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**HM Courts
& Tribunals
Service**

**Leasehold Valuation Tribunal
Case Number: CAM/26UE/LSC/2012/0160**

Premises : **Hudsons Court,
Darkes Lane,
Potters Bar,
EN6 1DH**

Applicants : **Jean Taylor (“the Applicant”)
Together with those listed in the
attached Appendix**

Respondent : **Fairhold Homes (No. 4) Limited
 (“the Respondent”)**

Date of Application : **5th December 2012**

Type of Application : **Application for a determination of
the reasonableness and payability of
service charges pursuant to section 27A
of the Landlord and Tenant Act 1985
 (“the 1985 Act”)**

**Date of Determination
(paper)** : **19th April 2013**

Tribunal:

**Mrs. J. Oxlade
Ms. H. Bowers MRICS
Mr. D. Reeve**

**Lawyer Chairman
Valuer Member
Non-legal Member**

DECISION

The Tribunal finds that in the service charge year 1st September 2011 to 31st August 2012 the sum of £11,700 is reasonable and payable as a service charge by the Lessees of the premises, in respect of the provision of the house manager’s flat (flat 38).

REASONS FOR DECISION

Background

1. The Applicants are the lessees of some of the flats in a development known as Hudson Court, built in 2000, consisting of 41 flats. The development is open to those aged 60 years and above.
2. Jean Taylor is the lead Applicant, and lessee of flat 23.
3. Flat 38 in the development has been designated as the "House Manager's flat", and is occupied by a House Manager, who lives on site.
4. The lessees pay service charges in respect of the costs incurred by the lessor in the maintenance and repair of the building, insurance, and management of the estate.
5. Included in the service charge account is the notional loss of rent suffered by him in being unable to let out flat 38, which is used by the House Manager.
6. The lessees do not dispute such an entitlement, but say that the costs are excessive. In respect of previous service charge years, the parties successfully negotiated, and in 2010 resolved their dispute on this point, as follows:

Year	Rent Charged	Rent Agreed
2004/5	15,551.00	10,450.00
2005/6	16,049.00	10,550.00
2006/7	16,494.00	10,660.00
2007/8	17,223.00	11,100.00
2008/9	17,878.00	11,100.00
2009/10	17,878.00	10,200.00
2010/11	10,649.00	10,649.00

7. However, in the service charge year 2011/12, the parties have not achieved an accord, and offer different views as to the correct loss of rent: the Applicants say that the maximum should be £11,700 p.a., and the Respondent says that it should be £12,600 p.a.
8. In view of the unresolved dispute, the Applicants issued an application for the Tribunal to determine reasonableness and payability of this element of the service charge for 2011/12.

The Application

9. The Applicants were content for the application to be determined on the papers; the Respondent did not disagree. Both parties complied with Directions to file evidence, made on 19th December 2012.
10. Though there is some disagreement between the parties about the description of the house manager's flat, this was not sufficiently significant for the Tribunal to require an inspection of the premises, nor for the parties to request that it take place.

The Evidence

11. The Applicants rely on statements of case made by the lead Applicant, dated 31st January and 15th February 2013, and attachments.
12. The Respondent relies on a statement of case made by its agent Estates and Management Limited dated 17th January 2013 and attachments, and further documents submitted on 7th February 2013.

The Parties Respective Positions

13. At the outset it is important to record that the parties agree two points of principle:
 - (i) that the Respondent can add to the service charge account a sum which reflects the loss of rent to the Respondent in providing the house manager's flat, and
 - (ii) that the loss of rent depends (partly) on the rent achievable on the open market ("the OMR").

The Applicants

14. The Applicants say that there are two sources of information about the OMR: one being comparable flats, and the other being the annual rent achieved by the letting of the guest room at the development.

Comparable Evidence

15. When considering comparable market evidence the Applicants consider that the following should be taken into account: the house manager's flat has one double and one single room, being awkwardly configured so that a double bed could only be placed with one long side next to the window; it has velux windows in each room - so giving a view only of the sky; there is no central heating, and only night storage heaters in the lounge and single bedroom, a convector heater in the main bedroom, and an electric fan in the kitchen and bathroom; the kitchen in the flat is the smallest in the development, which is

described as “pokey”, and there is no washing machine in it, so that the laundry on the ground floor would have to be used; there is no garage; there is no allotted parking space, the available parking is sometimes oversubscribed and so requires parking off the premises (and outside the controlled parking zone nearby). Further, the occupant of the house manager’s flat does not bring with it the right to use the communal lounge; this is by invitation only.

