the Tribunal to the Lease (pages 12-34).
- 27 Miss Drysdale made reference to clause 2(2) (page 15), to clause 3(1)(e) and to the Third Schedule, in particular clause 3 of the Third Schedule (all set out above).
- 28 Miss Drysdale said that the proposed works were works which the Applicant intended to carry out whether or not the cost of the works could be recovered as service charge payments. The works in her submission were works both amounting to works of amendment and works of renewal to the existing electrical system serving the common parts. That the lease allowed the lessor to recover from lessees by way of service charge payments the cost of works which amounted to an amendment and/or renewal of the communal electrical system.
- 29 Miss Drysdale said that the current arrangement, whereby the communal electrical system runs from the electrical supply serving Flat 2, was not a satisfactory arrangement. It was dependent upon the goodwill of the lessee

from time to time of Flat 2. That it was reasonable that the Applicant should be in a position to operate a form of direct control over the supply to the common areas.

30 The Tribunal referred Miss Drysdale to the quotation from Anderson Electrical dated 16 April 2014 (page 50) and the reference to BS7671. Miss Drysdale was not able to say what BS7671 was but said she had taken that to mean that the current system whereby the communal electrical supply was fed from Flat 2, was in contravention of BS7671.

31 The Tribunal also took Miss Drysdale to part of the Scottish & Southern Energy quotation at page 47 dealing with cable entry to the Property. This provides for the need for a specified cable to enter the building through the footings. Miss Drysdale accepted upon being questioned by the Tribunal, that these could be additional works to those outlined in the quotations from Scottish & Southern Energy and Anderson Electrical.

32 **The Respondents' Case**

33 The Respondents' case is that there is no need to install a new communal electrical supply system and lighting circuit to serve the common parts. That the current system albeit operating from Flat 2 was perfectly adequate. That Miss Chiesa of Flat 2 was content for the current arrangements to continue and to allow any necessary appropriate inspection of her property for that purpose.

34 The Respondents also contend that the proposed works in any event were not works which properly could be recovered as service charge payments under the terms of the Lease. That the proposed works were not works to amend or renew but were works to install an entirely new system.

35 **The Tribunal's Decision**

36 The Lease allows the Applicant Lessor to recover from the Respondent Lessees expenses and outgoings that are reasonably incurred for, amongst other things, renewing and/or amending all appurtenances and apparatus at the Property together with the costs of the up-keep of and of the lighting of common parts.

37 The Third Schedule to the Lease identifies the expenses and outgoings which may be incurred by the Lessor and which can be recovered from the Lessees by way of service charge payments. They include the costs of "*...renewing amending...the said Building and all parts thereof and all the appurtenances apparatus and other things thereto belonging and more particularly described in clause 3(1) hereof*". Clause 3(1) has similar wording and provides for the Lessor to amongst other things "*...renew amend...*" at clause 3(1)(b) "*...electrical cables and wires and supply lines in under and upon the said Building*".

38 In the view of the Tribunal, the current system whereby the lighting to the common parts is served by way of a connection from Flat 2 is far from ideal. That relies upon the goodwill of the current lessee of Flat 2, Miss Chiesa.

- 39 The proposed works provide for the supply via Flat 2 to be disconnected and for the electrical supply to the common areas to be via a new consumer unit connected from the mains to include a new lighting circuit which will connect with the existing communal lights, albeit the intention is to renew those with up to date communal/emergency light fittings. The work will include the removal of the supply from Flat 2 and its reinstallation in the hallway.
- 40 In the view of the Tribunal, although such works are extensive, they are nonetheless works which amount to an amendment to the existing system and in a large part to a renewal of that system.
- 41 The Tribunal does not accept the Respondents' contention that the works are unnecessary. It is for the Applicant to determine what works it deems should be carried out to the Property and it is not in the view of the Tribunal unreasonable for it to decide that the current arrangement in relation to communal lighting is unsatisfactory, and that it should be amended/renewed in the manner proposed.
- 42 In all the circumstances the Tribunal determines that the proposed works are works which fall under the heads of expenditure set out in the Third Schedule to the Lease, they are works that it is reasonable for the Applicant to carry out, and as such, the cost of those works are recoverable from the Respondent lessees and payable by them pursuant to clause 2(2) of the Lease (to the extent that the costs of such works are reasonable).

43 **Section 20C Application**

- 44 Miss Drysdale for the Applicant indicated that it was not the Applicant's intention to seek to recover the costs of these proceedings by way of service charge payments from the Respondents.
- 45 In all the circumstances, the Tribunal takes the view that it is just and equitable to make an Order pursuant to Section 20C of the 1985 Act and accordingly the Tribunal orders as follows.
- 46 It is ordered that the costs incurred by the Applicant in connection with these 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 Respondents.

47 **General Concluding Comment**

- 48 The Tribunal is surprised that although the Applicant appeared to have commissioned a Health & Safety document dated 9 April 2014 and carried out a Fire Risk Assessment review on the same date (neither of which were before the Tribunal), that no works appear to have been carried out and it had taken the Applicant until 20 October 2015 to make this application. Further, it would have been helpful for the Tribunal and for the Respondents if up to date quotations/estimates for the cost of all the works required had been obtained. That would have allowed the Tribunal, if the parties had wished and if the cost

of the works were in dispute, to determine whether the cost of such works were costs that were reasonably incurred.

49 For the avoidance of doubt, the decision of the Tribunal is limited to the question of whether the cost of the works proposed by the Applicant in its statement of case (pages 40 - 51) could be recovered from the Respondents by way of service charge. The Tribunal has not made a determination as to whether the cost of those proposed works are reasonable or otherwise. Nor has the Tribunal made a determination as to whether the cost of any subsequent works to those proposed, whether they be in respect of the provision of a fire alarm or otherwise, would be recoverable by the Applicant by way of service charges.

50 **Summary of Tribunal's Decision**

51 That the cost of the works which the Applicant proposes to carry out for the installation of a communal electricity supply and associated works are recoverable from the Respondents as service charge payments (provided that such costs are reasonable).

52 That the costs incurred by the Applicant in connection with these proceedings shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.

Dated this ~~10th~~ day of March 2016



Judge N P Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application 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.