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

Case Reference : **BIR/00CS/LSC/2013/0009**

Property : **20 Telford Close, West Bromwich, B71
2NB**

Applicants : **David Joseph and Karen Joseph**

Respondent : **Sandwell Metropolitan Borough
Council**

Type of Application : **To determine whether service charges
are payable and if so as to their
reasonableness under section 27A of
the Landlord and Tenant Act 1985
(‘the Act’)**

Tribunal Members : **Mr W J Martin (Chairman)
Mrs S Tyrer F.R.I.C.S**

Date and venue of Hearing : **None – paper determination**

Date of Decision : **31 JUL 2013**

DECISION

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DETERMINATION

The service charges in respect of caretaking are not authorised by the Lease and are therefore not payable by the Applicants.

Reasons For the Tribunal's Decision

Preliminary

- 1 The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No 1036) ('the Transfer Order') the functions of Leasehold Valuation Tribunals were, on 1st July 2013, transferred to the First-tier Tribunal (Property Chamber). By virtue of the transitional provisions, applications to leasehold valuation tribunals in respect of which a decision had not been issued before the 1st July 2013, automatically became proceedings before the First-tier Tribunal (Property Chamber). The Transfer Order also amended the relevant legislation under which leasehold valuation tribunals were referred to by substituting the words 'First-tier Tribunal' for 'leasehold valuation tribunal' within the relevant parts of the legislation. The extracts from the legislation applicable to the present applications that appear below incorporate the changes made by the Transfer Order. In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber) or, where the context admits, the leasehold valuation tribunal.

- 2 On 25th May 2013 David Joseph and Karen Joseph ('the Applicants') applied to the leasehold valuation tribunal ('the Application') for a Determination under section 27A of the Act as to whether a service charge was payable and if so as to the amount thereof in respect of caretaking levied by Riverside on behalf of Sandwell Metropolitan Borough Council ('the Respondent') in respect of 20 Telford Close, West Bromwich B70 8PD ('the Property'). The Application requested that the Tribunal made its decision on the basis of written submissions. This was agreed to by the Respondent and the Tribunal issued appropriate Directions.

- 3 The Lease of the Property ('the Lease') is dated 5th August 1991 and is made between the Respondent (1) and Colin William Leatherland (2). The Lease (in consideration of a premium) was made under the Right to Buy provisions of the Housing Act 1985 and demised the Property to the said Colin William Leatherland for a term of 125 years from 1st April 1991 at a ground rent of £10 per annum.

Inspection

- 4 The Tribunal inspected the Property and the surrounding area in the presence of Mr Joseph on 23rd July 2013.

- 5 The Property is an entirely self-contained ground floor maisonette located in a purpose built block of four similar properties. The Property has the use of

communal gardens and footpaths to the front and a private garden to the rear, through which an emergency escape is reserved. The Inspection revealed that the Property did not have access to or require the right to use the communal entrance giving access to the two upper maisonettes. It does, however, have a fire detector installed and is connected to a combined fire alarm system serving all four maisonettes in the block.

The Relevant Provisions of the Lease

6 Clause 4 (c) contains the following covenant

4. The Purchaser hereby covenants with the Council:-

(c) to pay annually by way of further or additional rents including an inflation allowance

....

(ii) a reasonable part of the costs incurred or to be incurred by the Council in respect of a service and maintenance charge and for carrying out repairs to the Property and to the Building and to other property within the repairing obligations of the Council under Clause 6 of this Lease

6. The Council hereby covenants with the Purchaser

....

(e) that subject to the Purchaser duly discharging his obligation under Clause 4 (c) (ii) hereof the Council will duly provide and maintain at a reasonable level and so far as practicable the services mentioned in Schedule D hereto and will keep in repair any installation connected with the provision thereof

Schedule D

Communal Lighting
Grass Cutting/ Flower Beds

The relevant legal provisions

7 LANDLORD AND TENANT ACT 1985

18 Meaning of "service charge" and "relevant costs"

(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' cost of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection for which the service charge is payable.

(3) For this purpose-

(a) "costs" includes overheads

(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.

19 Limitation of service charges: reasonableness

- (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 of subsequent charges or otherwise.

