



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

Case Reference : **CHI/43UM/LSC/2018/0024**

Property : **Hazel House, Sycamore Avenue
Woking, GU22 9FG**

Applicant : **Various Lessees (listed in
appendix)**

Representative : **Daniel Higney and
Gary Larnder**

Respondent : **Willow Reach Residents Management
Company Limited**

Representative : **Robert Brown (Counsel instructed by
Gately Plc)**

Type of Application : **s.27A, 1985 Act**

Tribunal Members : **Judge D Dovar
Mr K Ridgway
Mrs J Dalal**

**Date and venue of
Hearing** : **23rd August 2018, Staines**

Date of Decision : **21st September 2018**

DECISION

1. This is an application for the determination of the payability of service charges for the years ending 2015 to 2018 in respect of the Property.
2. The Applicants, a list of which is appended to this determination, are all long leaseholders of the Property.
3. The Respondent is the Management Company under the long leases of the Property.

Inspection and Property

4. Hazel House is part of a large development of apartments and town houses. Constructed over a three year period, Hazel House was the first block to be completed and occupied in 2015.
5. The property is a 5 storey block of one and two bed apartments. It has a stock brick facade with undercroft and external car parking. Lift access is provided to all floors.
6. The Tribunal was shown around the property by the Applicants and representatives of the Respondents. Various issues that concerned the applicants were pointed out. These included: glass from car vandalism still uncleared after two years; a fire door emergency button not working correctly; entrance door not closing correctly; PIR lighting that does not go off on the third floor; magnetic locks on all floors not working; outstanding decoration to the third and fourth floor and cracked plaster work. In the Bin Store the door closures were missing their release cords and two lights were not working.

Background

7. The Applicants purchased their leases off plan in 2015, paying an initial service charge and ground rent on completion which was to cover the period up to 31st December 2015.

8. The first demands that were received were in October 2016, from the then managing agents, Gordon and Co. They were not accompanied by a summary of tenants' rights and obligations under s.21B of the Landlord and Tenant Act 1985.
9. Leaseholders started to move in around August 2015 and the Property was the first block to be built on the wider development. Consistent with this type of development, the service charges are set out with a number of schedules, being the specific expenditure relating to each block on the development (for which only those in the specific block contribute) and then estate wide costs which are shared amongst all leaseholders.
10. At this point some leaseholders asked to see the underlying invoices for the charges, but they did not receive any vouchers until after this application was made. Having had sight of those documents, the main issues in contention were the cost of insurance, the costs of cleaning and management fees.
11. There were a few overarching difficulties facing both the Applicant and in turn the Tribunal. The first was that it was not clear how the yearly service charge had been apportioned to each leaseholder; the second was that for the first year, 2015, there had been no demands (as mentioned above, a sum on account was taken on completion), the third was that there had been no reconciliation of the year end 2017.
12. It went some way to reflect the problems with management that the Respondent was unable to give a proper response to how the charges had been apportioned. As far as the Tribunal could ascertain, the current position was that in relation to block expenditure, each flat paid a different proportion based on floor area; so that flat 17 paid 4.1213%, flat 13 paid 2.8309%, flat 18 paid 4.1632% and flat 4 paid 4.1632%.
13. In terms of estate charges, since the development had completed, there were now 78 houses and 71 flats, all paying an equal 1/149th. In earlier years, it was understood that the share was based on the number of completed units so the apportionment in respect of estate charges

fluctuated over time. The Respondent was not however able to show how these had been applied at the time to the Applicants.

14. Finally, towards the end of the hearing, it dawned on the Applicants that the management structure was such that it was soon intended to hand over control of the Respondent to the leaseholders. Indeed as the Tribunal understood the situation, the Respondent was set up as a management company under the lease, initially in the control of the developer, with the intention to transfer ownership to the leaseholders after the development had completed. Whilst this is a fairly standard set up for developments of this kind, what it means is that the only income available to the Respondent was through the service charge, with the result that if the Respondent had spent sums that were not recoverable, and was unable to recover them, then there was no alternative means to credit the service charge account; i.e. a disgruntled leaseholder had very limited scope to recover any wasted expenditure that they had already contributed to through the service charge without forcing the Respondent into insolvency.

Challenges

15. The Applicants challenged various items over the years in question. The Tribunal will deal with those on a year by year, item by item basis.

Year End 2015 (only for the period 16th October 2015 to 31st December 2015)

16. The costs set out below, and challenged, are taken from the service charge accounts provided by the Respondent dated 1st August 2017.

Insurance: £3,708.25.

17. This sum was for the period from October 2015 to December 2015. Therefore, for the sake of comparison, the annual cost of the policy was £17,625.39. Indeed the actual policy was provided showing that cost for the period 16th October 2015 to 16th October 2016. The sum insured was £5,813,000. This compares pretty unfavourably to the more recent cover obtained for the period to 30th April 2018, which worked out at

£12,844 per annum (with similar excess and cover and a sum insured of £9,016,893) and the following year of £12,033.30. The Respondent was unable to explain the difference and sharp decline in premium. As the Applicants pointed out, one would expect the premium to have risen not least due to inflation but also because of the significant increase in the sum insured. Whilst the Applicants did not provide any contemporaneous evidence of comparable quotes, the Tribunal is satisfied that the premium for this year was not reasonably incurred; whether through failure to properly test the market or through commission or both. Accordingly, the Tribunal sets the annual premium at £12,500, which means that for this period the insurance contribution is reduced to £2,602.74.

