

12756



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

Case Reference : **LON/00AJ/LSC/2018/0102**

Property : **1-71 Canalside Gardens, Southall,
Middlesex UB2 5TJ**

Applicant : **Salmon Estates Limited**

Representative : **Ms R Sohata and Mr C Wheaton of
JPW Real Estates – Managing Agents**

Respondents : **The long lessees of the flats
comprising 1-71 Canalside Gardens.**

Representative : **None as such – please see paragraph []
below**

Type of Application : **S27A Landlord and Tenant Act 1985 -
determination of service charges
payable**

Tribunal Members : **Judge John Hewitt
Mr Kevin Ridgeway MRICS**

**Date and venue of
determination** : **10 May 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **17 May 2018**

DECISION

The issue(s) before the tribunal and its decision

1. The issue before the tribunal was the temporary apportionment of the charges for hot water and heating pending the installation of the new individual smart meters into each apartment.
2. We record the broad thrust of the agreement arrived at between the applicant and the long lessees of apartments present at the hearing was as follows:
 - 2.1 Each lessee should pay £600 on account payable as to £100 per month November 2017 to April 2018;
 - 2.2 It is anticipated that the new smart meters will be installed within the next few weeks. Those meters will be run for a 12 months period to get a broad feel for consumption over such a period. If there is a major discrepancy between the actual consumption as measured and the amount paid on account for, the appropriate period, the applicant's managing agents shall make retrospective adjustments; which may be debits of credits;
 - 2.3 The applicant shall take into account any special circumstances of a particular lessee, for example if over the period in question – June 2016 to June 2018 a particular flat has not been occupied for a significant period; and
 - 2.4 If the applicant and a lessee are unable to agree the amount payable by the lessee for the supply of hot water and heating over the period in question, it shall be open to either party to make an application to the tribunal for a determination of the amount payable.

Procedural background

3. The applicant sought a determination of the basis for ascertaining the amount payable by each lessee for the supply of hot water and heating.
4. Directions were given on 13 March 2018. Direction 1 required the applicant's to serve copies of the application form and the directions on each individual lessee. By letter dated 22 March 2018 the applicant's managing agents, JPW Real Estate, certified to the tribunal that it had done so.
5. The tribunal received a number letters in response. Some lessees also served statements of case on the applicant.
6. The application came on for hearing before us on 10 May 2018. The applicant was represented by Ms R Sohata and Mr C Wheaton, both of JPW Real Estate. Ms Sohata is the managing director and Mr Wheaton is the property manager for Canalside Gardens. A number of lessees were also present as follows:

Flat 3	Mrs D Choudhary
Flat 5	Mr T Choudhary
Flat 6	Mr J Coddington
Flat 8	Mr & Mrs Kumra
Flat 33	Ms V Sivam
Flat 35	Dr S Amar

Those present did not appoint any particular lessee to be their representative and during the course of the hearing all present took the opportunity to make particular points and/or to ask questions.

The development and the problem

7. The development was constructed in the mid-2,000s. The sample lease of flat 17 was granted in 2008. It was prepared by Russell-Cooke and granted by Swan Reach Limited.
8. The development comprises 71 flats or apartments which range from one, two and three bedroom units. In addition there are two houses which contribute to some service charges but not the hot water supply.
9. The developer installed a communal hot water boiler and system to supply each of the 71 apartments with hot water for domestic and heating purposes. Each apartment was fitted with an individual smart meter which evidently measured the rate of volume of consumption of hot water and fed back data to equipment located in the plant room. From that data the landlord prepared bills which were sent to each lessee; in much the same way as a utility company might bill its customers.
10. In about 2012/13 problems with the recording of data for billing purposes occurred. There was some difference in the recollections of those lessees present as to the exact technical reasons for the problem. Some thought it was a problem with a component in the plant room whereas others said they were led to believe the problem was with all or some of the individual meters. The outcome of that was that meter readings were unavailable to the landlord and in consequence the landlord started to issue estimated bills to lessees. The arrangements were ad hoc. Evidently some lessees paid without query, some lessees raised queries and the landlord made adjustments for them. So far as we could establish the then landlord had no coherent plan to deal with the accurate billing, but pursued a variety of different arrangements with different lessees.
11. At some point the then landlord put the freehold interest in the development on the market. A Mr James Salmon of the respondent took an interest and ultimately his company acquired the freehold in June 2016. Prior to that acquisition and no doubt as part of the due diligence procedure in March 2016 Mr Salmon had meetings with some lessees and a number of issues that required to be addressed was the supply of hot water and accurate meter readings. Evidently the

impression given was that Mr Salmon was keen to resolve the water meter issue.

12. Post-acquisition the respondent and its advisers have attempted to progress the technical issues with the meters. Some lessees are of the view that there has been insufficient energy and urgency to resolve matters and some have taken the time and effort to offer technical solutions. Ms Sohata accepted that technical and procurement problems had occurred along the line and expressed the view that the criticism put forward was not all well founded.
13. Whatever the rights and wrongs about the delay a s20 consultation exercise has been completed, estimates to supply and fit the new kit required have been obtained and the respondent is going forward with a scheme which will entail new kit in the plant room and new smart meters in each apartment. The provisional start date for these works is 15 May 2018, with a completion date three weeks thereafter.

