



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

Case reference : **LON/00BH/LSC/2021/0308**

HMCTS code : **P: PAPERREMOTE**

Property : **Flat 3, Halstead Court, 36 Verulam Avenue, London, E17 8EW**

Applicant : **Luke McGown**

Representative : **In person**

Respondent : **Orbit Housing Association**

Representative : **In person**

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal members : **Judge Robert Latham
Mark Taylor MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **8 February 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because all issues could be determined on paper. The Tribunal has been provided with a Bundle of Documents of 215 pages.

Decisions of the tribunal

- (1) The Tribunal determines that the landlord's proposed expenditure in installing a new bin storage system and locating the bins is both payable and reasonable.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or for the refund on the tribunal fees paid by the Applicant.

The Application

1. By an application dated 27 August 2021, the Applicant tenant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge year 2021. The application relates to the landlord's proposed expenditure in installing a new bin storage system and locating the bins.
2. On 14 September 2021, the Tribunal gave Directions. The case was allocated to the paper track. Either party was permitted to request an oral hearing. Neither party has done so.
3. Pursuant to the Directions, the parties have prepared a Schedule summarising the issues in dispute. The Respondent landlord has a Statement of Case. The Applicant has provided a Supplementary Statement. The Tribunal refers to the Bundle of Documents in our decision, which extends to 215 pages.

The Law

4. The consultation requirements applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003. They were summarised by Lord Neuberger in the leading authority of *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 (at [12]):

Stage 1: Notice of intention to do the works

Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates

The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notices about Estimates

The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons

Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

The Background

5. Halstead Court is a block of 23 purpose built flats constructed in the late 1980s. The Applicant is the tenant of a one bedroom flat on the ground floor. His shared ownership lease is dated 9 March 1988. He contributes 1/23 towards the service charge.
6. This application relates to the landlord's intention to install a new bin storage system and locating the bins. The landlord arranged for two Fire Risk Assessments dated 1 December 2019 and 22 December 2020. The most recent report is at p.76. Concern was raised about the inappropriate siting of the bins (at p.90). The bins are stored on the pavement under the archway which gives access to the rear of the property. The bins are not secured and there is a danger that arsonists might set them alight. There was an incident on 11 April 2020 (see p.83). There was a further incident on 13 June 2021. Neither of these arson attempts were serious. There are photos of the bins at p.117. There is also a problem that bulky waste items, such as mattresses, have been dumped by the bins (p.89). The Assessor recommended that the bins be located where they could be secured away from the building (p.90). Despite these two incidents, the

likelihood of fire is assessed as low. However, the Assessor recommended that the bins should be relocated by 22 December 2022.

7. The Respondent proposes to replace the bins with a Europa Bin Store (at p.163). The store is constructed using panels of Italia steel louvred grating (see p.163). The Applicant suggests that this work is not necessary. We disagree. A fire risk has been identified. Expert advice has been obtained. An insurance claim could be voided were the works not to be executed. The Respondent also suggests that the new bin store may also reduce the risk of pests and vermin.
8. The Applicant further suggests that the works are a “Trojan horse”. If the bins are moved, the Respondent will proceed to install a gate system at greater cost to the tenants. This is denied by the Respondent. The landlord states that some tenants have requested this work to improve the security of the development. The Tribunal notes that MDP Communication Services Limited provided a quote for this work. However, there would need to be a separate consultation process were this proposal to be progressed. If a clear majority of the tenants are against this proposal, the Respondent would need to take this into account in determining whether or not to proceed with the works.
9. On 5 February 2021 (at p.146), the Respondent served its Stage 1 Notice of Intention. The Respondent invited any comments by 8 March. The tenants were also invited to propose the name of a contractor from whom an estimate should be sought. No tenant nominated a contractor within the consultation period.
10. The Respondent proceeded to seek quotes from two contractors on their approved list. There is no evidence to support the Applicant’s suggestion that these were not bona fide contractors. One firm had installed the Europa Bin Store for the Respondent on an Estate in Newmarket. Both gave quotations:
 - (i) RGM Maintenance Services Ltd £17,750 + VAT (at p.162);
 - (ii) MDP Communication Services Limited £19,980 + VAT (at p.158).
11. On 20 July 2021 (at p.149), the Respondent served its Stage 3 Notice of Estimates. Details were provided of the two estimates which had been obtained. The Respondent intended to accept the lowest estimate. In addition, there was to be a 10% management fee. The Applicant’s contribution was estimated at £1,018.70. The cost of the works was to be borne from the sinking fund. Observations were invited by 20 August.
12. On 6 August 2021 (at p.155), the Applicant responded inviting the Respondent to seek estimates from two contractors, Kohle Design and

Construction and Klajgres Ltd. Any such nomination should have been made by 8 March. The Consultation Regulations set out a strict time limit. Despite this, The Respondent states that they were considering whether to seek estimates from these contractors when they were notified of this application. They thereupon halted further work and are awaiting the outcome of this Tribunal.

The Lease

13. The Applicant's lease, dated 9 March 1988, is at p.36. The landlord's covenants are set out at Clause 5 (p.51). The landlord covenants to maintain, repair, redecorate and renew the common parts are at Clause 5(3)(c).

14. The Applicant raises two issues in respect of the lease:

(i) He questions whether the landlord is entitled to move the bin storage area. Clause 6(4) (at p.55) permits the landlord to alter the arrangements of the common parts, provided that these are not substantially less convenient than before. The Applicant refers to the "mutual covenants" in Schedule 1 (at p.63). These are covenants which the landlord is obliged to include in any other lease that it grants (see Clause 4 at p.51). These have no relevance to the right to the landlord to move the bins.

(ii) He queries the right of the landlord to charge a management fee of 10%. Clause 7(5)(c) gives the landlord the express right to levy a service charge in respect of "the costs of and incidental to the performance of the landlord's covenants contained in clauses 5(2) and 5(3) and 5(4)". The lease does not specify a figure of 10%. However, the Tribunal is satisfied that this is reasonable for the cost of arranging the works, carrying out the statutory consultation and supervising the works. We make one observation. The 10% fee should be added to sum paid to the contractor, net of VAT. The additional sum paid to the contractor in respect of VAT is a tax to the government; the 10% fee should be based on the cost of the works.

The Tribunal's Decision

15. The Tribunal has already recorded that:

(i) We are satisfied that the landlord is entitled to install the new bin storage system and that this work falls within the scope of the works.

(ii) The landlord is entitled to move the bins to another area.

(iii) The 10% supervision on the contractor's fees (net of VAT) is reasonable.

16. The Tribunal is further satisfied that the proposed cost of the works is reasonable. The landlord has tested the market. The Applicant has adduced no evidence that another contractor could install the Europa Bin Store at a lower cost.
17. It is a matter for the Respondent as to whether they seek further estimates from the two contractors nominated by the Applicant. The nomination was not made within the statutory time frame, so the landlord would not be obliged to do so. However, the landlord should seek to secure best value.
18. There was no obligation for the Respondent to put the works on hold pending the determination of this application. It is to be hoped that RGM Maintenance Services Ltd will still stand by their quote of £17,750 + VAT.
19. In the light of our findings, it is not appropriate to make an order under Section 20C of the Landlord and Tenant Act 1985 or for the reimbursement of the Tribunal fees paid by the Applicant. An order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 is not appropriate as this is an application brought by the tenant.

Judge Robert Latham
8 February 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).