

9809



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

**Case Reference** : **MAN/30UK/LSC/2013/0081**

**Property** : **81 Thistlecroft, Ingol, Preston,  
PR2 7BT**

**Applicant** : **Mr Paul Critchley**

**Representative** : **Appeared in person**

**Respondent** : **Places for People Homes Limited**

**Representative** : **Ms J Chambers, Leasehold Manager**

**Type of Application** : **Application for a determination of  
liability to pay and reasonableness of  
service charges**

**Tribunal Members** : **P J Mulvenna LLB DMA (chairman)  
J Rostron, MRICS**

**Date and venue of  
Hearing** : **18 September 2013 at Preston County  
Court, Openshaw Place, Ringway,  
Preston, PR1 2LL**

**Date of Decision** : **27 February 2014**

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**DECISION**

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## DECISION

1. **That, subject to a reduction of the contribution to the reserve fund from £370.76 to £234.00, the level of the service charges levied by the Respondent for the year ending 31 March 2014 is reasonable and payable by the Applicant.**
2. **That the Respondent refund the Applicant with the application fee of £50.00 and the hearing fee of £190.00.**

## DETERMINATION AND REASONS

### INTRODUCTION

3. Mr Paul Critchley ('the Applicant') made an application to the Leasehold Valuation Tribunal on 16 May 2013 for the determination of the reasonableness and payability of the service charges for the year ending 31 March 2014 demanded by People for Places Homes Limited ('the Respondent') in respect of 81 Thistlecroft, Ingol, Preston, PR2 7BT ('the Property').
4. On 1 July 2013 the functions of leasehold valuation tribunals transferred to the First-tier Tribunal (Property Chamber) ("the Tribunal") and so this matter now falls to be determined by the Tribunal.
5. The Property comprises a first floor, one bedroom, self-contained flat in a purpose-built block of five flats situated within an estate of similar blocks and other residential property ('the Estate'). The Property is situated in a predominantly residential area and has reasonable access to public transport and to local shops and other facilities and amenities.
6. The Applicant has a leasehold interest in the Property for a term expressed to be for 125 years from 17 February 1992 to 17 February 2117 held under a Lease made on 17 February 1992 between (1) The North British Housing Association Limited and (2) Kathryn Jayne Preston ('the Lease').
7. The Respondent has a freehold interest in the Estate, including the Property.

### THE LAW

8. The material statutory provisions in this case are as follows:

(i) The Landlord and Tenant Act 1985

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... (c) the amount which is payable'.

Section 27A (3) provides that an application may also be made 'if costs were incurred.'

Section 19(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.

(ii) The Commonhold and Leasehold Reform Act, Schedule 11, Paragraph 5 provides for applications to be made to the appropriate tribunal for a determination whether an administration 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.

## **THE LEASE**

9. The Tribunal had before it a copy of the Lease which has been read and interpreted as a whole. In reaching its conclusions and findings, the Tribunal has had particular regard to the following matters or provisions contained in the Lease, none of which were the subject of dispute or argument by or on behalf of the parties:

- (a) The definitions of 'the Estate', 'the Flats', 'the Reserved Property' and 'the Premises' in Clause 1 of the Recitals and the First, Second and Third Schedules as appropriate.
- (b) The requirement to pay the service charge in Clause 1(ii).
- (c) The Lessee's covenants in Clause 2 and the Sixth Schedule (particularly paragraphs 18 to 21 of the Sixth Schedule which relate to service charges).
- (d) The Lessor's covenants in Clause 3 and the Seventh Schedule which include the provision of services and related matters, particularly paragraph 10(a) which concerns the reserve fund and reads as follows:

'The Lessor shall so far as it considers practicable equalise the amount from year to year of its costs and expenses incurred in carrying out its obligations under this schedule by charging against such costs and expenses in each year and carrying to a reserve fund or funds and in subsequent years expending such sums as it considers reasonable by way of provision for depreciation or for future liabilities or payments whether certain or contingent and whether obligatory or discretionary.'

## **THE MATTERS IN ISSUE AND PARTIES' WRITTEN SUBMISSIONS**

10. The Applicant has asked for a determination of the reasonableness of the service charges for the financial year 2013/14. He has challenged the reasonableness of the provision included in the service charge demand for the year 2013/2014 of a contribution of £370.76 to the maintenance fund. In his application, the Applicant states that:
  1. The maintenance fund has risen to an amount of £5,404 as of the end of March 2012 and there has been little expenditure in this category over the last few years. I would wish to see a cap placed on the accumulated value of the reserve fund.
  2. I consider that maintenance of the external door to the property should be included in the category covered by the contribution to the maintenance reserve.'
11. The Respondent has indicated that the maintenance fund contribution is calculated by
  - '...the use of a 50 year Asset Maintenance Plan ('AMP') of all items for which People for Places is responsible in the scheme lease, their expected remaining life span and their estimated replacement cost.'
  - 'The AMP takes into account the expenditure that will be required in the next 50 years on the scheme, the current balance of the reserve and the estimated interest to be received on the reserve after the payment of tax.'
  - '[the AMP] is used to calculate how much provision/income will be required each year to fund the reserve and give a zero balance at the end of the year.'
  - 'The amount so calculated is the amount collected under the service charge.'
12. In reply to the Respondent's submissions, the Applicant said that he had obtained quotations for undertaking work in relation to each of the general heads included in the AMP calculation. In total, the quotations amounted to £194.78 and the Applicant suggested that this 'would represent a more reasonable level of contribution to the maintenance reserve.'