The cost of supply

14. In the meantime the respondent has continued to provide a hot water supply and has paid (or is in the process of paying) the supplier's invoices. The respondent has endeavoured to recover some contributions to the cost of supply from lessees. Despite several efforts the respondent has not been able to arrive at a scheme which has achieved universal (or near universal agreement) with lessees.
15. Evidently a variety of temporary measures were put forward which included a unit basis, a floor area basis, a number of bedrooms basis and an estimated consumption basis. Obviously each has its pros and cons. There is also the personal position of each lessee. To take extreme examples, there is a three bedroomed apartment occupied by the sole lessee as against a one bedroom apartment which might be sublet and occupied by up to four, possibly more persons. Inevitably the living arrangements in each apartment will impact on consumption. That may also arise if a flat is vacant for an extended period, perhaps undergoing refurbishment or perhaps the lessee spends a considerable period of time abroad.
16. During the course of the hearing the lessees present were keen to ensure that the respondent continues to provide a supply of hot water. They all accepted an obligation to contribute to the cost but views as to how that contribution should be arrived at varied. On behalf of the respondent it was explained that it was willing to continue to provide a supply of hot water but required some contributions from lessees to the costs incurred. As at December 2017 the respondent had paid the supplier £27,305 and was committed to a monthly instalment plan to ensure continued supply.
17. A discussion took place as the tribunal's jurisdiction on this application. We shall explain that shortly. Having concluded that the tribunal does have jurisdiction and in the light of observations made during the

course of the hearing we adjourned to enable the parties to have private discussions. On resumption it was reported that those present had arrived at the understanding set out in paragraph 2 above. For reasons we shall mention shortly it seems to us that such an arrangement is broadly in line with the concept provided for in the leases. Ms Sohata accepted that there might be some individual cases where circumstances were such that a special arrangement might be appropriate. Ms Sohata said that they would be looked at on a case by case basis and on the supporting evidence. Dr Amar expressed the view that he was a special case because his apartment, which was a buy-to-let investment had for a variety of reasons been vacant for 12 months or so during the period in question.

The service charge regime

18. The sample lease of apartment 17 sets out the service charge regime. It provides for contributions to four different schedules of costs with contributions being; 0%, 2.39%, 1.32% and 2.08%.

All costs in relation to the central boiler including its maintenance, repair, servicing and renewal are at 1.32%.

But the cost of water and the cost of supplying hot water is not mentioned at all in the Eighth Schedule which sets out the various costs and expenses to which the lessee must contribute on a % basis.

Historically the cost of water and the cost of supplying hot water has never featured in the annual service charge accounts, such costs being re-charged pursuant to individual meter readings where available.

19. So far as material the lease provides:

By paragraph 2 of the Third Schedule a right for the lessee in common with others to a number of services including the free and uninterrupted passage of water;

By paragraph 3 of Part I of the Fifth Schedule a covenant on the part of the lessee with the landlord to pay ... charges for water ... ;

By paragraph 9 of Part I of the Sixth Schedule a covenant on the part of the landlord with the lessee to ... maintain and renew when required any boiler, heating apparatus and pipes ... serving the demised premises ... and all ancillary equipment thereto ...; and

By paragraph 18 of Eighth Schedule a provision requiring the lessee to contribute to the costs of other expenses reasonably incurred in carrying out works or services ... desirable for maintaining or improving services ... so long as they relate to or benefit the demised premises ...

20. The lease falls to be construed in the light of the factual matrix which existed at the date of grant of the lease and as known to the parties. We

find that on the evidence the understanding of the parties was that the landlord would provide a supply of hot water from the boiler which was to be maintained and repaired at the lessee's cost through service charge but that the cost of the hot water consumed by the lessee would be billed separately on a consumption cost basis as ascertained from meter readings. That fits with the lessee's right to a supply of water and his covenant to pay the landlord the cost of that supply.

21. We also have no doubt that if a suitably informed bystander had intervened and enquired of the parties that in the event of a failure in the meter readings should the supply of hot water be suspended or should the landlord be obliged to continue to make a supply but entitled to recover the cost on reasonable basis as near as can be ascertained akin to consumption, and that the response would have been, certainly. As was made plain to us in the course of the hearing the last thing that lessees' wanted was for the landlord not to provide a supply of hot water.
22. We have considered the provisions of s18 Landlord and Tenant Act 1985 and the definition of a 'service charge' and 'relevant costs'. A service charge is an amount payable by a tenant in addition to rent which is payable directly or indirectly for services and which may vary according to the relevant costs.
23. We are satisfied that the lease obliges the lessee to pay to the landlord the cost of water supplied, and that the cost can vary from time to time. We find that fits within the definition set out in s18. Thus we find that a tribunal shall have jurisdiction to determine the reasonableness of the amount payable by a lessee to the landlord for the supply of hot water.
24. We tested this approach by considering whether the obligation to pay might be a variable administration cost within the meaning of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Paragraph 1 of Schedule 11 defines an 'administration charge as being one of four specific types of charge. A supply of water does not fit any of those four examples.

The way forward

25. The understanding arrived at by the parties present at the hearing appears to us to be a sensible and realistic way in which to arrive at a contribution payable for hot water, albeit it may be a bit rough and ready. It will be broadly based on a record of consumption, even though the that record of consumption will be applied retrospectively. Nevertheless it is an approach that is within the spirit of the scheme set out in the lease and in line with the parties expectations when the lease was granted.
26. The respondent has accepted there will be some exceptions and anomalies to be resolved on a case by case basis. If the parties cannot reach a consensus, an application may be made to the tribunal for a determination.

27. The arrangement arrived at will also enable the landlord to maintain a supply of hot water which is undoubtedly in the interests of the occupiers of the apartments concerned.

Judge John Hewitt
17 May 2018

ANNEX - 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.