

12448



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

**Case reference** : **LON/00AW/LSC/2017/0230**

**Property** : **Nell Gwynn House, Sloane Avenue,  
Chelsea, SW3 3AZ**

**Applicant** : **Crabtree PM Limited**

**Representative** : **Katie Gray, instructed by CG Naylor  
LLP**

**Respondent** : **The leaseholders**

**Representative** : **N/A**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal members** : **Judge Hargreaves  
Stephen Mason BSc FRICS FCI Arb**

**Date and venue of  
hearing** : **10 Alfred Place, London WC1E 7LR  
31<sup>st</sup> October 2017**

**Date of decision** : **1<sup>st</sup> November 2017**

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**DECISION**

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## DECISION

In respect of the service charge years 2018 – 2019 - 2020 - 2021 – 2022 and in respect of the amounts referred to in the application form dated 15<sup>th</sup> June 2017 (as modified subsequently: see the decision below), the Tribunal determines that:-

1. The amounts to be claimed are payable pursuant to *s27A Landlord and Tenant Act 1985* and
2. The amounts to be claimed as payments to the reserve fund are reasonable pursuant to *s19 Landlord and Tenant Act 1985*.

## REASONS

1. This being the third of a similar application undertaken by the Applicant<sup>1</sup>, the contractual background and legal framework to the application has already been set out before and we see no reason to repeat the explanation given by the Tribunal in the 23<sup>rd</sup> May 2013 decision (LON/00AW/LSC/2012/0597) which is at tab 6 of a well-prepared bundle provided by the Applicant. See paragraphs 2-10. See also paragraph 14 and continuing of the evidence of Chad Bryant at p47, together with copies of the relevant standard form leases at pages 57, 97 and 125<sup>2</sup>.
2. Page numbers refer to that bundle. We note that a full copy of the trial bundle was provided to Ms Rachel Broster, the leaseholder of Flat 408, who was the only one out of a total of 431 residential leaseholders to provide written objections to a number of items by returning a “schedule of disputed charges” to the Applicant, which is at p34 of the bundle. With a mail shot costing around £700 due to the number of leaseholders (and the fact that many live abroad), we are satisfied that since no-one else apart from Ms Broster made any objection to the application, that she is well aware of the current situation, as that is fully explained in the evidence and contents. She did not appear at the hearing, file any evidence or make any further representations.
3. We should add that we are satisfied that the Applicant complied with the Tribunal’s amended directions as to service of the application on the leaseholders.
4. Ms Townsend, one of the leaseholders, observed the proceedings for part of the morning, and was able to participate when she wished to ask questions, finding the experience “useful”.

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<sup>1</sup> LON/00AW/LSC/2007/0225 June 2007 and LON/00AW/LSC/2012/0597 May 2013: see also LON/00AW/LSC/2008/0291 September 2008 on apportioning contributions to the reserve fund

<sup>2</sup> For the relevant clauses see pages 81–83 and p87–90, pages 109 and p115–121, and p140 and p115–121

5. The application was well supported by the evidence of Chad Bryant, an employee of the Applicant whose detailed witness statement is at p43, and by the oral evidence (when required to assist the Tribunal), of Mr Peter Richards, the general manager of the block who works on-site, and Mr Arnes, the building manager. The latter two gave evidence in 2012 and the management and the Tribunal have benefited from their long experience there. Mr Bryant is a relatively new employee of the Applicant but is fully involved in the current plans. We accept their written and oral evidence. Mr Richards in particular was able to answer any question put to him fluently, professionally and in full.
6. The development is a well known 1935/6 built block in a prominent location in Sloane Avenue. The management prefers to carry out its maintenance obligations in five year cycles and has done so for the last ten years. 2018-2022 is the next five year maintenance period. The leases contain provisions whereby the leaseholders can be required to contribute to a reserve fund in advance. The managers say that they prefer to raise a more or less level contribution to the reserve fund every year to avoid the peaks and troughs of fluctuating demands and this is achieved by making a 5 year plan and then averaging the cost of that future contribution for every flat across the 5 years. It is a given that in relation to the works we have been considering, that there will be a s20 consultation process and the opportunity for any leaseholder to challenge the reasonableness of the amounts actually incurred and works actually carried out.
7. In both previous cases the Tribunal decided that the estimated costs and the proposed reserve fund charges were reasonable, and although we are not bound by those findings, it is almost inevitable that we do so in this application, not only because this is part of a planned sequence of repair and maintenance (the principle of which has been accepted to be reasonable), but because the approach is detailed, thoughtful, and overall reasonable both in terms of the basic proposals and the estimated costs.
8. In order to prepare the maintenance plan, the managers instructed Cushman & Wakefield to prepare a "Planned Preventative Maintenance Schedule" for the property, by way of an update on the one prepared in 2012 (the basis of the 2012 application). Again, the person in charge of the report (Bill Nancarrow) has been concerned with the property for 18 years. His first report, prepared in November 2016, is at p170. The crux of his recommendations are summarised in a schedule at p185. The application was prepared on the basis of this schedule. The comments made by Rachel Broster are in response to this schedule. One of the Appendices is a "life cycle" report on the building services installations prepared by Ridge Consultants (p187). Many of the comments raised by Rachel Broster (in August 2017) are in fact answered by reference to the Ridge report, and she would by now have had a copy of that report.

9. The summary at p185 provides an estimated total of £4,337,473.07 as required to be spent in the forthcoming maintenance period. The calculation per flat for every year in the maintenance period, as a payment to the reserve fund, is £1989.67 – taking an average sized flat, because the contributions vary.
10. But as an indication of the careful approach to the maintenance cycle, there has been a further review of both the work carried out by Cushman Wakefield and Ridge. Both reports have been updated since the application was made in June and these are at p229 and p246 respectively. The schedule at p185 has been updated and is to be read as replaced by that at p244. The works were revised as the result of further inspections and discussions, as was entirely proper given the amounts at stake.
11. The overall effect is that the anticipated works have been reduced by around 22% (see Bryant, p50). The bottom line figure is revised down to £3,484,002.39, and that produces a revised reserve charge fund of £1598.17. We were shown a copy of a schedule which is not in the bundle but contains the individual flat calculations based on the correct apportionments, both original and revised. Ms Townsend had the opportunity of considering this.
12. In both Mr Bryant's witness statement and in his and Mr Richards' oral evidence, the changes made in amounts and movements in the years in which they are to be charged, were explained to the Tribunal. These are summarised in Mr Bryant's statement at p50-52.
13. In particular the 2018 figure of £400,000 in relation to fire riser proofing works was discussed in some detail and we are satisfied that the figure is still appropriate, subject to review. In relation to 2019 costs are reduced due to proposed use of reserve fund balance, and in relation to 2020, the proposal to replace communal lighting has been put on hold, due to recent replacement of light bulbs with LED fittings (saving £250,000). So where appropriate the management has reduced costs to avoid unnecessary works, such as modifying a plan to install new boilers – deciding not to place them on the roof has resulted in reduction of £100,000 for associated builders' works.. Other items explored include the £20,000 proposed cost of rising bollards as security in relation to vehicular access, and the professional fees, contingency fees (10%) and provision for inflation (3%).
14. We asked questions about each of the items in respect of which Ms Broster objected and we are satisfied that on the basis of the responses received, the charges are reasonable both in terms of being charged to the reserve fund and as to amount.