

10/68



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

Case Reference : **CHI/45UH/LIS/2014/0020**

Property : **16 Broadwater Boulevard,
Worthing, West Sussex BN14 8JF**

Applicant : **David Hedgecock, lessee of flat 16**

Representative : **N/A**

Respondent : **MOBRO Land and Developments
Ltd, freeholder**

Representative : **Parsons Son & Basley, managing
agents**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay service charges 2010/11 to
2013/14**

Tribunal Members : **Judge J A Talbot
Mr N I Robinson FRICS**

**Date and venue of
Hearing** : **3 September 2014 at Chichester
Magistrates Court & Tribunals
Centre**

Date of Decision : **22 October 2014**

DECISION

Decision of the tribunal

The tribunal determines that the following sums are payable by the Applicant in respect of the service charges for the years 2010/11 to 2013/14:

2010/11	£1,377.87 (a reduction of £107.74)
2011/12	£1,427.92 (unchanged)
2012/13	£1,698.71 (unchanged)
2013/14	£1,535.77 (unchanged)

The application

1. The Applicant, Mr Hedgecock, seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2010/11 to 2013/14.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. Mr Hedgecock appeared in person. Parsons Son & Basley (PSB) was represented by Ms Barbara Pitney, senior property manager, and Ms Christine Vines from the accounts department.
4. The start of the hearing was delayed while the tribunal considered additional documents, namely, the service charge accounts for all years, which were not in the hearing bundle but which had previously been supplied for the case management conference.

The background

5. The property which is the subject of this application is a self-contained flat in a purpose built development of mixed commercial and residential units. The members of the Tribunal inspected the development in which the flat is situated before the hearing in the presence of the parties. It comprised a small 1960's shopping precinct with 29 flats above on the corner of Broadwater Road and Rectory Gardens. The commercial element remains mostly shops although a substantial section has, in recent years, been converted into an NHS medical centre and GP surgery. Parts of the development are two storey

and parts three storey. These upper parts, with the exception of a section directly fronting Broadwater Road (with Anglian Windows and a Newsagent on the ground floor) having residential flats on long leases above, some of which are sub-let.

6. The elevations are of mixed brick with concrete and rendered sections under flat roofs. Most of the flat windows are Upvc but several original crittal windows remain. There are paved communal walkways in front of the commercial units understood to be maintained by the freeholder and a large plane tree maintained at the cost of the service charge account. The grassed area fronting Broadwater Road is maintained by the local Council. The tribunal was told that the section fronting Rectory Gardens is maintained at the cost of the service charge. Within the grounds of the development there are two unsecured bin store areas for the use of the flats.
7. There are a number of entrance doors each giving access to certain flats. The entrance to flats 1-7 faces Rectory Gardens with the other entrances (to flats 8-9, 10-11, 12-17, 18-21, 22-25, 26-28 & 29) being off the car park/rear access areas. Each staircase was similar in having painted walls and ceilings, thermoplastic floor tiles and painted concrete stairs. The lighting in the internal common parts was operated by push switches with emergency lighting throughout. Externally, there were bulkhead fittings mostly just above each entrance door operated by time switches. There were several circular light fittings round the exterior of the medical centre and it appeared these were installed for the benefit of the medical centre and under its control and responsibility.
8. Much of the block was in a poor decorative state externally but some parts had been repaired and redecorated. Internally the common parts looked shabby with the thermoplastic tiles lifting in places with some missing. The walls and ceilings had probably been repainted fairly recently but scuffing and other marks were already evident.
9. Mr Hedgecock holds a long lease of the property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
10. The lease is dated 01 September 1986. The service charge proportion is $1/24^{\text{th}}$ or 4.166667%. Ms Pitney explained at the hearing that the leases throughout the development are not all in the same form. Some leases provided for $1/29^{\text{th}}$ and others for a fair proportion.
11. All the commercial units were understood to be let on commercial leases on varying terms. Ms Pitney advised that historically a contribution of 15% of the maintenance costs was made by the commercial units so that the residential lessees only paid 85% of the maintenance costs between them, including the roof, common parts,

electricity, cleaning, management fees and reserve fund. The flats pay for the residential block insurance premium and the commercial units arrange their own insurance. As a result of these arrangements, Mr Hedgecock is actually charged 3.541667%, which is to his advantage.

12. In the following determinations, the total costs allowed or disallowed by way of service charges are given on the basis that Mr Hedgecock's proportion is 3.541667%.

