

9572



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

Case Reference : **MAN/30UF/LSC/2013/0087**

Property : **12, St David's Grove, Lytham-St Anne's
Lancashire FY8 2QR**

Applicant : **Fairways Management Company (St Annes on
Sea) Limited (by its agent Homestead
Consultancy Services Limited)**

Respondent : **Mr L J Doward and Ms Z K Wilson**

**Type of
Application** : **Sections 27A (and 19) of the Landlord and
Tenant Act 1985**

Tribunal Members : **Mr J R Rimmer
Mr K K K Kasambara
Mrs H Clayton**

Date of Decision : **14th November 2013**

DECISION

© Crown Copyright 2013

Order

The service charges which are the subject of this application are reasonably incurred at reasonable cost with the exception of the late payment levy referred to in paragraphs 9 and 12, below.

A. Application and background

1. The Applicant is the management company responsible for the provision of services to the development known as St David's Close, Lytham-St Anne's, Lancashire. Those services are currently provided under contract by Homestead Consultancy Services Limited which has latterly replaced the management company itself which provided services directly to the development. The Respondents are the leasehold owners of the subject flat under an underlease dated 15th November 1985 granted at a premium and a rent of £100 a year for 998 years (less the last 20 days thereof) from 25th March 1976. The current leaseholders are not the original lessees.
2. The Applicant has made application to the Tribunal for a determination that the service charges are fair and reasonable and payable by the Respondents. The application relates to the 4 years ending 31st March 2011, 2012, 2013 and 2014. Accounts are available for the first 3 years and the budget for the last (current) year.
3. The Respondents lease contains provisions relating to the service charge at different places in the lease
 - Clause 2 is the reddendum to the lease and refers to payment of the appropriate proportion of certain charges and the insurance premium for the buildings insurance on all the buildings on the development. The charges are referred to as "maintenance payments" but are what are usually referred to as service charges.
 - Clause 3 contains the covenant by the lessees to pay the relevant payment.
 - The Fourth Schedule sets out what the services are and they are divided into two parts. Part one relates to services provided to the whole estate, of which the Respondents pay 1/90th, and Part 2 relates to those services dealt with on a block by block basis, of which the Respondents pay 1/12th of the costs.
4. The services are essentially those that would be expected in the service provision for relatively modern (built in the mid-1980s) residential accommodation and although they are slightly unusual in that the management company is responsible for the exterior maintenance even of the houses as well as flats.

5. The Applicant did not provide a Statement of Case but merely set out in the application form, submitted by its managing agent, the basic premise that the service charges were reasonable. The Respondents have not responded to the application, or to the directions sent out in this matter dated 18th June 2013.
6. On the morning of 14th November 2013 the Tribunal inspected the St David's Close development in general and the block containing the subject property in particular, together with the common parts appurtenant thereto. There are 90 residential units in a number of separate blocks which consist of both low rise, two-storey flats and terraced houses. They are constructed of brick, partly rendered, under pitched, tiled roofs. The inter-relationship between the flats and adjoining houses is a possible explanation the provision in the lease for the Applicant to be responsible for maintaining all exteriors. There are extensive common grounds and parking areas, those for general use maintained within the service charge. The rear gardens to houses are maintained by the leaseholders. Electricity is supplied to the lighting for the common parking areas, again within the charges, but the roadways are adopted. The development is situated at the North end of St Annes on the approach to Blackpool and is fairly well situated for the general amenity of the former and the more widely developed attractions of the latter.
7. Thereafter the Tribunal reconvened at the Glendower Hotel, St Anne's for a hearing attended by Mr Bentham and Miss Pendlebury of the managing agents. There was no attendance by or on behalf of the Respondents.
8. On behalf of the Applicant the managing agents concurred with the observations of the Tribunal that the issue was simply the reasonableness of the charges levied and in the absence of any direct response from the leaseholders the Tribunal should itself consider whether or not, on the information submitted, the charges were reasonable. Mr Bentham and Miss Pendlebury were happy to answer the Tribunal's questions upon matters that had arisen from its inspection or from its consideration of the papers submitted in support of the Application and in compliance with the directions referred to in paragraph 5 (above).
9. The following matters were addressed and considered and the observations below include the Tribunal's views having heard and considered the observations made:
 - The application refers specifically to the consideration of service charge, insurance premium and Ground Rent. The latter is outside the scope of the Tribunal's jurisdiction and is fixed by the lease.
 - The insurance premium is reasonable and realistic for the risks covered and the properties to which it relates. The single entry

in the account for year ending 31st March 2013 relates to a quinquennial insurance valuation and is also reasonable.

- Sundry expenses are reasonable and are itemised in the detailed breakdown of expenditure supplied by the managing agents.
- Management fees are charged on the basis of a fee per unit. This is in accordance with RICS guidelines and the amount, per unit is reasonable. The Tribunal is not concerned that the same amount is charged per unit whether flat or house given the minimal difference in services provided. The flat owners accept their own responsibility for common parts.
- Prior to the involvement of the current managing agents the Applicant had managed the development itself. All leaseholders are shareholders in that company. They had voted for the company to levy a 10% late payment fee on outstanding unpaid charges. There is no provision for this in the lease, nor in the Applicant's memorandum or articles so far as the Tribunal could establish. For the avoidance of doubt the Tribunal considers this levy to be unreasonable and would disallow it. The lease makes provision elsewhere for any professional fees which might be incurred, including those relating to debt recovery and if proceedings commence court costs and other fees will no doubt be part of a claim.

Tribunal's Conclusions and Reasons

10. The law relating to jurisdiction in relation to service charges falling within Section 18 is found in Section 19 Landlord and Tenant Act 1985 which provides:
 - (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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard

11. Further section 27A Landlord and Tenant Act 1985 provides:
 - (1) An application may be made to a 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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the

Applicant has yet made any full or partial payment for those services(subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

12. In the absence of any evidence from the Respondents as to service charges being anything other than reasonable and in the light of the enquiries that the Tribunal made on its own account into certain elements of the charge, and outlined in paragraph 9 (above) the Tribunal considers that the charges, subject to the observations set out were reasonably incurred and the work carried out was of a reasonable standard, with the exception of the late payment levy.