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

Case Reference : LON/00AH/LSC/2013/0468

Property : 12 and 95 Menlo Gardens Beulah Hill
London SE19

Applicant : Hastoe Housing Association

Representative : Mr D Thompson regional manager
Ms T Akinboro

Respondents : Mr O Balogun (12) and Mr R Evans (95)

Representative : none

Type of Application : to determine reasonableness and payability
of service charges and administration
charges

Tribunal Members : Mrs E Flint DMS FRICS IRRV
Mr C Gowman
Mr C Piarroux

Date of Hearing : 20 November 2013

Venue of Hearing : 10 Alfred Place London WC1E 7LR

Date of Decision : 15 January 2014

Decision of the Tribunal

The Tribunal determines in respect of 12 Menlo Gardens that all the sums shown in the appendix are payable except for the major works in 2011-12 which are limited to £250.

The Tribunal determines that all the costs shown in the appendix in respect of 95 Menlo Gardens are payable.

The application

The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of the service charge years 2006, 2007-8, 2008-9, 2009-10, 2010-11, 2011-12, 2012-13 and the budget for 2013-14..

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

The hearing

7. The Applicant was represented by Mr D Thompson, the regional manager of the Hastoe Group and Ms T Akinboro the Area Housing Manager. The Respondents did not appear nor were represented.

At the commencement of the hearing the Tribunal asked if the whereabouts of the respondents was known as there had been no communication with either lessee. All correspondence had been sent to the flats. Mr Thompson said that the last contact with Mr Balogun was on 19 September 2013 when he refused to confirm to a member of staff that he was not resident in the flat, despite the call being taken in Nigeria. Consequently the association did not have any other address for correspondence. It was thought that Mr Evans had lived at No.95 until about a year ago, the flat was now tenanted. He had not supplied a forwarding address; the bundle had been delivered to the flat by hand.

The tribunal was satisfied that the respondent’s had not supplied alternative addresses for service of documents, the correspondence relating to the applications had not been returned therefore the tribunal agreed that it was appropriate to continue with the hearing.

The background

9. The flats are situated within a development of 176 purpose built flats and approximately 12 houses in communal gardens with parking spaces. No.12 is situated in a tower block with a lift which had been replaced 4-5 years ago, lighting and a fire alarm within the internal

common parts. No.95 is situated in a low rise block with open walkways. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

10. The individual leases which are dated 31 January 1989 and 29 April 1983 and 21 July 1988 are each for a term of 125 years from 25 December 1981 are in identical form. By clause 3(1) the lessee covenants to pay the annual service charge in accordance with clause 4 of the lease. The service charge year is from 1 January to 31 December or such period as the lessor may in its discretion determine.
11. The service charge proportions payable under the leases are:
No.12: 10.31% of block expenditure and 0.57% of estate expenditure.
No.95: 5.49% of block expenditure and 0.57% of estate expenditure.
12. Under paragraph 5 the Lessor covenants to maintain repair and keep in good condition the block and exterior of the building and common parts, clean and light the common passage ways, landing and staircases and insure the building.
13. The Lessor is required to keep proper accounts which are to be certified by an accountant each year. The accountant is also required to set the amount of the reserve fund.

The issues

14. The level of the service charge had not been challenged in principle. The Lessee of No.12 had made some payments in respect of 2007-8, 2012-13 and 2013-14. The Lessee of No. 95 had made no payments in respect of any of the years the subject of this application.
15. Having heard evidence and submissions from the applicant and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Service Charge account

16. The service charge account for the period commencing 1 January 2006 was for 15 months to 31 March 2007 because the Appellant had decided to operate all their service charge accounts from 1 April to 31 March rather than use the calendar year. The accounts for all subsequent years were for periods of 12 months. The budget for each year is set based on the expenditure of the preceding year, adjusted for inflation and any non regular anticipated expenditure for the year ahead.

Caretaking

The costs covered cleaning, rubbish removal, litter picking, fire safety checks, keeping the estate clean and tidy and overseeing the grounds maintenance company. There is one caretaker for the whole estate; time sheets are used to allocate the costs to the different functions.

The Tribunal's decision

17. The Tribunal determines that the service charges were reasonably incurred and payable.

Reasons for the Tribunal's decision

18. The Tribunal is satisfied that no proper evidence has been produced to show that the amount of the service charge was unreasonable. No evidence was produced to show that the standard of the caretaking was unsatisfactory.