The issues

13. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the four years 2010/11 to 2013/14 relating to expenditure incurred under the following headings: management fees, electricity, common ways cleaning & gardening, waste management, pest control, maintenance & repairs.
 - (ii) Mr Hedgecock had put all the expenditure in issue because, in summary, he considered that he had been paying high service charges with little benefit in terms of satisfactory property maintenance and services.
 - (iii) Ms Pitney had supplied the relevant service charge accounts together with copy invoices in support.
 - (iv) In his statement of case, Mr Hedgecock had commented on every item in the category of maintenance & repairs. At the hearing, he did not dispute all those items. This decision therefore deals only with the disputed costs.
 - (v) For the avoidance of doubt, Mr Hedgecock did not dispute insurance costs or the first stage of major roof works.
 - (vi) We were assisted by Mr Hedgecock's written statement of case and Ms Pitney's written replies, which comprised the Respondent's case.
14. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Management fees

15. Mr Hedgecock submitted that since he moved in, in 2010, the standard of property management had been poor. Some areas of the property were in poor condition and routine maintenance had been neglected. In particular he had not received adequate replies to enquiries.
16. Ms Pitney said PSB took over management in 2007. She had only been in post at PSB since March 2014 and the previous manager had left. The property was complex and difficult to manage because of the mixed commercial and residential user and the high number of sub-let flats. The freehold had changed hands in 2009 and PSB had not been handed over any reserve at their commencement. It had therefore taken longer than hoped to organise necessary works to avoid unaffordable charges to the lessees. Ms Pitney was preparing a 5 year plan for roof repairs and exterior decorations and was committed to improving communication with the lessees. The largest single item, roof repairs, was being carried out in three stages of which the first stage was complete. The roof above Mr Hedgecock's flat along with some exterior painting had been included in the first stage.

The Tribunal's decision

17. The tribunal calculated that the management fee per residential unit in 2010/11 was £166.66 with annual increases on a percentage basis, in respect of the duties listed by Ms Pitney. Whilst we accepted that there had been a history of poor communication, overall we considered that the property was adequately managed with staged repairs and maintenance in progress. The fee per unit was at the lower end of the market range for the area and was not excessive or unreasonable.
18. The tribunal determines that the amount payable in respect of management fees for the above years is £6,823.28, £7,164.92, £7,525.00, & £7,750.00.

Electricity

19. Mr Hedgecock regarded the electricity costs from energy supplier EDF as too high, and that lights were left on unnecessarily. Ms Pitney explained that energy suppliers were kept under review and that PSB had recently switched to Southern for this property.

The Tribunal's decision

20. We accepted that electricity costs had been reasonably incurred as evidenced by the bills supplied for the four years. There was a balance to be struck between standing charges and metered costs. We noted a vacuum switch was stuck in the "on" position in the entrance to flat 16. It was not unusual for such switches to fail. The landlord's obligation to repair arose once the problem was reported to PSB.

21. The tribunal determines that the amount payable in respect of electricity charges for the above years is £1,050.57, £1,331.28, £1,360.00, £1,350.00.

Cleaning & Gardening

22. Historically, cleaning and gardening services had been provided by the owner-occupier of flat 9, trading as "Double Ess Cleaning and Caretaking Services". Monthly invoices were provided referring to "caretaking duties at Broadwater Boulevard Flats" but there was no caretaking contract as such. The charge of £75 per week had remained unchanged throughout the four years.
23. For this cost, the services provided included four-weekly common parts cleaning, changing light bulbs, gardening duties as needed (mainly grass mowing), and daily checking of the two communal bin areas and common areas. The lessee of flat 9 also liaised with the managing agents as necessary and reported any issues such as abandoned items.
24. Mr Hedgecock submitted that the quality of cleaning was poor and he doubted whether the common ways in the entrance to his flat were properly cleaned, i.e mopped as well as swept. He did accept that the bin store he used was generally tidy, which indicated to the Tribunal that this area was monitored. He was not previously aware that there was more than one bin store.

The Tribunal's decision

25. The Tribunal noted on inspection that the floor coverings throughout the common areas, being the original tiles and painted concrete stairs, were dated and in some cases where the tiles had lifted would be difficult to mop. The paintwork to the common ways was scuffed but the floors were not unduly dusty or dirty. Four-weekly cleaning was not ideal, but there was a benefit to the property of daily checking of the bin areas and to the managing agents of having someone on site to report issues. £75 per week was not unreasonable for the type and level of service provided. More frequent cleaning or separate contractors for cleaning, gardening and bin areas would be more expensive.
26. The Tribunal determines that the amount payable in respect of cleaning & gardening for the above years is £3,960.46, £4,758.09, £4,514.04, £4,450.00.