27A Liability to pay service charges: jurisdiction

- (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)- (7) not relevant to this application

20CLimitation of service charges: costs of proceedings

- (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 leasehold valuation tribunal... 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 person specified in the application.
- (2) The application shall be made....
 - (b) in the case of proceedings before a leasehold valuation tribunal or the First-tier Tribunal to the tribunal in which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal....
 - (ba) in the case of proceedings before the First-tier Tribunal, to the tribunal
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances

The Applicants' submissions

7 In accordance with the Tribunal's Directions, the Applicant provided written submissions which are summarised as follows:

01. The Applicants' purchased the Property in 2009. Their solicitor had checked that the service charges demanded prior to purchase did not include caretaking. In fact caretaking appeared on the service charge demands for the first time in the service charge year 1st April 2011 to 31st March 2012.
02. The amounts demanded, including caretaking, for the year 2011/12 were £819.63 and for the year 2012/13 £856.66. The amounts in respect of caretaking for the two years are £379.80 and £382.53 respectively.
03. When the Applicants asked the Respondent why the charge had appeared, they were told that the Property had always benefited from the caretaking service and that it was an error on the part of the Respondent that had not been charged before. The Applicants were given a list of items that the caretaking covers.
04. The Applicants have no need of caretaking services to their flat and they do not benefit incidentally from them.
05. The Applicants own five other leasehold properties in respect of which the Respondent is the lessor. Only one of these has a caretaking charge, which is £136.79.
06. The service charge seems high compared to the other properties owned.
07. The Applicants do not believe the caretaking charge is payable as Schedule D of the Lease does not include it.
08. The Sandwell 'Leasehold Handbook' states under 'Services': "This is where you will find costings for any services provided such as caretaking, cleaning, communal electricity, lighting etc. The elements you will be charged for appear as agreed in your lease under Schedule D".

The Respondent's submissions

8 The Respondent also made a written response in accordance with the Tribunal's Directions. These are summarised as follows:

01. It is averred that the covenant in Clause 4 (c) (ii) is not linked with the specific services set out in Schedule D of the Lease. Schedule D obliges the Respondent to carry out the listed services, but it would be inequitable if new services could not be charged for.
02. The formula for caretaking in respect of the two years in question is that an employed member of Riverside's staff is the caretaker, and his salary is apportioned across the whole housing stock.
03. For 2011-2013 the weekend (and holiday) caretaking was charged for by apportioning contractor costs over the total stock. The formula for 2013/2014 is different as a weekend caretaker is now employed. The salary is broken down into 'minute charges' for the two employees. The new formula results in a charge of £148.20 for 2013/14. The lower amount results from the savings achieved by using an in house weekend caretaker.
04. The caretaker's duties include removal of bulky items or potential fire hazards, fire checks, removal of graffiti, checks to electric meters, checks on pathways, litter picking, bi-annual adjustment to the lighting

timer clocks and an annual supply of grit bins topped up through the winter.

05. A copy of the caretaker time sheets was provided.

06. The Respondent request an determination that all of its costs incurred or to be incurred in connection with the Tribunal proceedings are relevant costs to be taken into account in determining service charges payable by the Applicants.

The Tribunal's Determination

- 9 The liability to pay a service charge depends upon the provisions of the Lease. The Respondent's suggestion that it can provide a service additional to those listed in Schedule D to the Lease is rejected. Service charge provisions in leases are construed restrictively by the courts and any ambiguity in the service charge provisions is construed in favour of the leaseholder under the doctrine of *contra proferentem*. Accordingly, as there are no clear provisions in the Lease which do permit the Respondent to vary or increase the services, the only services which are 'payable' for the purposes of section 27A (1) of the Act are those relating to communal lighting, grass cutting and flower beds, i.e. those listed in Schedule D.
- 10 Accordingly the determination of the Tribunal is that the caretaking charges of £379.80 for 2011/12 and £382.53 are not payable and the Respondent must therefore credit or refund the amounts charged. Although the Application does not refer specifically to 2013/14, the Respondent has mentioned it in its written submissions and therefore the Tribunal finds that the charge is not payable for 2013/14 either.
- 11 The Application did not request an Order under section 20C of the Act. The Respondent has made submissions in support of it being able to include its costs in connection with the Tribunal proceedings in future service charges. The Tribunal does not consider that the Lease provides for legal cost to be included in the service charge in any case, but were the Applicants to make a separate application for an Order under section 20C in connection with these proceedings, the Tribunal would have no hesitation in making the Order, for the reason that the Tribunal's determination is wholly in favour of the Applicants.

Conclusion

- 12 In reaching its decisions the Tribunal took account of the its inspection of the subject property, the submissions of the parties, the relevant law and its knowledge and experience as an expert tribunal, but not any special or secret knowledge.
- 13 If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

W.J Martin - Chairman