16. Further, the development at Hudson Court contends with the anti-social behaviour that has arisen from their proximity to the Admiral Byng Public House, since the extension of opening hours in 2005. The problems are well-documented in the notes of residents’ meeting, which would have the effect of reducing rent on the open market and influence the time taken to let the flat.
17. By way of comparable evidence the Applicants rely on a first floor flat in the subject development offered for let by Girlings Estate Agents on 5th February 2012 at £11,700, (page 56) and a 2 bedroom flat offered for let by Raine & Co in Potters Bar at £10,200 p.a. (page 52). The rents quoted are asking rents, and the rents at which the flats were let have not been stated by either party. The Applicants take issue with the Respondent’s comparable market evidence as being at the luxury end of the Market, with which the subject flat does not compare favourably; the market opinion offered by Girlings does not appear to be based on thorough research, as it makes no reference to the flat which it advertised in the development in February 2012 (page 56).

Guest Room income

18. The development has a guest flat, which produces an income, and which the Lessees retained until 2010, and thereafter by agreement was paid to the lessor. The Applicants have provided a chart on page 3 of their statement of case which sets out in the income received.
19. Finally, when assessing loss to the lessor, as the lessor is not responsible for paying service charges on the flat, nor the maintenance/repair/redecoration of the flat, the loss to the lessor is reduced – so should the compensation payable by the lessees.

The Respondent

20. The Respondent says that there are two sources of information about the OMR: one being comparable flats, and the other being the opinion of Girlings. Further, the RPI of 4.4% from 2009/10 to 2010/11 should inform the decision.
21. The Respondent says that flat 38 is on the third floor, and is the largest on that floor, with a floor area of 66.28sqm. It was agreed that the kitchen is small, but the plans show two good sized bedrooms – although it is possible that the fitted wardrobes make the second room

seem smaller. As well as the flat, the house manager has access to the laundry, the communal lounge (which is not dependant on permission), and the guest room. Irrespective of the terms of the lease it is standard practice for the House Manager to be allocated a parking space. The development is specialist, being limited those over 60, which attracts a premium (being age limited) of an additional 10% of the market rent, which was acknowledged in the case of Goode v Fairhold Homes (No. 17) Limited BIR/00CQ/LIS/2009/0014 on 8th February 2010.

22. The Respondent undertook a survey of local rents and has provided particulars at pages 59 and 79. No specific analysis undertaken, and reliance was not placed on any specific flat.
23. The Respondent received advice by email from Emma Slocombe of Girlings, an Estate Agency specialising in retirement rentals, who on 5th July 2012 said that the rent should be £12,000 maybe up to £13,500 p.a. dependant on condition (page 58). The opinion was not supported by an earlier inspection, any analysis or comparable evidence.
24. In addition the Respondent relied on the change in RPI from 2010/11 to 2011/12 of 4.4%.
25. The Respondent disputed the relevance of the income from the guest room.
26. The Respondent submits that the rental increase from £10,649 to £12,600 was therefore justified on the evidence gathered.

Terms of the Lease

27. A copy of the lease of flat 23 forms part of the bundle of documents; the Tribunal understands that this lease is a fair reflection of the other leases in the development (save flat 38).
28. The lease provides, by clause 7 of the Sixth Schedule that the lessor shall:

“so far as practicable use its best endeavours to provide and maintain the services of a House Manager (and Deputy House Manager, if appropriate) for the purpose of being available to the tenants in the Building during reasonable hours of the daytime to render such assistance in cases of emergency as may reasonably be expected of a person in such a position possessing no medical or other special qualification or skill and to supervise the provision of services in the Building and on the Estate and to perform such other duties as the Landlord may in its discretion stipulate together with an emergency call system connected to a central control for the purpose of providing assistance in cases of emergency and in the short term or temporary absence of a House Manager and whilst the House Manger is off duty”.

29. Further, the lease provides by clause 3 of the Sixth Schedule, that the lessor shall:

“ So far as practicable, to keep cleansed lighted and in a tidy condition .. the passages staircases entrances and forecourts gardens grounds and if provided resident’s lounge(s) guest room(s) residents’ kitchen laundry stores, House Managers’ flat(s) lifts and all other parts of the Estate enjoyed or used by the Tenant in common with all or any other tenants or occupiers of the Building”.

30. The lessees’ obligation is to pay an “annual service cost” which by Clause 1.2 of the Fourth Schedule means the total of all costs expenses overhead payment charges loss and outgoings suffered or incurred by or on behalf of the landlord in any year in connection with the repair maintenance decoration renewal and management of the Estate and the building and the provision of all services in the performance of its covenants ... the same shall include:

.....

1.2.11 the costs of providing and maintaining in repair and good decorative order accommodation for the House Manager(s) together with rent(s) in respect thereof”.

