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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BC/LSC/2015/0054**
Property	:	**Jasmine House, Gabrielle House and Carmel House, 332-336 Perth Road, Ilford, Essex IG2 6PG**
Applicant	:	**Images (Gants Hill) Management Company Limited**
Representative	:	**Mr D Foulds, solicitor**
Respondents	:	**Various Leaseholders**
Representative	:	**Mr P Zhandire, No 17 Jasmine House (on behalf of himself only)**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Mr S Brilliant** **Mr T Johnson FRICS** **Ms S Wilby**
Date and venue of hearing	:	**27 April 2015** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**15 June 2015**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £557,979.00, which is the Applicant's service charge budget for the year 1 January 2015 – 31st December 2015, is payable and reasonable.

(2) There is no order as to costs.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") of the payability and reasonableness of the service charge budget for the year 1 January 2015 – 31st December 2015. The budget figure is £557,979.00.

2. In particular the Tribunal is asked to determine the payability and reasonableness of professional fees that are anticipated for the observation of major building works ("the works") to be carried out by Taylor Wimpey UK Ltd ("Taylor Wimpey"). We shall refer to this as "the additional expenditure".

3. The additional expenditure consists of the following fees:

Ed-Ellis Associates Limited ("Ellis")	£60,000
Rynew Property Management Limited ("Rynew")	£40,000
Other professional fees	£25,000
VAT	£25,000
Total	£150,000

4. The balance of the budget, £407,979, is for routine recurring matters. We shall refer to this as "the routine expenditure".

5. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

6. The Applicant was represented by Mr Foulds, its solicitor. He called Mr Edward Ellis, a chartered builder and chartered environmentalist, who provides his services through the vehicle of his company, Ellis. Mr Foulds also called Mr Darren Touhey, who is the chief executive officer of Rynew, the Applicant's a managing agents.

7. We were satisfied that all the Respondents had been served with copies of the Directions and the Applicant's statement of case. The

Respondents did not appoint a representative or respond to the application as they had been directed to do. However, Mr Zhandire attended the hearing and he gave evidence and participated throughout. No other Respondent attended or sent in any written submissions.

The background

8. The property which is the subject of this application is a development built in 2007-2008 which consists of three separate buildings containing altogether 214 flats and one commercial unit.

9. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

10. We were shown a typical long lease of a flat dated 16 December 2008 ("the lease"). The following were the parties to the lease:

George Wimpey East London Limited	Freeholder
The Applicant	Management company
Mr Oguz	Lessee
Taylor Wimpey	Developer

11. The freeholder is now Fairhold Breccia Limited.

12. The lease requires the Applicant to provide services, including structural repairs to the common parts, and the lease requires each Respondent to contribute towards the costs of the services by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

13. Each Respondent has a share in the Applicant. There are two Respondents who act as its directors. The Applicant has appointed Rynew as the managing agents of the development. Rynew's normal duties involve the matters giving rise to the routine expenditure, but do not involve any activities giving rise to the additional expenditure.

14. The works being carried out by Taylor Wimpey began prior to the service charge year commencing 1 January 2015, and will continue throughout this year and beyond.

15. The works are being carried out because, according to the Applicant, Taylor Wimpey built the development in a wholly defective manner. Taylor Wimpey has been allowed back to the development in order to remedy the defects at its expense. We are told that the cost could exceed

£6M.

16. The Applicant considers it has a duty under the lease to undertake the structural repairs to the common parts. Whilst it is amenable to Taylor Wimpey undertaking the works in order to remedy the defects at its expense, it has to protect itself and the Respondents by employing professionals to observe the works. It is this cost which constitutes the additional expenditure. In previous years the Applicant has met the additional expenditure from reserves, but it now wants a determination so that the additional expenditure can be properly itemised in advance. There has been no challenge in the past to the reserves being used to pay for the additional expenditure.

17. We should make the point that Taylor Wimpey is not a party to these proceedings and we have heard no submissions from it. Accordingly, this decision is not determinative against Taylor Wimpey in respect of any allegation that it built the development in a defective manner or that it is failing to carry out the works in a proper manner.

The issues

18. The issues before us in respect of the additional expenditure are whether it is reasonable for the Applicant to incur professional fees to observe the works and whether the amount of the additional expenditure claimed is reasonable. The issue before us in respect of the routine expenditure is whether it is a reasonable estimate of the likely costs for the service charge year.

