



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

Case Reference	: CHI/43UF/LSC/2022/0034
Property	: Apartment 3, Lingfield House, Petersmead Close, Tadworth, Surrey KT20 5AR
Applicant	: Maria Martin
Representative	:
Respondent	: Petersmead Close Company Limited
Representative	: White and Sons
Type of Application	: Determination of service charges and Order under S.20C Landlord and Tenant Act 1985 preventing costs of this application being included as a service charge
Tribunal Member(s)	: D Banfield FRICS Regional Surveyor
Date of Decision	: 11 August 2022

DECISION

The Tribunal disallows the sum of £254.13 from the service charge contribution payable by the Applicant for Apartment 3 for the period 2021/22.

The Tribunal makes Orders under section 20C of the Landlord and Tenant Act 1995 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Background

1. The Applicant seeks a determination of the service charges for 2021-2022. The value of the dispute is said to be £4,066.
2. The Applicant also applies for an Order under S.20C of the Landlord and Tenant Act 1985 listing the other 7 lessees to be included.
3. The dispute is said to be in respect of the installation of a patio and bench for the adjoining Kempston House the cost of which it is alleged was incorrectly met from service charges relating to both Kempston and Lingfield Houses. The lessees of Lingfield House only being obliged to pay costs relating to that property.
4. The Applicant also questions whether the required Section 20 Consultations have been conducted.
5. A copy of the lease for Apartment 3 has been supplied.
6. The Tribunal has identified the following issues to be determined.
 - Whether the terms of the Applicant's lease require her to contribute to works outside the block known as Lingfield House.
 - Whether S.20 consultations were required and if so were they conducted satisfactorily.
7. The Tribunal made Directions on 16 June 2022 indicating that it considered the application to be suitable for determination on the papers alone without an oral hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing. No objections have been received and the application is therefore so determined.
8. The Directions also indicated that an inspection was not proposed unless asked for by a party. No such request has been made although the Tribunal has viewed the property on the internet.
9. The application was taken as the Applicant's case to which the Respondent was required to respond. The Applicant then had the opportunity to provide a concise reply.

The Lease

10. The lease is dated 23 August 1995 and is in common form, the relevant parts being as follows;
 - . The flat is defined as Number 3 on the Ground Floor of the building of which the flat forms part.
 - The Block is defined as "The land and buildings edged blue on the plan annexed hereto.
 - The plan shows Petersmead Close with a blue line around Flats 1 to 8, the surrounding area, a number of parking spaces and the

road. Uncoloured and therefore outside of the blue line are flats 9 to 17, their surrounding area and a number of parking spaces. Flat 3 and two parking spaces are edged red.

- Clause 1.7 requires the lessee to pay one-eighth of the maintenance cost of the block pursuant to Part I of the Fourth Schedule.
- The Fourth Schedule Part I permits the company to recalculate the proportions ...in the Block.
- The Fifth Schedule all relates to expenditure incurred for the Block.
- Clause 12 refers to Joint Expenditure whereby a proportion of expenditure undertaken by an adjoining owner subject to the expenditure being in respect of one of the purposes mentioned in the Schedule.

The Law

11. See the Appendix attached.

The Evidence

The Applicant

12. “The Directors of the Petersmead Close Company Limited spent £4066 on the installation of a patio and benches in the communal grounds of Kempton House. Which sits outside the remit and boundaries of Lingfield House. They used the maintenance and service charges allocated by both properties to fund this installation. In addition, the Directors did not formally or informally consult with any of the 8 tenants (16 in total) of the two properties (Kempton House and Lingfield House) prior to the installation. They should under the requirements of the lease notify and consult all Lessees if the cost exceeds £250 per flat. This installation totalled £254. It is my understanding that under the terms of the lease that I am not (and neither are any of the other lessees in Lingfield House) are obligated to pay for the installation costs as they are not specifically related to any remediations or maintenance of either property.”

The Respondent

13. The Respondent did not comply with Directions by sending a statement in reply to the Application. I have however extracted the points made from their various emails
 - The AGM on 10 June 2015 permitted Directors to spend £250 per flat
 - A newsletter of January 2017 states that the board had decided to amalgamate the budgets of Lingfield House and Kempton House from 1 July 2017.
 - The service charge budget from 1 July 2017 was headed Petersmead Close Company Ltd as both budgets are now run as one.

- An invoice for 2 garden benches totalling £1,130
- A quote from a builder to build the patio seating for £2,856
- The work to build the patio seating area was two separate items totalling less than £250 per flat as approved by the directors.
- for which S.20

The Applicant's Reply

14. In a response the Applicant stated;
- "I continue to dispute the total value of £4,066 identified in my original claim (my share will be 1/16 of this totalling £254.13). There is some confusion with the invoices you have submitted not aligning to the amounts confirmed by White & Sons and those detailed in the signed off Petersmead Close 2021 and 2019 accounts. There is a line item £1,210 detailed as Garden Benches in the accounts ending June 2021, however your invoice only totals £1,130. Please confirm discrepancy. In addition, the total amount for installation of the patio confirmed by Rory on the 13th October 2021 as £2,856 (£2380+Vat), confirmed by the invoice in your attached email. However, the accounts ending June 2019, there is a line item for Tom Childs totalling £2,952 for slabs. Please confirm which is accurate is it £2,856 as per invoice or £2,952 as per signed off accounts?
 - Irrespective of the updated totals of the spend to be confirmed in item 1 and 2, the total will exceed £250 per apartment and therefore the consultation process applies; which was not followed. Along with the requirement to obtain three quotations, which was also not adhered to.
 - The total amount of £4,066 should not have been spent, as expenditure should be restricted to the approved parameters for the service charge (limited to services, repairs, maintenance, improvements, insurance and management only). These benches are an enhancement that benefits a restricted few, given 8 of the 16 properties have their own gardens/patios and the area in question, in accordance with lease restrictions, is only accessible by Kempton House residents.
 - The AGM meeting minutes do not supersede addendums or alterations to the lease, therefore the requirement to alter the lease to manage funds as a merged block was not requested until a few months ago. So the spend of the service charge should still be managed separately, until the new lease applies, irrespective of historic annual financial reporting.
15. Despite the extensive information as to the costs of benches, seating etc and whether consultation was required the only issue for the Tribunal is whether or not expenditure on parts of the estate not comprising Lingfield House is permitted.
16. The lease is quite clear on this. All expenditure referred to in the Fifth Schedule is in respect of "The Block" which is defined as the land edged blue.

17. The expenditure challenged is in respect of an area not within the area edged blue and as such is not recoverable as part of the service charges for Lingfield House.
18. It is open to the Respondent to budget however they wish but the only expenditure recoverable from the Applicant is that in respect of Lingfield House.
19. **The Tribunal disallows the sum of £254.13 from the service charge contribution payable by the Applicant for Apartment 3 for the period 2021/22.**

Costs

20. The Applicant have been wholly successful in her application and whilst this is not the only factor in determining whether the Respondents' costs may be recovered it would be perverse for them to be able to do so given the outcome. The Application is for all of the lessees to benefit from this Order however, unless those lessees have indicated that they wish to be included the application cannot be granted. The Order is therefore for the benefit of the Applicant only.
21. **The Tribunal therefore Orders that any costs incurred by the Respondent in these proceedings may be not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.**
22. **The Tribunal also makes an Order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that no costs may be recovered by way of an administration charge.**

D Banfield FRICS
11 August 2022

RIGHTS OF APPEAL

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 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

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- (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.