



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

Case Reference : **MAN/32UG/LSC/2016/0091**

Property : **72 The Pollards
Bourne PE10 0QB**

Applicant : **The Pollards (Elsea Park)
Residents Association Limited**

Representative : **Mr. J. Wragg Barrister**

Managing Agents : **RMG – Mr. P. Cook
Mr. P. Russell**

Respondent : **Mrs. S. Dorricott-Leslie**

Representative : **Mr. Dorricott-Leslie**

Type of Application : **s27a of the Landlord & Tenant Act
1985
Schedule 11, Paragraph 5 of the
Commonhold And Leasehold Reform
Act 2002**

Date of Decision : **12 July 2017**

Tribunal Members : **Mrs A J Rawlence MRICS
Ms S D Latham MRICS**

DECISION

Preliminary

1. On 9 May 2016, The Pollards (Elsea Park) Residents Association Limited ('the Applicant') applied to the County Court Money Claims Centre for unpaid service charges under a lease. The total amount claimed was £6,542.72.
2. On 2 August 2016, the claim was transferred to the County Court at Boston.
3. On 17 October 2016, the District Judge sitting at the County Court at Coventry ordered that the claim be stayed pending determination by the First Tier Tribunal (Property Chamber) (the Tribunal) of the issue identified which was: "whether the service charges claimed by the Claimant are reasonable".
4. The papers were transferred to the Tribunal on 21 October 2016. The Tribunal noted that this was deemed to be an Application ('the Application') for under section 27A of the Landlord & Tenant Act 1985 ('the 1985 Act') for a determination as to whether service charges were payable and under Schedule 11 to the Commonhold & Leasehold Reform Act 2002 ('the 2002 Act') and limited to the issues identified by the County Court.
5. On 10 November 2016, the Tribunal directed that the matter be listed for a Case Management Conference and this took place on 12 January 2017. It was noted that RMG provided management services for the Applicant.
6. Directions were issued on 13 January 2017.
7. The issues to be determined are:
 - a. Service charges since 2010 including:
 - Costs of cleaning, window cleaning and garden maintenance
 - Costs for security, fire and smoke
 - 2010 to 2012 11 invoices for adjusting entrance door
 - Electrical works carried out in 2013
 - Various invoices from the maintenance company and managing agent
 - Cost of reinstatement valuation for insurance purposes
 - Cost of supply of electricity to the Pollards.
 - b. Works not carried out but charged for:
 - Bird netting
 - New water heater.
 - c. Lack of complete invoices for the period 2013 to 2015.
 - d. Safety certificates for the communal areas.
 - e. Monies paid by the Leaseholder in 2011 and 2012.
 - f. Company Secretary costs as part of the service charge.

8. Further Directions were issued on 11 April 2017 to ensure that statements of case and schedules would be received by the Tribunal.
9. Directions were also issued on 23 June 2017 to clarify the legal and professional fees charged as part of the service charge in 2012, whereas the previous Tribunal decision had ruled that the costs of the proceedings were not to be regarded as relevant costs in determining the service charges.

The Relevant Laws

10. The starting point of the Tribunal's consideration is its jurisdiction in respect of service charge applications.
11. Under section 27A (1) of the 1985 Act the Tribunal has jurisdiction to decide whether a service charge is payable and if it is the Tribunal may also decide:
 - 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.
12. A charge is only payable by a lessee if the terms of the lease permit the Lessor to charge for specific services. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the lease can be recovered as a charge (*Gilje v Charlgrove Securities* [2002] 1 EGLR 41).
13. Furthermore Section 19 of the Act provides that:-
 - (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 provision of services of the carrying out of works only if the service or works are of a reasonable standard; and the amount payable shall be limited accordingly
14. It is important to recognise that an application which has been transferred by the Court into the Tribunal limits the issues that the Tribunal may consider. In *Staunton v Kay and Taylor*, the Upper Tribunal explained:

“The power of the (*Tribunal*) in determining the questions in the transferred proceedings is no wider than that of the court. The court is limited by the terms of the parties' pleadings, although, it can, of course, give permission to a party to amend. The powers of the (*Tribunal*) in transferred proceedings are necessarily limited in the same way, but the (*Tribunal*) has no power to permit the pleadings to be amended and thus to widen the scope of the questions that it is required to determine under the transferred proceedings”.