Cleaning: £1,080.

18. This equates to an annual charge of around £5,186.84. The Applicants dispute that any works were carried out during this period. They say there were no sign in sheets, as there are now, recording cleaning times. Further given the condition of the Property, no cleaning was in evidence. They also contend that in any event, this sum is excessive given both the low standard of cleaning that took place, if any, as well as the current charges which are considerably lower; £2,000 per annum has been estimated for the budget for 2018.
 - a. The Respondent relied on the invoices to support their claim for £1,080 for this period. However, the invoices say very little other than there was a call out clean in November for £300 and then another clean at the end of November for £120 and then four cleans in December for £120 each.
 - b. In the Tribunals view, in light of the current charges and having seen the limited areas cleaned and noting that at the time of these works, the Property had just been built (with any tidying up after construction being the responsibility of the developer), the Tribunal considers that this charge is excessive and reduces the amount to £416; being an annual cost of £2,000 pro-rata'd for the period in question.

Surplus £4,699.68.

19. This was not an actual cost demanded, but instead is a credit to the account. The Applicants complained that this has not been credited back to them. The Respondent contended that it had been dealt with the following year, when, in respect of Hazel House, there was a significant deficit.

Year end 2016

20. The costs set out below, and challenged, are taken from the service charge accounts provided by the Respondent dated 19th December 2017.

Heath and safety £780:

21. The Respondent conceded that this sum should not have been charged to the account and accordingly it comes out.

Gardening of £7,488

22. The Respondent clarified that this was wrongly posted and was actually cleaning costs. In light of that, the Applicants reiterated the points made in respect of cleaning for the previous year. For this year, they also contended that the quality had been poor compared to the current, new contractors. For the same reasons as set out above, the Tribunal agrees and sets the Gardening costs to nil and the Cleaning costs to £2,000.

Electricity £4,778.27

23. The Applicants considered that this amount seemed excessive and asked for clarification and for reassurance. They stated they hadn't got that. Further, when they first in August 2015, there was an issue with solar power which was intended to power the block. As a result of those issues, the developer did not take any opening meter readings. The Applicants were concerned that the high charges were not to do with the limited energy required by the common parts, but were a result of the construction works. Further, they contended that a lack of proper management had increased costs in that the PIRs did not work and

around 50% of the internal lighting was faulty with some lighting on permanently.

24. The Respondent, whilst accepting that this was high and that no investigation had occurred, relied on the invoices received.
25. The Tribunal noted on the inspection that some of these issues remained to date and that for the other blocks for the year end 2017, the actual electricity cost was around £1000 (as noted in the s.21B notice served by the Respondent on 29th June 2018. That appears to be a figure that is far more in line with the minimal electricity required for the common parts. The Tribunal does not consider that the £4,778 is a reasonable sum. It is excessive and is indicative either of other, non-common part use, or of a faulty meter. This should have been investigated by the Respondent, but has not been. Accordingly, the Tribunal reduces this figure to £1,400; being a generous estimate of actual cost in light of the costs incurred in the other blocks.

Building Insurance £16,593.79:

26. The parties repeated their arguments for the previous year and the Tribunal's determination follows that for that year, so £12,500 is allowed, subject to what is said below.
27. The Applicants took a further point under section 20B of the 1985 Act contending that the costs had not been demanded within 18 months of having been incurred. In particular, that: a.) the relevant date was 29th October 2015, when the Respondent was invoiced; b.) that although a payment on account was made in respect of the service charge for this year, that was only for £2,650; and c.) that the demand for the deficit was not made until 25th January 2018. The latter date being more than 18 months from the date of invoice.
28. The Applicants also pointed out that the Respondent had failed to provide any evidence of cover for the latter part of this year from 17th October 2016.

29. The Respondent was unable to provide any evidence of insurance for the latter part of the year. In respect of the section 20B point, they queried when costs were actually incurred as it was not known when the invoice was actually paid. The Tribunal considered this a fairly weak argument given that: a.) that was evidence wholly within their knowledge and they could not seek to take advantage of their failure to provide that evidence; and b.) insurance is not usually activated until payment is made. They also contended that it was not as simple as attributing the deficit to the insurance as other expenses were incurred that year. However, the Tribunal was not persuaded by that argument given that the covering letter to the deficit demand in January 2018 stated that the deficit was *'largely due to the building insurance underestimation'*.
30. The Tribunal considers that the s.20B point is made out and that the Respondent is time barred from recovering the balance. Accordingly, the total cost recoverable for this item for this year is £2,650.

