



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

Case Reference: CHI/OOMS/LSC/2017/0075

Property: Elmfield North & West, 24 Millbrook Road East,  
Southampton SO15 1JA

Applicant: St Sampsons Finance Limited

Representative : Napier Management Limited

Respondents: Various lessees

  

Representative: James Dennis & Philip Mercer

Type of Applications: Reasonableness of estimated service charges under  
Section 27A Landlord and Tenant Act 1985 ("the  
1985 Act")

Tribunal Members: Judge P.J. Barber

  

Date of Decision: 21<sup>st</sup> February 2018

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**DECISION**

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## Decision

- (1) The Tribunal makes no determination as to the reasonableness of the budget or estimate figures in the service charge year 2017-2018, in relation to fire precaution works.

## Reasons

### INTRODUCTION

1. The Tribunal has an application dated 18<sup>th</sup> August 2017 from the landlord, seeking a determination of reasonableness of service charges in a total of £324,295.12, in the service charge year 2017-2018 under Section 27A of the 1985 Act. Directions were issued, dated 13<sup>th</sup> September 2017 providing for the application to be dealt with on the papers without a hearing, in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected within 28 days of receipt of the directions. No objections have been received and accordingly this matter is being dealt with on the papers without a formal hearing or inspection.

### THE LAW

2. Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

*“(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 cost, 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.*

“Service Charges” are defined in Section 18 of the 1985 Act as follows

*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, 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*  
*18(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.*

*18(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 20ZA(1) of the 1985 Act provides that:

*Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

### **REPRESENTATIONS**

3. The evidential bundle provided to the Tribunal included a copy of the application and the directions, and a specimen copy lease, being that for Flat 7 Elmfield North, and dated 31<sup>st</sup> May 1991 made between Yorkbrooks Investments Limited (1) George Robert Henderson and Suzanne Elizabeth Ruddock (2). In addition, specimen copies of Section 20 consultation notices, responses, and a schedule of works prepared by the Building Consultancy Bureau and dated 19<sup>th</sup> July 2016, were included in the bundle, together also with a tender analysis report. Copy accounts for the service charge year ended 24<sup>th</sup> March 2017 were also included, as well as a copy of a fire authority enforcement notice dated 4<sup>th</sup> September 2015 and related correspondence. The bundle further included:

Respondents` statement dated 4<sup>th</sup> November 2017

Applicant`s response (undated)

4. The summarised tender sheet at Page 64 of the bundle, refers to proposed fire precaution works being:

Project A - Communal Areas and Garages

Project B – Garage Shafts and Boiler Room

The grand total for the cost of the Project A and Project B works as shown in the summarised tender sheet, is £324,295.12, being the amount in dispute as referred to in the application.

5. The Respondents broadly submitted in their statement that the estimates within the 2017-2018 budget which are disputed, are £252,895.00 on the basis that the Project B work includes the Link House (Boiler Room), previously determined in earlier proceedings under No. CHI/00MS/LSC/2016/0075, as not part of the lease service charges. The Respondents further asserted that the 2016-2017 budget included £71,400.00 for the works and that the method of charging is not in accordance with the leases. The Respondents stated they had been informed that the contractor for Project A has changed, resulting in delay to that project, and suggested that the fire work costs could properly be spread over multiple

budget years to assist lessees, adding that the tender analysis is unclear and that there may be a competitive advantage to splitting the work into smaller projects. The Respondents further submitted that given the passage of a year since the tender process was carried out, the Project A contractor had withdrawn and that both Projects A and B should be re-tendered. The Respondents referred to previous confusion on the part of the Applicant landlord, regarding allocation within the service charge, of Link House (Boiler Room) costs, referring to the insufficiency of mere numbered "codes" within the tender summary analysis, to identify and/or distinguish the costs. The Respondents concluded by saying that they acknowledge the need for the fire safety works, but do not accept inclusion of works for the Link House (Boiler Room), adding that the Applicant has failed to provide enough detail to allow leaseholders to determine what the scope of works are, and if they are chargeable items or not.

6. The Applicant in its statement, submitted that £252,895.00 is the figure which it was asking to be determined as reasonable; adding that it accepted that Link House (Boiler Room) costs will not be service charge items, and that "*The Contract Administrator has been asked to identify the costs of the same in readiness for the Tribunal Hearing.*" The Applicant did not agree that works were not being charged in accordance with the leases, referring to the sum of £71,400.00 as being an initial cost in the previous year's estimates. The Applicant stated that works to the shafts are under way and that the Project A work to the communal areas and garages is imminent. The Applicant further said that the tender analysis should be read in conjunction with the schedule of works which identifies the specific work in question. The Applicant further stated that it would not be best practice to split the works among several contractors, adding that Project A is being re-tendered by the Contract Administrator.

### **CONSIDERATION**

7. The Tribunal have taken into account the written submissions as well as the other case papers provided by the parties and contained in the bundle.
8. The Tribunal notes the 2017-2018 budget summary at Page 199 of the bundle which refers to the sum of £252,895.00, which according to the parties is the amount in dispute, not the sum of £324, 295.12 as referred to in the application; the difference of approximately £71,400.00, presumably being the contingent fire work figure from the 2016-2017 budget estimates at Page 200 of the bundle. The Tribunal agrees with the Respondents' view that as presented in the bundle, it is not clear as to how the disputed sum of £252,895.00 is precisely reflected in the tender analysis reports at Pages 183-198 of the bundle, or indeed which proportion of the Project B estimated costs relating to the Link House (Boiler Room), should be discounted, as not falling within the service charge. The codes used in the tender analysis report for Project B at pages 191-198 of the bundle are not clear as to the works being referred to, even when read in conjunction with the schedule of works. The Applicant has also failed either in its written response to the Respondents' statement, or elsewhere, to provide any fully clear, precise and accurate indication as to how the sum in dispute is reflected and/or subdivided within the estimated Project A and Project B costs, either as shown in the tender analysis reports, or otherwise.
9. The Applicant also states in its written response to the Respondents' statement, that Project A is being re-tendered by the Contract Administrator; in such

circumstances the application appears to be premature and without the benefit of a current estimate of the Project A costs, the Tribunal is simply unable to determine reasonableness of them. In regard to the Project B costs, the Applicant also stated in its written response to the Respondents' statement, that it accepted that Link House (Boiler Room) costs should not be service charge items and that the Contract Administrator had been asked to identify such costs in readiness for the Tribunal hearing. However, despite such statement, no evidence has been provided. Accordingly, without any clarity as to the breakdown of Project B costs which are intended by the Applicant as being either chargeable or not chargeable via the service charge, the Tribunal is not in a position to determine reasonableness of the Project B costs which are actually within the service charge mechanism. In any event, even if the Tribunal was in a position to determine reasonableness of the Project A and Project B amounts, that would constitute only an approval of estimates, and it would of-course still remain open to the Respondent lessees to challenge the service charge demands relating to actual expenditure in due course, if they were to feel so minded.

10. We made our decision accordingly.

Judge P J Barber

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.