

12015



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

Case Reference: BIR/37UJ/LSC/2016/0004

Property: 6 Edwalton Hall, Village Street, Edwalton, Nottingham,
NG12 4HE

Applicant : Jacqueline Louise Callan (In person)

Respondent: Pemberstone Reversions (3) Limited

Agent/representative: Mainstay Residential, Whittington Hall, Whittington
Road, Worcester, WR5 2ZX.

Type of Application: 1. Determination of liability to pay/reasonableness of
service charge pursuant to section 27A Landlord and
Tenant Act 1985; and
2. Application under section 20C Landlord and Tenant
Act 1985.

Hearing: 28 February 2017

Tribunal Members: Judge A McNamara
Mr. C. Gell FRICS

Decision: 7 March 2017

DECISION

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Introduction

1. This is the adjourned hearing of the Applicant's (representative) claim pursuant to section 27A Landlord and Tenant Act 1985 regarding the liability to pay/reasonableness of service charges due under a lease. There is a Schedule attached to the Application setting out the residents whose interests are affected.
2. By reference to the Applicant's exhibit 'JC16', an official copy of Land Registry title number NT392005, on 2 July 2015 the Applicant acquired the balance of a 125 year lease originally granted on 1 July 2002 in respect of 6 Edwalton Hall, Nottingham, NG12 4HE.
3. Edwalton Hall consists of a single period building and adjacent modern additions, known as the Lodge and the Mews (the property).
4. The Respondent is the freeholder and has devolved the management of the property to Mainstay Residential.

The lease and the issues

5. Within the bundle of documents provided by the Respondent, at pages 9-44 is a sample lease. Its terms are accepted by the parties. In the interests of the concessions made at the hearing and proportionality, the Tribunal does not recite the lease but notes, in particular, that no issue is taken by the Applicant in relation to the obligation to pay service charges, including professional charges and fees (see §1.33; and §3.7). The relevant paragraphs are adopted in this decision.
6. Accordingly there is no contest regarding the obligation to pay the service charge. The issue which occupied the parties and the Tribunal was the reasonableness of charges levied at the beginning of 2016 based upon a budget from December 2015, later revised. Therefore the remainder of this decision is dedicated to two questions:
 - a. Is the revised budget figure a reasonable one; and
 - b. Should the tribunal make an order pursuant to section 20C of the 1985 Act that *'all or any of the costs incurred, or to be incurred, by the landlord in*

connection with proceedings before...the First-tier 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 persons specified in the application'.

7. Originally there was also an issue regarding service of various Notices: namely, that the Respondent was unable to demonstrate to the Tribunal's satisfaction that the statutory notices had been served upon any of the tenants. This was only resolved after a second adjournment when information was provided to the Tribunal by the Respondent so that the Tribunal was satisfied that all tenants, including the Applicant's predecessor in title, had been properly served. The Applicant was also content.

The reasonableness of the service charge

8. By application dated 21 April 2016, the Applicant sought a determination because, when the Respondent originally presented its budgeted service charge figures for 2016, there was a 418% increase in the quarterly service charge sum from £322.26 to £1347. The increase was to reflect an estimated £100,000 to address external decoration. The Applicant considered that to be an unreasonable increase. Although it is not material the Tribunal agrees.
9. The Tribunal heard evidence from the Applicant, Mrs. Richardson and Mr. Lichfield (all residents of Edwalton Hall) to the effect that they were shocked by this increase and that requests for clarification from the Respondent's agents were not forthcoming.
10. The evidence from the Respondent was to the contrary: namely that it reacted to the anxieties raised by the tenants in the early months of 2016 by obtaining input from five painting contractors. Letters dated 29 March 2016 were sent to all tenants explaining that five contractors had been approached and that that had produced 4 estimates for the work (all figures are exclusive of VAT):

a. GI Sykes	£40,484;
b. Bell Group	£60,214;
c. Ashlar FM Ltd	£63,117;
d. Johns of Nottingham	£91,888.

11. Following consultation with the tenants and the Respondent, Mainstay issued a revised budget. The, undated, revised budget for 2016 was included in the Respondent's documents at 223-233. The Tribunal heard evidence that the budget was re-drafted on the basis of adopting the least expensive estimate. Mr. Young, the agent's surveyor, assured the Tribunal that no additional cost had been or would be factored in to the budget to make up for the minimal scaffolding provision earmarked by GI Sykes when compared with the other contractors' estimates. Therefore, in simple terms, the Respondent's position before this Tribunal was that it had adopted the least expensive option and had, therefore, sought only a reasonable sum. The Tribunal agrees.
12. However, during the course of the hearing the Applicant and her witnesses were shocked to discover that the revised budget reflected the least expensive option. That appears to be a reflection of the breakdown in communication between the Respondent's agents and the tenants; and that lines appear to have been drawn which meant that this Tribunal had to resolve the impasse that had developed between the parties.
13. However, the Respondent's written submissions to the Tribunal made it clear that the budget had been revised and credit given. Although not dated, those submissions were filed ahead of the first hearing date in this case, namely 8 August 2016.
14. Ancillary to the question about service charges is the 10% charge levied by the Respondent's agent to reflect the services of surveyors in managing and administering the process from budgets through consultation to supervising the

works. The evidence was to the effect that the Respondent's agent would, depending upon the size of the project, levy fees 7-11%.

15. The Tribunal has concluded that the 10% figure sought is reasonable and does not propose to interfere.
16. Therefore, for the avoidance of doubt the Tribunal concludes that:
 - a. The service charge as identified in and based upon the revised budget for 2016 is a reasonable one; and
 - b. The imposition of a 10% additional sum by way of surveyor's fees is also reasonable.
17. Although the Applicant also raised a question regarding building insurance costs the Tribunal heard no evidence to resolve that issue.

The s.20C application

18. The application was twice adjourned by reason of the failure of the Respondent to satisfy the Tribunal that the documentation necessary to recover the costs of decoration had been properly served. The Respondent eventually provided copies of the necessary documentation.
19. Further, there appears to have been a lack of effective management of the Property, inconsistency of approach and evidence of a breakdown in communication: Mrs. Richardson explained how she had on the one hand been offered an opportunity to pay in instalments by Mr. Jones but, during his absence, she and her partner faced Court proceedings for failure to pay the service charge.
20. The Applicant on the other hand has declined to pay and appears not to have been treated in the same way.
21. Again the bewilderment of the Applicant and her witnesses speaks of an inability on the part of the Respondent to communicate effectively through its agents to the tenants.

22. Finally, the Tribunal was concerned to hear that it was only in 2015, after 10 years under the management of the Respondent's agents, that the necessity for a long term maintenance plan was identified. In those circumstances it is hardly surprising that, absent effective planning and the reservation of sufficient funds, tenants would be likely 'hit' with such a significant increase.

23. In all of the circumstances it is the Tribunal's view that the s.20C application is allowed and none of the costs incurred, or to be incurred, by the landlord in connection with these proceedings are 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 persons specified in the application.

Mr. A. McNamara, Judge of the First Tier Tribunal (Property Chamber)

Mr. C. Gell FRCS, Valuer Member of the First Tier Tribunal (Property Chamber)