Estate Management Fees: £6,235.79; Parking Space Management Fee £714.77; Block Management Fee £3,449.18; Access Way Management Fees £1,114.95.

31. It was not clear, and the Respondent was not able to give a clear response, as to why Parking Space and Access Way should not come under Estate Fees given that they all related to spaces which were of benefit to the entire Estate.
32. The Applicants complained that a lot of what they would deem as management has not happened: no invoices, no meetings, not ensuring that cleaning takes place, a failure to answer emails. It was contended that they had only done a very small proportion of what they should have done to properly manage both the Block and the Estate .
33. In 2016 the service charge demands were 9 months late, and the budgeting upon which they were based showed a lack of attention and competence for instance the budget variance on insurance was 500% even though they had known the actual cost.

34. Numerous items and services had not been provided even though they had been charged for; i.e. fire and health and safety. There were problems and defects which were ignored and not addressed, i.e. the security door, excessive electricity charges, excessive insurance, excessive cleaning costs, lighting, bin store and the solar hot water system.
35. In response the Respondent pointed out that this period was covered by the old managing agents Gordon and Co. In its response to the application, the Respondent apologised for its many defaults; late demands, maintenance issues (wrongly saying that the lighting and doors had now been fixed).
36. Further, in its written response it promised that further details on this issue would be provided. All that the Respondent could say at the hearing in response was that the fees were not very high. It was suggested that for estate management only £41.85 was charged per unit per year and when all the various management charges were totalled, it came to around £200 per unit per year.
37. The Tribunal was not impressed with the obvious issues with management pointed out by the Applicants, some of which were reflected in the other items of expenditure that have been reduced in this determination. It was also shown numerous items of correspondence where valid complaints raised by leaseholders were not properly addressed. The Tribunal considers that for this level of service, the management fee in its entirety, both estate and block should be £2,000 for the block and £3,000 for estate.

Year End 2017

38. No accounts had been prepared for this year and so the Tribunal was only able to determine whether the budget that had been levied was a reasonable one. Despite the issues in the past and known problems during the course of this year, the Tribunal, in assessing whether a budget was reasonable, has to approach this issue from the vantage point

of when the budget was set and with an optimistic eye as to the level of performance and service which is anticipated will be provided.

39. The Applicants challenged a number of items on the budget.

Management Fees: Open Area Management £5,000; Estate Management Fees £15,153; Block Management Fees £3,744

40. Total Management Fees for the Estate were £5,000 for 'Open area management' and £15,153 for 'Management Fees'. Given that the total actual cost claimed to have been incurred in the previous year was around £7,500 in the absence of evidence to justify this increase, the Tribunal could not see how this could be a reasonable budget. All that is said is that 'the managing agent took on more areas during 2017'. In the Tribunal's view this is not sufficient evidence to warrant such an increase. Allowing for some increase due to time and increased areas of responsibility, £10,000 is allowed for these two items.

41. In respect of the block management, £3,744 was estimated which appeared to the Tribunal to be a reasonable sum for the budget.

Solar Maintenance £835

42. The Applicants complained that this equipment had never worked and that claims were ongoing through NHBC with the developer and that some payments had been made in that regard. The Respondent confirmed that the system was operational. However, it is noted that in the budget for the next year, 2018, there is no cost for this item. The Tribunal believes the Applicants on this point in that the system is not functional (a view supported by the absence of any cost claimed under the 2018 budget) and therefore disallows this item of expenditure.

Cleaning £2,750

43. The Applicants point to the budget for 2018 in which cleaning is set at £2,000 following a new cleaning contract. However, the Tribunal does

not consider that it is unreasonable to allow some margin in a budget and allows this amount.

Year end 2018

44. In respect of the budget for the year ending 2018, the Applicants only challenged a couple of items.
45. The first was the inclusion of insurance which the freeholder had taken over directly. The Respondent conceded this point and so £13,000 should be taken out of the budget.
46. Finally, in line with the view above in relation to management fees, estate is reduced to £10,000 for open area management and management fees. Block management fees of £3,893.76 are allowed.

Section 20C

47. The Respondent would not commit as to whether or not it would seek to recover the costs of the application through the service charge. In light of the comments above about the lack of management and the failure to provide information, the Tribunal makes an order under Section 20C prohibiting any costs incurred by the Respondent in dealing with this application from being recovered through the service charge.
48. The Applicants also sought a determination under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. It was unclear whether the Respondent intended to charge any of the Applicants an administration charge and if so, what the amount claimed was to be. The Tribunal makes no determination under this paragraph, and the Applicants are at liberty to make a further application in that regard if the need arises.

Conclusion

49. A number of items have been reduced over the years in question. Difficulties may arise in attempting to calculate what that means in terms of each leaseholders statement of account. If the parties are not

able to reach agreement on this point, then they are at liberty to apply back to the Tribunal to make a final determination on that issue at which point the Tribunal will give further directions. Any such application should be made within 28 days of the date on which this decision is sent out.

A handwritten signature in black ink, appearing to read 'D. Dovar', with a long, sweeping flourish extending to the right.

Judge D Dovar

Appeals

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.