The Lease

15. The Tribunal was provided with a copy of the Lease for Plot 62, Phase 2 The Pollards, Elsea Park, South Road, Bourne, Lincolnshire. Plot 62 was renumbered 72 the Pollards. The Lease is dated 30 June 2005.
16. The parties to the Lease are Wilson Connolly Limited ('the Lessor', Elsea Park Community Trust ('the Trust'), the Pollards (Elsea Park) Residents Association Limited ('the Managers') and Susan Dorricott-Leslie ('the Lessee'), Tenant Sean Powell and The Birches (Farnworth) Management Company.
17. Under the terms of the Lease, the Lessor agreed to transfer the Freehold to the Managers once all properties in the block had been sold, and the sole members of the Managers are now the owners of the flats.
18. The Lease expires on 31 December 2128.
19. Clause 1(6) of the lease states by way of further or additional rent from time to time to be paid on demand by the Managers to the Managers

'1.16.1 11.11% of all costs and expenses incurred by the Lessor or the Managers in or incidental to carrying out their obligations set out in clause 10 and performing and observing all obligations entered into by the Lessor or the Managers for the benefit of the owners of the Block including the costs of administration and management of the services provided by the Lessor or the Managers in carrying out their said obligations the costs of calculating certifying and collecting such sums and also including such amount by way of reasonable provision for anticipated expenditure as the Lessor or the Managers may in their respective discretion (acting reasonably) determine

1.6.2 an equal share per flat with all other owners of a flat within the Block of all costs and expenses incurred by the Lessor or the Managers in or incidental to the management and administration of the Managers and the exercise of any of the objectives set out in the Memorandum of Association of the Managers

20. Clause 5 of the Lease provides:

That in consideration of the Lessor or the Managers performing the obligations in Clause 10 to make payments ...in the following manner

5.2.1. from to and after today's date and from time to time and whenever called upon to do so to pay the relevant percentage and share as referred to in clause 1.2 of the estimated amount of the total costs and expenses to be incurred in the next following period of not more than a year in performing the said obligations due allowance being made for any surplus from any previous payments and due addition made for any previous deficit (subject to the power to vary the percentage and share set out in clause q3.3 and always including ongoing proviso for a reserve fund.

5.2.2. such estimate shall be certified by Chartered Accountants...

5.2.4 as soon as practicable after the end of each accounting year Chartered Accountants ...shall determine and certify the amount by which the estimate referred to in clause 5.2 shall have exceeded or fallen short of the actual expenditure in the account year and the Lessee shall be entitled to a copy of this certificate at the expense of the Lessor or the Managers.

5.2.5. any sums collected by way of reserve fund or funds shall be held by the Lessor or the Managers until expended upon trust for the Lessee and the owners of all other flats in the Block'

21. Clause 10.1 of the Lease requires the managers to 'effect and maintain ...policies of insurance for the full reinstatement value.'
22. Clause 10.2.1 requires the Managers to manage repair and renew all things used or enjoyed in common and Clause 10.2.1.1 to 10.2.1.6. identifies specific and general items 'without prejudice to the generality of the forgoing.'
23. Clause 10.2.2 to 10.2.10 requires the managers to carry out further obligations the cost of all of which are chargeable to the lessee under Clause 1(6) They will be particularised hereunder to the extent they are relevant.

Inspection

24. The property was inspected on 31 May 2017 by the Tribunal accompanied by Mr. Dorricott-Leslie for the Respondent and Mr. P. Russell of RMG for the Applicant.
25. The Pollards is a mixed development of flats and houses with ongoing development being carried out in the area.
26. The development was completed by 1 January 2007 when the Lease was granted.

27. The Applicant's property is within a three-storey brick and pitched concrete tile roof with UPVC double glazing and PVC rainwater goods. Car parking for 12 cars and a bin store are situated at the rear of the property. There is also external lighting to the property. There is a small landscaped area at the rear of the property with paving slabs and small terrace.
28. On the roof is a communal TV aerial with a satellite dish at the front of the building. A second satellite dish appears to have been installed for individual use at the rear of the property. Several flats had evidence of burglar alarms having been installed.
29. The property has two separate accesses at the front and the rear. The closer to the rear door has been installed on the external face and shows signs of corrosion. There is emergency lighting, a hard-wired smoke detection system and an automatic smoke vent in the roof. The communal area is heated by storage heaters and there is limited storage under the stairs.
30. The Respondent's flat is situated on the first floor of the block 64 to 80 the Pollards ('the Block'). She also owns No 70 the Pollards which is not part of this decision. There is no lift access.

