



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

**Case Reference** : CHI/00HP/LIS/2020/0003

**Property** : The Oasis, 45 Lindsay Road, Poole BH13  
6AP

**Applicant** : The Oasis(Poole) Management Ltd

**Representative** : Bourne Estates Ltd

**Respondent** : The Lessees of;  
Penthouse 1  
Penthouse 2  
Flats 7,9, 33 & 60,41,36, 27

**Representative** : Mr W J Hancock for Flats 7,9, 36 41,  
33&60

**Type of Application** : Determination of liability to pay and  
reasonableness of service charges

**Tribunal Member** : D Banfield FRICS  
Regional Surveyor

**Date of Decision** : 13 October 2020

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DECISION

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**Only costs relating to the repair of an existing facility may be added to the service charge. Costs of improvements cannot be so charged. (See paragraph 38 for guidance)**

## **Background**

1. The Applicant sought a determination of the leaseholders' liability to pay and reasonableness of certain costs relating to the refurbishment of leisure facilities at the Property.
2. It appears that a major works consultation has been undertaken, quotations have been obtained but certain leaseholders have indicated that they object to the works and the recovery of the costs as a service charge.
3. Judge Whitney made Directions on 14 February 2020 requesting the lessees to indicate whether they opposed or agreed to the application, those who did not respond or agreed with the proposals were to be removed as respondents.
4. Responses opposing the application were received from 5 lessees in respect of 6 of the flats. All other lessees are removed as Respondents as indicated above.
5. By a statement dated 19 March 2020 the Applicant indicated that some changes were to be made to the proposed works.
6. The 19 March 2020 Pilot Practice Direction for the First Tier Tribunal provides that decisions should now usually be made without a hearing.
7. By directions dated 2 June 2020 the Tribunal indicated that it considered that the application was likely to be suitable for determination on the papers and that any relevant information which would have been obtained by the Tribunal at an inspection can be provided by the parties by other means.
8. The Tribunal's directions set out a timetable for the provision of updated proposals to be sent to the Respondents, legal submissions in respect of the service charge provisions of the lease with all statements of case to be endorsed with signed statements of truth.
9. The bundle provided by the Applicant was incomplete and by Directions of 6 August 2020 the Tribunal ordered a revised bundle to be submitted and that any document a Respondent considered to have been omitted could be sent to the Tribunal direct with a copy to the Applicant.
10. No objection to the Tribunal determining the application on the papers was received and this determination is therefore made without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013.
11. The Tribunal has received the revised hearing bundle together with additional papers from Mr Hancock and Mr Hammond upon all of which this determination is made.
12. References in the decision to page numbers are shown as [x].

## Application

13. The property is described as a purpose-built development of two blocks of flats, comprising 66 units with a detached Leisure Complex including a pool, gym and sauna. [3]
14. In the service charge year 2019 the Applicant wishes to carry out “improvements from Major Works and Reserves - £40,000 budgeted” and seeks a determination from the Tribunal whether “all the planned works are recoverable through the Service Charges under the terms of the Lease, and if not, why not.” [10]
15. The works were described in a S.20 Notice dated 26 February 2019 as “Refurbishment of the Leisure centre comprising of replacement of central heating and hot water boilers; update showers to walk in wet room format; replacement of shower units; replacement of non-slip flooring, anti-bacterial wall panels and splash screens in 5 showers; re-locate kitchenette from gym to entrance foyer; re-decorate throughout internally (excluding pool area)” The reason given for the works was “The Directors consider it necessary to carry out these works in accordance with the repairing obligation of the lease and to ensure that the leisure complex which has not been comprehensively refurbished since the property was built is maintained to a standard commensurate with the rest of the property. [49]
16. The proposed works are set out in an invitation to tender attached to an email dated 10 July 2019 comprising 10 pages of annotated drawings. [120]
17. In a second stage Notice dated 18 October 2019 [61] the proposed works were summarized as;
  - Level floors in shower areas
  - Replace existing doors, revels(sic) and door furniture in Boiler cupboard, shower & Gym rooms
  - Replace existing ceiling with New MF
  - Replace existing Velux windows with new
  - Install new, more efficient Extractor Fans
  - Decorate through lobby and shower areas
  - Install Low energy LED lighting with sensor fittings
  - Replace Boiler in Gym with new more efficient
  - Install Anti-bacterial safety flooring throughout
  - Install 5 new Mira High speed showers
  - Install Towel Radiator
  - Fit Bespoke Easy wipe anti-bacterial shower enclosures
  - Fit Shower Screens
  - Install 4 Lockers for Ladies and Gents showers
  - Install Anti-bacterial waterproof panelling fitted to replace existing tiles.
  - Install hand dryer.
  - Install Mirror.