Gardening

19. Prior to 2010 Westland Estates had been employed to maintain the gardens; there were no records available to show the quality of their work or the level of complaints, if any. Since 2010 when the work was put out to tender the gardening has been undertaken by South East and City Landscapes. Mr Thompson said that their work was to a good standard, there had been no complaints and it was good value for money.

The Tribunal's decision

20. The Tribunal determines that the service charges were reasonably incurred and payable.

Reasons for the Tribunal's decision

21. The Tribunal is satisfied that no proper evidence has been produced to show that the amount of the service charge was unreasonable. No evidence was produced to show that the standard of the gardening was unsatisfactory.

Light and Power

22. The electricity bills were sometimes based on estimated readings which resulted in variations in the actual amounts charged each year. No regular checks were made that the estimated bills were realistic. Mr Thompson accepted that such checks would be preferable to the current situation.

The Tribunal's decision

23. The Tribunal determines that the service charges were reasonably incurred and payable.

Reasons for the Tribunal's decision

24. The Tribunal is satisfied that no proper evidence has been produced to show that the amount of the service charge was unreasonable, although the amounts charged varied considerably from year to year over or underpayments were rectified once the meters had been read.

Insurance

25. The market was tested at regular intervals. The landlord had gone to the market this year and S20 letters had recently been sent out to all leaseholders.

The Tribunal's decision

26. The Tribunal determines that the insurance premiums were reasonably incurred and are payable.

Reasons for the Tribunal's decision

27. The Tribunal is satisfied that proper steps were taken to market test the cost of building insurance, there was no evidence that the amounts were unreasonable.

Minor Repairs

28. The costs were made up of lots of individual items.

The Tribunal's decision

29. The costs incurred were reasonable and payable.

Reasons for the Tribunal's decision

30. Good management includes dealing with minor repairs as and when they are required. The costs are not excessive particularly since the cost for flat 12 in 2009-10 included the fire risk assessment which could be expected to be charged against Health and Safety rather than repairs.

Major repairs

31. In 2010-11 there was a fire risk assessment of the tower block and repairs to the roof entrance doors on 4 blocks which resulted in charges in excess of the S20 threshold. Mr Thompson agreed that the fire risk assessment could have been allocated to the health and safety heading which would have resulted in this falling below the £250 cap.
32. In 2011-12 digital aerial works had been carried out to all blocks. Notices of Intention had been served in accordance with S20. The landlord's consultants had advised that the cost of the work would be less than £250 per flat; consequently the full consultation procedure under S20 had not been completed. The actual cost was higher than the estimate and exceeded the threshold due to a mistake in respect of the amount of fees charged in relation to the project.

Tribunal's decision

33. The costs in 2010-11 exceeded the threshold only due to an item which should have been allocated to health and safety had been allocated to major repairs, the whole amount was reasonably incurred and payable. The cost of the digital aerial works to the tower block where S20 consultation has not been carried out is limited to £250 per unit.

Reasons for the Tribunal's decision

34. The consultation procedures were not followed, no detailed explanation of why the cost exceeded the estimate was provided and no application for dispensation had been made.

Sinking Fund

35. Every leaseholder has his own sinking fund account within each block, the balances varying depending upon the contributions actually made. The fund is used for recurring maintenance matters e.g. external decorations which are subject to a 7 year cycle. Historically the contributions to the sinking fund were too low at £ 72.17 (flat 12) and £55 (flat 95) until April 2011 when the fund was reviewed. This resulted

in a period of catching up and the contribution was increased in 2011-12 to £400. The tower block is to be decorated in 2014 at an estimated cost of £18,000; the sinking fund contribution for the current year is £350 per flat. Flat 95 is in a block which will be redecorated in 2115-16 at an estimated cost of £27,000; the sinking fund contribution is £350 per flat.

The Tribunal's decision

36. The annual charge per flat in respect of the sinking fund is reasonable and payable.

Reasons for the Tribunal's decision

37. The contributions charged were not excessive and the current charges are at a realistic level when the historically low charges are taken into account.