Waste Management

27. These costs related to the removal of items dumped in the bin areas by occupants of the flats and possibly others. Ms Pitney explained that as those responsible could not realistically be identified, the cost was

charged to the service charge account. Mr Hedgecock thought the individuals should be made to pay and that fly-tipping was a criminal matter, but he acknowledged the existence of the problem.

28. The Tribunal agreed with Ms Pitney that these costs were a service charge item. At the inspection we saw that several items including a child's buggy had been left in the entrance way to flat 16. The costs were reasonably incurred and supported by invoices.

The Tribunal's decision

29. The Tribunal determines that the amount payable in respect of waste management for the above years is £407.06, [2011/12 & 2012/13 nil], £60.00.

Pest Control

30. Mr Hedgecock queried the meaning of this item. Ms Pitney explained it referred to fixing bird spikes and removing nesting pigeons from the roof.
31. On examining the invoices, it was clear that in 2010/11 invoices from Temp Pest dated 20/07/2010 for £695 and 09/10/10 for £987 related to the front of the Anglian Windows Showroom. This was not a service charge item but a cost to the commercial unit. The Tribunal disallowed these costs, and also disallowed a cost of £180 to treat insect infestation to flat 9 (invoice 01/03/2011) as this was internal to the flat and not a service charge item.

The Tribunal's decision

32. The Tribunal determines that the sum of £1,862 in respect of pest control is to be deducted from the service charges payable in 2010/11.

Maintenance & Repairs

33. This was the largest category as set out in the service charge accounts and was further broken down in the notes to the accounts to show individual items. On clarification from Ms Pitney we accepted that certain matters were properly charged to the service charge account, for example, the cost of clearing debris from the canopies above the shops but not structural work to the canopies which was met by the shops.
34. At Mr Hedgecock's request the Tribunals examined certain high cost items. The first was clearing snow and grit from walkways, cost £557.89 in 2010/11. The invoice from Immaculate Property Services Ltd dated 17/11/2010 suggested that this cost related to the whole site, including

walkways to the shops and medical centre, not just the flat entrances and parking areas. Ms Pitney accepted that only 50% was attributable to the flats and 50% to the freeholder. The Tribunal therefore disallowed £278.95.

35. The cost of internal decorations of £4,302.25 related to painting and re-decoration of common parts. Mr Hedgecock queried where and when this was completed. The costs were supported by invoices from contractor JMR Property Maintenance Ltd dated 01/12/2010 and 21/03/2011. The invoices referred to the "commonways" and although the blocks were not specified, it seemed likely from what the Tribunal had seen that the work related to the common parts in all the flat entrance areas, in which case the amount was not unreasonable and was allowed.
36. Similarly, the cost of electrical tests and emergency light installation was not excessive at a cost of £3,500.40 supported by an invoice from Transvac Security & Electrical dated 28/01/2011.
37. Various items related to costs of work to the canopies above the commercial units and medical centre. Ms Pitney explained that where the work was necessary to debris emanating from flats it was charged to the service charge account but structural work was charged to the commercial units. On this basis the Tribunal disallowed a cost of £901.20 because the invoice dated 25/01/2011 from Traditional Roofing of Sussex Ltd for repairing roof leaks was headed "the Doctor's surgery" including "the flat roof above Penny's office".

The Tribunal's Decision

38. All these items concerned the year 2010/11. Having disallowed a total of £3,042.15 from the service charges for 2010/11 the tribunal calculated Mr Hedgecock's liability for that year as £1,377.87, a reduction of £107.74.
39. Turning to the other service charge years, Mr Hedgecock disputed a cost of £2,112.00 incurred in 2012/13 in respect of digital TV aerials. Ms Pitney explained that this was a communal aerial and a one-off cost. He also disputed a cost of £1,668 incurred in 2013/14 for external redecorations. This related to the south facing block and was supported by a detailed invoice dated 08/08/2013 from ST Builders & Sons. The Tribunal accepted that both these costs were reasonably incurred.

Reserve Fund or "Forward Funding"

40. Ms Pitney explained that forward planning was necessary for the maintenance of the development, especially with phased ongoing roof and exterior redecoration works. She was in the process of preparing a

5 year maintenance plan. The reserve fund was held on deposit. Mr Hedgecock observed that the costs were increasing. The Tribunal took the view that it was prudent property management to collect such a fund to cover future necessary expenditure and that the sums claimed were not unreasonable.

Application under s.20C and refund of fees

41. Mr Hedgecock did not make an application for a refund of the fees that he had paid in respect of the hearing, or for an order under section 20C of the 1985 Act that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. He may still make such an application even though the proceedings have concluded.

Name: J A Talbot

Date: 22 October 2014

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

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 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).