18. In the covering letter with the application dated 5 February 2020 the works for which approval is sought are said to comprise those referred to on the statement of estimates and the copy of the proposed plan included. Quotations from 3 companies were referred to, the lowest of which was from Seascap South Ltd in the sum of £66,754.80. [65]
19. Seascap's estimate dated 25 September 2019[82] and totals £51,964.00 plus VAT (£62,356.00) made up of the following items; (all plus VAT)
- Steam clean and strip out etc etc £2,476
  - Asbestos survey and report £500
  - Install new Hot and Cold to new showers £700
  - New shower cubicles £8,818
  - Supply and install 5 Mira shower valves, glass screens and seats £7,295
  - Install 10 LED lights, 3 hand dryers and 3 extractor fans £3,260
  - New fire doors £7,125
  - New flooring £1,530
  - Decorate £2,380
  - Fit only 5 shower shelves, 3 mirrors and 3 hair dryers £380
  - Supply lockers £1,755
  - Works for new heating boiler £2,490
  - Works for new hot water heater £10,455
  - Overheads and prelims £2,800
  - There is a note that the stretch ceiling has been excluded as they felt it would not work and be potentially problematic for future maintenance.

## The Lease

20. A copy of the lease for No 2 The Oasis has been provided [13] and it is understood that all others are in similar form. The lease contains the following clause relevant to the application;
- Initial Estate Charge: £1250 per annum (subject to increase as hereinafter provided)
  - 1.(i) "the Reserved Property" means that part of the Estate not included in the Flats being the property more particularly described in the Second Schedule. [18]
  - 1.(l) "Leisure Complex" means the land and building comprising the swimming pool and gymnasium and curtilage thereof [18]
  - THE SECOND SCHEDULE FIRSTLY ALL THOSE the Leisure Complex garages parking spaces ..... [27]
  - THE SIXTH SCHEDULE 28. The Lessee to pay one sixty sixth of the Management Company's costs in carrying out its obligations under the Seventh Schedule. [39]
  - THE SEVENTH SCHEDULE 3. (a) The Management Company shall keep the Reserved Property and all fixtures and fittings therein and all additions thereto and to the boundary walls and fences in a good and tenable state of repair decoration and condition inside and out throughout the continuance of this demise including the renewal and replacement of all

worn or damaged parts and shall maintain and uphold whenever necessary for whatsoever reason rebuild reconstruct and replace the same. [42]

- 5.To decorate internally in 1994 and every 4 years thereafter. [43]
- 17. The Management Company shall keep the common room laundry sauna gymnasium swimming pool changing rooms and any other communal rooms or amenities forming part of the Reserved Property properly cleaned and in good order and shall adequately light and heat all such parts as are normally lighted or heated or should be lighted or heated and shall keep carpeted and re-carpet all such parts as are normally carpeted or should be carpeted. [47]

### **Applicant's Statement of Case**

21. In the Applicant's statement of case dated 15 June 2020 [99] Scott Raisbeck on behalf of the Applicant's Board states that "The application is to consider works put forward by the board of directors at the Oasis for refurbishment of the leisure complex including 5 showers and general decoration. The original tender has already been submitted although there are some minor changes to the original detailed below;

- Replacement of central heating boiler – done separately
- Replacement of fire doors – redecoration will suffice
- Stretch ceilings – recommended this would not work

22. The grounds for the application are that there has been little or no refurbishment since its construction in the 1990's and that the board feels that it is need of repair, and in particular reference to the changing areas, improvement. This is in part due to the stepped nature of the current showers which goes against the Equalities (sic) Act 2010.

### **Respondents' Statements of Case**

23. In a statement dated 1 August 2020 Mrs Butler-Creagh of Flat 27 states that;

- She is completely opposed to the refurbishment of the Leisure Complex as described in the proposed Schedule of Works
- The cost has risen from £40,000 to £70,000
- It is not denied that the Leisure Complex requires an overhaul i.e. maintenance to include new showers, painting and decorating. The inclusion of mood lighting and underfloor heating, especially when a new boiler has been fitted is not only fanciful and extravagant, but is in contravention of the terms of the lease, which provides for maintenance only – not improvements
- The current proposals should be dispensed with and a new Schedule of Works be drawn up and submitted to members for approval.

24. Anita Turner of Penthouse 1 in a statement dated 3 July 2020 [106] says that;

- The estimates of 18 October 2019 can no longer be valid

- The proposed costs of £66,000 to £74,000 are not in proportion to the needs of residents should the lifts fail in either block
- The project should be re-designed with new estimates and S.20 consultations.
- Building maintenance and maintaining a healthy reserve should be the priority.

25. In a statement dated 6 July 2020 [108] Mr Peter Hammond of Penthouse 2 states;

- The lease does not allow for the setting aside of money for improvements.
- At the April 2018 AGM there was budget figure of £20,000
- In February 2019 the S.20 procedure commenced resulting in proposed costs of between £66,754 and £75,835.
- He has not been provided with the directed “statement ... detailing the works now proposed”
- It seems that the works now proposed are (Mr Hammond then lists the works in the second stage notice)
- The Applicant’s decision-making process is flawed
- Levelling floors in the shower areas and installing anti-bacterial safety flooring throughout the whole leisure complex are improvements. No evidence has been provided that the Velux windows require replacement
- New proposals should be put forward with a further S.20 consultation carried out.