Hearing, Statements of Case and Additional Information

31. Statements of case were provided by both parties and the Applicant provided a schedule of the items in dispute with comments from both the Applicant and the Respondent.
32. Mr. Wragg, for the Applicant, stated that the previous Tribunal decision dated 5 July 2011 had not been challenged by the Applicant because at that hearing no-one from RMG, who managed the Property for the Applicant, had attended the hearing and provided information.
33. It was agreed between the parties that payment of an estimate of the service charge for 2016 was not part of this decision. The service charge estimate had been served on the Respondent without a certification by the Chartered Accountants. (Clause 5.2.2 of the Lease.)
34. The Tribunal noted that service charge accounts for the years 2011, 2012 and 2013 included another block of flats Block 30-36 The Pollards. For the years 2014 and 2015, although total expenditure of both block was shown on the accounts, the actual expenditure per block was broken down rather than shared 50:50.
35. Mr. Wragg stated that none of contracts for cleaning, window cleaning and garden maintenance were long term qualifying agreements as they were annual purchase orders that lasted less than one year and could be terminated within 3 months. The directions had not stated that this was an issue.

36. Mr. Russell, for the Applicant, stated that these contracts were regularly market tested. The contracts were awarded to a nationwide company across the portfolio of properties managed by RMG. All the contracts were awarded on an approved contractor basis with public liability insurance and the supply of their own equipment.
37. Mr. Dorricott-Leslie, for the Respondent, stated that using a company from Kettering was unreasonable to carry out the three main contracts and a closer contractor could be employed. He suggested a figure of £44.00 per month (£528 per annum) for cleaning both blocks every fortnight.
38. Mr. Dorricott-Leslie pointed out that the garden maintenance contract equated to £95 per hour whereas he could find a local gardener at an hourly rate of £12.50.
39. With regard to these contracts, Mr. Dorricott-Leslie queried the need for public liability insurance.
40. On being questioned, the Respondent stated that he had not obtained written quotes for any of the three contract figures.
41. Mr. Dorricott-Leslie queried whether it was reasonable to have a valuation for insurance carried out every 3 years and by a chartered surveyor from Sussex.
42. Mr. Wragg stated that it was good practice to carry out an insurance valuation every 3 to 5 years. Mr. Russell confirmed that the management company used a number of surveyors and this nationwide rate was reasonable. He stated that the principal of the firm had been a partner of RMG, when it was a previous corporate entity.
43. There was some confusion about the communal aerial and it became apparent to the Tribunal that the aerial was supplemented by one sky box. Under Clause 10.2.2. of the Lease, the managers are required to repair and maintain equipment for communal use.
44. Mr. Dorricott-Leslie pointed out that door repairs were excessive. The Tribunal noted the closer to the rear door and that there were several invoices for the lubrication of doors. Although only two invoices were shown in the accounts as for door entry for 2011 and 2014 there are other invoices, viz. three in 2012 and two in 2013, and the Tribunal concludes these are included in the item general repairs. The Tribunal notes that the 2014 figure appears only once in the now separated accounts for this Block.

45. Mr. Dorricott-Leslie called into question whether the investigation of the smoke vent related to the Block. The Tribunal were told by Mr. Wragg that the managers, RMG, only managed the two blocks at the Pollards, as shown in the accounts and no other properties. There were several invoices in connection with the smoke vent. However, in July 2014 an M & E report identified batteries needed to be replaced in the smoke vents. This was carried out on two occasions, six weeks apart.
46. Mr. Dorricott-Leslie turned to the maintenance of lights bulbs and queried whether the work had been carried out, the cost of such works and whether these costs related to the two blocks.
47. The bundle included invoices for fire defence equipment being checked three or four times a year. The Respondent stated that the company was not qualified to carry out such works. The Tribunal found, on questioning, that this was to check the motor to the smoke vent and not the emergency lighting. However, it notes this is contradicted by the invoice for replacing two emergency bulkhead lights following a recent M & E report.
48. The Respondent queried the new warning signs installed in October 2012 but Mr. Russell stated that new signs were required and installed.
49. The Respondent noted that new slabs had been laid in 2010 and only one was broken in 2012. It was felt that £378 was an excessive amount to pay. Mr. Russell commented that the invoice included various works to the paving and not just replacing one paver.
50. The Respondent queried works to the gutter. The invoices in January 2013 were included in the accounts for both blocks. However, the Tribunal noted no sign of any loose or blocked guttering and accepted that the works had been carried out.
51. The Respondent commented on electrical testing carried out and subsequent remedial work. The Tribunal notes that, following the remedial works, both that contractor and a separate contractor checked the communal electrics.
52. In December 2013, a health and safety survey was carried out. The Respondent queried whether this was necessary. The Tribunal finds that a prudent landlord would do such a survey but was disappointed that a copy report was not provided. A survey was also carried out two years later.
53. Mr. Russell confirmed that a broker was used to obtain the best cost for the buildings insurance. The Tribunal noted that no charge was made for the years 2011 and 2012 and that the charges in 2013 had substantially increased in 2014 and 2015.