Management and Audit

38. The fee is £194 pa and has remained at this level throughout the period under consideration.

The Tribunal's decision

39. The fees are reasonable and payable.

Reasons for the Tribunal's decision

40. The level of the fee has remained unchanged over a significant period of time, is at the lower level of fees charged in outer London and there is no evidence that the management of the estate was unsatisfactory.

Chairman:

Evelyn Flint

Date: 15 January 2014

Service Charge Accounts

	Flat 12	Flat 95
1 Jan – 31 Dec 2006	£919.37	£564.70
 1 Jan 2007-31 March 2008		
Estate Costs		
Caretaking	£75.10	£75.10
Cleaning	£13.65	£13.65
Gardening	£92.03	£92.03
Light and power	£0.97	£0.97
Minor Repairs	£0.11	£0.11
Major repairs	£0.00	£0.00
 Block Costs		
Caretaking	£96.92	£82.57
Cleaning	£4.84	£1.80
Light and Power	£131.49	£14.94
Lift Costs	£0.00	£0.00
Property insurance	£164.40	£101.70
Minor repairs	£7.16	£2.80
Major repairs	£0.00	£0.00
Sinking Fund	£90.21	£68.75
Management and Audit	£242.50	£242.50
Total	£919.38	£696.92
 1 April 2008-31 March 2009		
Estate Costs		
Caretaking	£48.58	£48.58
Cleaning	£8.35	£8.35
Gardening	£81.25	£81.25
Light and power	£2.02	£2.02
Minor Repairs	£3.00	£3.00
Major repairs	£0.00	£0.00

Block Costs

Caretaking	£82.41	£70.21
Cleaning	£5.37	£2.00
Light and Power	£132.61	£9.51
Lift Costs	£0.00	£0.00
Property insurance	£146.38	£90.55
Minor repairs	£215.91	£0.82
Major repairs	£0.00	£0.00
Sinking Fund	£72.17	£55.00
Management and Audit	£194.00	£194.00
Total	£992.05	£565.29

1 April 2009-31 March 2010**Estate Costs**

Caretaking	£58.63	£58.63
Cleaning	£7.36	£7.36
Gardening	£86.67	£86.67
Light and power	£0.00	£0.00
Minor Repairs	£4.53	£4.53
Major repairs	£39.82	£39.82

Block Costs

Caretaking	£84.36	£71.87
Cleaning	£68.31	£30.46
Light and Power	£147.62	£12.94
Lift Costs	£0.00	£0.00
Property insurance	£159.90	£96.44
Minor repairs	£279.37	£0.00
Major repairs	£0.00	£0.00
Sinking Fund	£72.17	£55.00
Management and Audit	£194.00	£194.00
Total	£1202.74	£657.72

1 April 2010-31 March 2011**Estate Costs**

Caretaking	£59.60	£59.60
Cleaning	£3.02	£3.02
Gardening	£77.07	£77.07
Light and power	£0.78	£0.78
Minor Repairs	£9.61	£9.61
Major repairs	£48.35	£48.35

Block Costs

Caretaking	£86.34	£73.56
Cleaning	£22.60	£9.29
Light and Power	£316.97	£4.41
Lift Costs	£0.00	£0.00
Property insurance	£163.38	£101.07
Minor repairs	£38.09	£3.77
Major repairs	£255.66	£16.13
Sinking Fund	£72.17	£55.00
Management and audit	£194.00	£194.00
Total	£1347.64	£655.56

1 April 2011-31 March 2012**Estate Costs**

Caretaking	£63.19	£63.19
Cleaning	£7.84	£7.84
Gardening	£92.41	£92.41
Light and power	£0.46	£0.46
Minor Repairs	£15.89	£15.89
Major repairs	£0.00	£0.00

Block Costs

Caretaking	£91.55	£78.00
Cleaning	£28.48	£11.73
Light and Power	£26.01	£0.00
Lift Costs	£0.00	£0.00

Property insurance	£153.41	£94.90
Minor repairs	£28.78	£0.00
Major repairs	£399.76	£246.51
Sinking Fund	£400.00	£400.00
Management and Audit	£194.00	£194.00
Total	£1501.78	£955.20

1 April 2012-31 March 2013

Detailed final figures not available

at date of hearing £1162.80 £1036.51

Budget 1 April 2013-31 March 2014 £1024.90 £955.20

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a Leasehold valuation 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 a Leasehold valuation 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 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.