26. In a statement from Mr and Mrs Hancock of Flats 33 and 60 and on behalf of Flats 7,9,36 & 41 dated 24 July 2020 [113] it is stated that;

- The central heating is operational and adequate for the purpose. There is no need to remove the new boiler and replace it with underfloor heating, which being an improvement is not permitted under the terms of the lease.
- Although the stretch ceiling is no longer proposed it reflects badly on the design company.
- Regarding the stepped nature of the current showers there are other steps around the property which have to be negotiated for access. There is a step to enter the Leisure Complex with no proposal to remove the same.
- At least half of the works is not in keeping with the repair/maintenance requirements of the lease.

## **Determination**

27. It is appreciated that the preparation of submissions has been complicated by the current Covid pandemic. However, the brevity of the Applicant’s statement of case leaves me with some uncertainty as to the works that are now the subject of this application.

28. There has been no explanation as to the differences between the list of proposed works contained in the S.20 Notice of 26 February 2019,

Seascape's estimate of 25 September 2019 and the Notice dated 18 October 2019.

29. To enable this determination to proceed without further delay I have taken the list included in the October Notice save that the replacement boiler, fire doors and Stretch ceiling have been excluded.
30. It is first necessary to examine the construction of the lease with regard to what the Applicant refers to on the application form as "Improvements"
31. It is clear from the Second Schedule that the Leisure Complex is included within "Reserved Property" and as such the Applicant is of course at liberty to carry out alterations should it so desire. The issue is whether such expenditure can then be charged to the Service Charge account.
32. The Sixth Schedule obliges lessees to pay one sixty sixth of the Management Company's costs of complying with its obligations as set out in the Seventh Schedule.
  - The Management Company's obligations under the Seventh schedule relevant to the current application are to **keep** the Leisure Complex in a good and tenable state of repair decoration and condition including the renewal and replacement of all **worn or damaged parts** and to keep the sauna gymnasium swimming pool changing rooms in good order and adequately lit, heated and carpeted. [47] (the Tribunal's emphasis)
33. There is nothing in the Seventh Schedule that refers to or permits improvement as opposed to keeping the property in a good state of repair and decoration and replacing worn or damaged parts. It is only such costs therefore that may therefore be recovered by way of service charge.
34. The Applicant has referred to the need to carry out works to the shower floor in order to comply with the Disability Act 2010. In many leases there is a clause that permits the cost of compliance with the requirements of statute to be met through the service charge this lease however is not one of them.
- 35. In summary therefore, only costs relating to the repair of an existing facility may be added to the service charge. Costs of improvements cannot be so charged.**
36. In considering the list of works in the October Notice it is therefore necessary to exclude those of pure improvement and then to consider whether those remaining are works to an element that is currently in disrepair.
37. The Applicant refers to the property being in need of repair. No details are given, the only specific information as to condition being provided by lessees; Mr Swerdlow refers to the flooring as being in good condition [68]. Mrs Butler-Creagh refers to the flooring and ceiling being in good condition and decorations having been recently carried out [72]. Mr & Mrs Turner refer to the internal decorations being carried out in 2017. [106]

38. The Tribunal has no conclusive evidence as to the property's existing state of repair and is therefore unable to determine definitively whether a particular item of expenditure may be charged to the service charge or not. In an effort to be of assistance however the Tribunal has indicated on the following list by an [\*] those items that it determines are improvements and not chargeable and by [?] those items that may, **if in disrepair, or with regard to decorations, in accordance with clause 5 of the Seventh Schedule**, be chargeable.

- Level floors in shower areas \*
- Replace existing doors, revels(sic) and door furniture in Boiler cupboard, shower & Gym rooms -No longer required
- Replace existing ceiling with New MF -No longer required
- Replace existing Velux windows with new ?
- Install new, more efficient Extractor Fans ?
- Decorate through lobby and shower areas ?
- Install Low energy LED lighting with sensor fittings \*
- Replace Boiler in Gym with new more efficient -No longer required
- Install Anti-bacterial safety flooring throughout \*
- Install 5 new Mira High speed showers ?
- Install Towel Radiator \*
- Fit Bespoke Easy wipe anti-bacterial shower enclosures ?
- Fit Shower Screens ?
- Install 4 Lockers for Ladies and Gents showers \*
- Install Anti-bacterial waterproof panelling fitted to replace existing tiles. \*
- Install hand dryer. \*
- Install Mirror. \*

39. The Tribunal is conscious that a majority of Lessees agreed with the proposals and in making its determination the Tribunal is not indicating that the works proposed are undesirable or inappropriate but simply that the leases under which the properties are held do not permit the recovery of the cost through the service charge.

**D Banfield FRICS  
Regional Surveyor  
13 October 2020**

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 RPSouthern@justice.gov.uk. 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.

2. 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.

3. 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 appeal is seeking.