54. Mr. Dorricott-Leslie was unconvinced that a manhole had been replaced in 2015 and concerned that it charged to reserve account that year. Mr. Russell confirmed that the work had been carried out.
55. Mr. Dorricott-Leslie was concerned about company secretarial fees and the cost of filing dormant accounts. There were only two directors of the Resident's Association – his wife and one other.
56. No issues were raised on the management or accountancy fees.

Decision

57. The Tribunal determines that the Respondent is liable to pay service charges under the terms of their Lease.
58. The Tribunal notes that invoices and explanations have now been provided for the service years in question.
59. The Tribunal notes that the figures for the cleaning contract have decreased from £1,939 in 2011 to £1,145 in 2015. The Tribunal accepts that latter figure and determines this is the figure payable during all five service years.
60. The Tribunal notes that the figures for the window cleaning contract have similarly decreased from £659 to £389. The Tribunal accepts the figure of £390 for the year 2014 and determines this is the figure payable during all five service years.
61. The Tribunal notes that the figures for the garden maintenance contract have been at around £1900 for all 5 years. The Tribunal finds this excessive for the small areas to be maintained and determines a figure of £900 in 2011 rising to £1200 in 2015.
62. The Tribunal finds the costs of the valuation for insurance purposes of £1352.40 and £1368.14 for 2011 and 2014 respectively are reasonable.
63. The Tribunal finds that maintenance of the communal aerial, the sky box and the 12-way switch are both payable and reasonable.
64. The Tribunal determines that repairs must be carried out to the four doors and accepts the figures, albeit surprised that the door closer had been fitted externally on one door.
65. The Tribunal finds that works to the smoke vent are both payable and reasonable. However, it determines the second invoice in September 2014 is not reasonable when works could, and should, have been carried out at the same time as the works in August 2014, as the faults had been identified in the M & E report in July 2014.

66. The Tribunal accepts that lights need to be maintained and determines all the costs as reasonable.
67. The Tribunal concludes that the fire defence reports do include checking the emergency lighting and finds that a prudent landlord would carry out regular checks.
68. The Tribunal finds the costs of new warning signs to be reasonable.
69. The Tribunal finds that works to the paving slabs is payable.
70. The Tribunal determines that works to the guttering are payable and reasonable.
71. The Tribunal notes the duplication of works occurred after remedial works had been carried out to the communal electrical system to bring it up to standard. The Tribunal determines that the invoice, dated 31 July 2013, is not payable as this should have been a follow up to work satisfactorily completed. The second invoice is from a different company and no action was taken. This is also disallowed, giving a deduction of £282 on the figure in the accounts
72. The Tribunal finds the cost of the health and safety surveys payable and reasonable.
73. The Tribunal finds the cost of building insurance in 2013 to be fair and reasonable and determines an increase of 10% for each successive year i.e. £1040 for 2014 and £1145 for 2015.
74. The Tribunal finds the costs of filing company accounts excessive and determines a figure of £206 for the first three years rising to £216 in 2014 and 2015
75. The Tribunal finds that legal and professional fees were incorrectly charged as part of the service charge in 2012 as the previous Tribunal decision had ruled that the costs of the proceedings were not to be regarded as relevant costs in determining the service charges. The Applicant has confirmed that the costs in respect of that decision have been credited in the 2016 accounts, which are not part of this decision.
76. The above determinations are for both blocks. However, in 2014 the service charge accounts were split to more accurately expenditure in each block. For clarity, the Tribunal set out in Appendix A the due amounts for the years in question. The figures in italics are items that were not raised.
77. If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made to the First-tier Tribunal within 28 days of this decision (Rule 52 (2)) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Appendix A - Expenditure