## **THE INSPECTION**

13. The Tribunal inspected the Property and the common parts of the Estate externally and internally on the morning of 18 September 2013. The Applicant was present in person; the Respondent was represented by Mr P Collins, Housing Services Manager. The Tribunal found the Estate to be maintained to a reasonable standard.

14. The Applicant drew the Tribunal's attention to the condition of the windows at the Property which appeared to be affected by condensation.

### **THE HEARING**

15. Directions were issued by Mr L J Bennett, sitting as a procedural chairman, on 25 June 2013 and subsequently amended at the Respondent's request. The parties have complied with the Directions.
16. The substantive hearing of the application was held on 27 September 2013 at Preston County Court, Openshaw Place, Ringway, Preston, PR1 2LL. The Applicant was present in person. The Respondent was represented by Ms Chambers.
17. Ms Chambers, on behalf of the Respondent, agreed that the condition of the windows at the Property could be included in the Tribunal's determination although there had been no express reference thereto in the application and the subsequent submissions.

### **THE ADJOURNMENT**

18. It became evident during the course of the hearing that the Respondent accepted one of the Applicant's challenges (that the cost of replacing the front door of the Property should be met from the reserve fund) and was prepared further to examine the other two challenges (the level of the contribution to the reserve fund and the condition of the windows).
19. In these circumstances, having heard on the question from the parties, the Tribunal decided that the fairest and most reasonable way to proceed was to adjourn the hearing and issue Further Directions to enable the parties to reconsider the issues and exchange information with a view to reaching consensus.

### **THE FURTHER DIRECTIONS**

20. The Tribunal accordingly issued the following Further Directions:
  1. The Respondent shall, no later than 31 October 2013 –
    - (a) put forward proposals to reimburse the Applicant with the cost of replacing the front door at the Property, subject to the Applicant providing reasonable evidence of the cost incurred;
    - (b) prepare revised calculation for the reserve fund and the level of contributions, taking particular account of the recent property survey and the possibility of rescheduling the estimated dates of replacement works to factor in economies of scale; and
    - (c) arrange for the investigation of the cause and effect of the condensation apparent at the windows of the property and suggest proposals to address any findings.

2. The Applicant shall, within two weeks from receipt of the above, elicit any evidence or make any submissions in relation thereto.
3. The Respondent shall, within two weeks from receipt of the Applicant's submissions, make any further submissions or elicit any further evidence in relation thereto.
4. Unless otherwise indicated, the provision of any evidence or submissions shall be by way of providing three copies of such evidence to the Tribunal and one copy to the other party or parties, as the case may be.
5. It shall be open to either party to request an amendment, addition or variation to these Further Directions.
6. The Tribunal does not intend to carry out a further inspection of the Property and intends to determine all of the issues in dispute without a further oral hearing unless there is a request to the contrary by either or both of the parties.

#### **THE SUBSEQUENT AGREEMENT OF THE PARTIES**

21. The Tribunal has been notified by the parties that they have agreed:
  - (a) proposals to reimburse the Applicant with the cost of replacing the front door at the Property;
  - (b) a revised calculation for the reserve fund and the level of contributions; and
  - (c) arrangements to deal with the condensation apparent at the windows of the property.
22. The Tribunal accepts that these agreements have resolved the issues between the parties, subject to the reduction of the contribution to the reserve fund from £370.76 to £234.00.

#### **COSTS**

23. The Tribunal has power to award costs and/or reimburse fees under Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 which provides, insofar as it is material to the present case:
  - (1) The Tribunal may make an order in respect of costs only –
    - ...(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –
      - ...(ii) a residential property case...
  - (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or any part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.'

24. The Tribunal did not consider that any of the prescribed circumstances arose in this particular case and concluded that it would not be appropriate to award costs to either party. The Tribunal determined, however, that, in the circumstances of this case, the Respondent having accepted the arguments advanced by the Applicant, it would be appropriate to make an order for the reimbursement of fees.
25. The Applicant requested that an order be made under section 20C of the Landlord and Tenant Act 1985 that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. The Tribunal has no evidence that the Respondent has acted unreasonably in any respect. It would not be reasonable or proportionate to make an order.