The lease

19. By clause 5.1 and paragraph 1 of Part I of the Fifth Schedule to the lease the Applicant covenanted:

To keep The Common Parts in a good state of repair and condition

We shall call this "the repairing obligation".

20. *The Common Parts* include the foundations, roofs and external walls of the buildings, and the glass on the external wall of any flat (see clause 2 of and Part II of the First Schedule to the lease).

21. By clause 3 and paragraph 1(a)(i) of the Third Schedule to the lease the lessee covenanted to pay the Maintenance Charge.

22. By clause 2 and paragraphs 1 and 2 of Part II of the Sixth Schedule to the lease the Maintenance Charge includes:

(1) Sums spent by the Applicant *of and incidental to its observance and performance* of the repairing obligation.

(2) *All fees charges expenses salaries wages and commissions paid to ... any other agent contractor or employee whom the management Company may employ on carrying out its obligations under this Lease*

The Applicant's liability to repair

23. We accept the Applicant's submission that on the true construction of the repairing obligation the Applicant is responsible for putting the common parts, including the foundations, roofs and external walls of the buildings, in a good state of repair and condition even though they had never been in a good state of repair and condition because of the alleged defective construction by Taylor Wimpey: see Crédit Suisse v Beegas Nominees Limited [1994] 4 All ER 803.

24. We also accept the Applicant's submission that it has no claim in respect of the defective state of the development against any other party, including Taylor Wimpey: see Peverel OM Limited v Peverel Freeholds Limited [2010] UKUT 137 (LC).

The additional expenditure

25. As we have said above, the Applicant is amenable to Taylor Wimpey undertaking the works in order to remedy the defects at its expense, but wishes to protect itself and the Respondents by employing professionals to observe the works.

26. The alternative would be for the Applicant to undertake the work itself and pass the massive costs through the service charges and for the long lessees individually or collectively to sue Taylor Wimpey. We consider that the approach taken by the Applicant is a reasonable one.

27. The works programme includes extensive works to the roofs, windows, balconies, Brise Soleil, cladding and drainage. We were shown a number of expert reports including one from RAM Consultancy Limited. It is possible that the entire external brickwork will have to be removed. The estimate for scaffolding alone is in the region of £1M. The development has become a large building site which causes a number of management issues concerning the lessees.

28. It is important that the works which are carried out restore the buildings to the condition in which they should have been in the first place. If Taylor Wimpey uses designs or materials which are inferior to those originally used then the lessees will be left with residual problems and will be liable in the future for higher costs for repairs and

maintenance.

29. Mr Ellis has arranged with Taylor Wimpey that an independent quantity surveyor, Pellings, will audit the works so that there is a record of any disagreement about what should be undertaken. We are satisfied from Mr Ellis' evidence that there are real concerns that if the works are not observed there is a risk that designs or materials which are inferior to those originally used will be used and that there will be no proper record kept of any disagreement about what should be undertaken.

30. Mr Ellis' fee, through his company Ellis, is £60.000. This is based on 22 hours per week at £64.50 per hour for 42 weeks. In practice Mr Ellis is spending far more time on this project and not charging for it. We found Mr Ellis to be an impressive witness He is highly motivated and genuinely anxious to protect the legitimate interests of the Applicants. We are satisfied that the nature and quantity of work being undertaken by him and the charges being made by him are reasonable.

31. Mr Touhey explained that whilst Mr Ellis is concerned with the construction issues connected with the works, Rynew is concerned with the maintenance issues arising from the works. The entire development has become in effect a large building site and he has to deal with all the day to day issues that invariably arise. He also has to ensure that the works are not carried out in such a way that the lessees will be exposed in the future to higher maintenance charges than they would have been had the development had been built properly in the first place.

32. Rynew's charges are £40,000. This is based on 11 hours per week at £70.00 per hour for 52 weeks. We are satisfied that the nature and quantity of work being undertaken by Rynew and the charges being made by Rynew are reasonable.

33. The other professional fees, which include a structural engineer, fire consultants and electrical consultants, total £25,000. Again, we are satisfied that these charges are reasonable.

The routine expenditure

34. In respect of the routine expenditure, the amounts claimed closely reflect the actual charges actually incurred in the previous service charge year and are considered reasonable. In making our Decision we stress that we are considering the budget/estimated charges for the budget year 2015 and nothing in our Decision precludes a challenge to costs incurred when the actual service charge demand is served

Name: Simon Brilliant **Date:** 15 June 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 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 or 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.

(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.

(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 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

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 -

(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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate Tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.