Sums in italics are not part of the Tribunal decision

Item	Total in a/cs	Tribunal	Total in a/cs	Tribunal	Total in a/cs	Tribunal
	2011	Decision	2012	Decision	2013	Decision
Cleaning	1939	1145	1909	1145	1718	1145
Window Cleaning	659	390	649	390	584	390
Sign writing & notice	0	0	150	150	0	0
Door Entry system	90	90	0	0	0	0
<i>Refuse collection</i>	<i>222</i>	<i>222</i>	<i>174</i>	<i>174</i>	<i>0</i>	<i>0</i>
Fire Equipment	336	336	799	799	376	376
Aerial systems	180	180	0	0	384	384
Electrical Maintenance	0	0	552	552	1585	1303
Gen. Reps Maintenance	1050	1050	581	581	727	727
5-year electrical test	0	0	0	0	80	80
Grounds Maintenance	1931	900	1900	975	1900	1050
Buildings insurance	0	0	0	0	947	947
<i>Directors insurance</i>	<i>133</i>	<i>133</i>	<i>140</i>	<i>140</i>	<i>164</i>	<i>164</i>
Insurance valuation	354	354	355	355	355	355
<i>Management fees</i>	<i>3204</i>	<i>3204</i>	<i>3317</i>	<i>3317</i>	<i>3417</i>	<i>3417</i>
Co Sec fees	517	206	538	206	550	206
<i>accountancy</i>	<i>753</i>	<i>753</i>	<i>786</i>	<i>786</i>	<i>808</i>	<i>808</i>
Legal & Prof. Fees			1455	0	0	0
Health & Safety	517	517	533	533	548	548
<i>Sundry expenses</i>	<i>88</i>	<i>88</i>	<i>107</i>	<i>107</i>	<i>115</i>	<i>115</i>
<i>DVLA enquiries</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>78</i>	<i>78</i>
<i>Venue hire</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>13</i>	<i>13</i>
<i>Electricity</i>	<i>959</i>	<i>959</i>	<i>1273</i>	<i>1273</i>	<i>484</i>	<i>484</i>
<i>Reserve fund contribution</i>	<i>2516</i>	<i>2516</i>	<i>2500</i>	<i>2500</i>	<i>900</i>	<i>900</i>
TOTALS	TOTALS	TOTALS	TOTALS	TOTALS	TOTALS	
	15448	13043	17718	13983	15733	13490
<i>less price adjustments</i>	<i>885</i>	<i>885</i>	<i>1989</i>	<i>1989</i>	<i>0</i>	<i>0</i>
S/C	14563	12158	15729	11994	15722	13490
50:50 between blocks	7281.5	6079	7864.5	5997	7861	6745
11.11%	808.97465	675.3769	873.74595	666.2667	873.3571	749.3695

Item	Total in a/cs	Tribunal	Total in a/cs	Tribunal
	2014	Decision	2015	Decision
Cleaning	600	600	572	572
Window Cleaning	195	195	195	195
Sign writing & notice	0	0	0	0
Door Entry system	102	102	0	0
Guttering	0	0	317	317
Refuse collection	0	0	0	0
Fire Equipment	537	492	346	346
Aerial systems	0	0	0	0
Electrical Maintenance	219	219	0	0
Gen. Repairs Maintenance	131	131	74	74
5-year electrical test	40	40	0	0
Grounds Maintenance	950	562.5	950	600
Buildings insurance	694	694	730	730
<i>Directors insurance</i>	89	89	88	88
Insurance valuation	231	231	0	0
<i>Management fees</i>	1708	1708	1760	1760
Co Sec fees	275	108	103	108
<i>accountancy</i>	404	404	417	417
<i>Legal & Professional Fees</i>	90	90	108	108
Health & Safety	112	112	171	171
<i>Printing postage etc</i>	62	62	64	64
<i>DVLA enquiries</i>	0	0	0	0
<i>Venue hire</i>	0	0	0	0
<i>Electricity</i>	321	321	554	554
<i>Reserve fund contribution</i>	450	450	689	689
TOTALS	7210	6610.5	7138	6793
S/C at 11.11%	801.031	734.42655	793.0318	754.7023