Flat 38

31. The lease of flat 38 provides that the occupant of flat 38 shall have the right:
- by clause 3 of the Second Schedule, “(in common with all other persons entitled to a like right which category for the avoidance of doubt shall include the House Manager) to use if provided the community room guest room resident’s kitchen, laundry and store and other common facilities (if any) in the Building”, and
 - by clause 10 of the Second Schedule “the right, subject to availability, for visitors to the Premises to park in such parking spaces as may from time to time be designated by the Landlord as visitors’ parking spaces”.
32. The lessee of flat 38 is not required to contribute to the annual service costs.

Jurisdiction

33. The jurisdiction of the Tribunal is set out in section 27A of the 1985 Act:
- “An application may also be made to the 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 will 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) date at all by which it would be payable, and
- (e) the manner in which it would be payable".

34. The following statutory provisions also have relevance to this case:

Section 19(1) of the 1985 Act, which provides:

"Relevant cost should be taken into account in determining the amount of the service charge payable for period –

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

and the amount payable shall be limited accordingly".

Findings

35. The Tribunal has carefully considered the evidence filed and submissions made.
36. There is no dispute between the parties that the lease provides that the annual service costs include a loss of rent, being a notional cost to the landlord who has been precluded from letting the flat and so deriving an income. As the service charge year started on 1st September 2011, it is that date which should form the date of our assessment of the rent payable.
37. The Applicants made an interesting point that the loss to the lessor is reduced by the absence of any responsibility on the lessor of flat 38 to contribute to service charges; the compensation needed through the service charge is thereby reduced. The Tribunal considers that this is a powerful argument, but in the absence of evidence adduced as to the service charge cost per annum which would otherwise be payable, the Tribunal cannot assess how this affects the notional rent. Accordingly, no deduction is made for this.
38. The parties have agreed that the open market rental value is the major factor in this assessment, and have adduced evidence of comparable premises to let and Girlings advice of what could be achieved. The advice given by Girlings (page 58) was given on 5th July 2012, and so some considerable time later than the relevant date. The information given to Girlings was also limited, to being advised that it was a 2-bedroom flat in Hudson Court; the advice received was quite broad - £12,000 to £13,200, and no comparables were provided to support the

advice given. As the Applicants point out, no reference was made to the first floor flat that Girlings advertised for sale on 5th February 2012 at £11,700; there is no evidence as to what rent was achieved. In the circumstances, the advice from Girlings provides background information, but does not directly assist the Tribunal.

39. The parties have produced between them 7 comparables, albeit all are asking prices, not prices which have been achieved.
40. The Respondent relies on comparables in Heathfield (£12,000 and £12,600), Frampton (£11,700), Thornton Road (£15,000), and Claregate (£15,000). The particulars of the first and second suggest that they are in quiet locations, the third one backing onto National Trust land. The particulars of the latter two suggest that they are at the luxury end of the market with features such as having a luxury kitchen with marble worktops, a balcony, gated development, en-suite bathrooms, underfloor heating and private patio; they are of a higher specification than the subject flat.
41. The Applicant relies on two comparables: one in Potters Bar (£10,200) with limited details provided; one (a first floor flat) in the subject development (£11,700). The latter is directly comparable as to location and communal facilities. Despite making the points summarised at paragraph 15 about the subject flat, the Applicants' nevertheless accept that this flat is directly comparable, and that the asking rent for that flat would be a reasonable rent for the subject flat. The effect of a direct comparable meets the Respondent's point about a premium being payable for the quieter living experience.
42. The Applicant has referred to the income from the guest suite, but the Tribunal does not find that this is of assistance. Generally, short stay accommodation is more expensive than longer stay rents, as the landlord in the former has to compensate for voids.
43. The Respondent refers to the RPI as a useful guide or a component of the decision-making, but this has not been worked through. If the 2010/11 rent of £10,649 is multiplied by the RPI of 4.4%, then the rent for 2011/12 would be £11,117, which is considerably below the £12,600 sought by the Respondent.
44. On the evidence adduced the Tribunal is satisfied that the loss suffered by the landlord in not being able to let flat 38 is a loss of rent of £11,700 for the service charge year 2011/12, and so that sum should appear in the annual service costs.

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 Joanne Oxlade
 (Chairman)
 22nd April 2013

Appendix
Schedule of Applicants

Flat 1 – P. Walker
Flat 5 – A. Bennett
Flat 6 – B. Cater
Flat 7 – F. Ricardo
Flat 14 – S. Smith
Flat 16 – S. Macgeachy
Flat 18 – R. Branch
Flat 20 – M. Franks
Flat 24 – H. and D. Bruen
Flat 27 – E. Blackmore
Flat 28 – V. Stroud
Flat 31 – J. Stanton
Flat 32 - C.A. Pike
Flat 34 – I. Wheatley
Flat 37 – J. and P. Joskowska
Flat 40 – E. Endwell
Flat 41 – N. Brewster