



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

Case Reference : **MAN/ 00EQ/LSC/2019/0009**

Property : **Butley Hall, Scott Road, Prestbury,
Cheshire SK10 4DN**

Applicant : **Butley Hall Management Company Ltd**

Representative : **Stephen Downing -Director**

Respondents : **Shareholders of Butley Hall
Management Company Ltd**

Type of Application : **Section 27A Landlord and Tenant Act
1985 – Service charges**

Tribunal Members : **Judge J. E. Oliver
Tribunal Member P. Mountain (Valuer)**

**Date of
Determination** : **24 July 2019**

Date of Decision : **9 September 2019**

DECISION

Decision

1. The external maintenance and decoration of the townhouses forming part of the development known as Butley Hall are within the definition of Retained Parts as defined by the Lease. The cleaning, maintaining, decorating, repairing and replacing the Retained Parts form part of the Services as defined within the Lease. The cost of providing those services forms part of the Service Charge.
2. The Tribunal finds the allocation of the Tenant's Proportion, as last amended by the Applicant, to be reasonable.
3. The Service Costs are to be allocated in accordance with the Tenant's Proportion.

Application

4. This is an application by Butley Hall Management Company Ltd ("the Applicant") for the determination of the liability to pay and the reasonableness of the service charges, pursuant to Section 27 of the Landlord & Tenant Act 1985 ("the Act"), in respect of Butley Hall, Stockport, Cheshire ("the Property") for 2019 onwards.
5. The property comprises of 7 apartments within Butley Hall and 3 townhouses built within the grounds of the Hall.
6. The Respondents to the application are the leaseholders of the Property, also the shareholders of the Applicant ("the Respondents").
7. The parties confirmed to the Tribunal they were agreed the application should be determined on paper and without an inspection. The matter was listed for determination on 24 July 2019.

Background

8. The Applicant states the developer of the Property went into liquidation at the end of construction. At that point the Applicant was formed. When the Applicant was subsequently transferred to the Respondents, the service charge for the Property has been allocated between the flats and townhouses. The current service charge schedules allocate the expenditure as follows:
 - (a) Service Charge –this is the allocated expenditure for the Hall including Hard and Soft services to the internal and external common or retained parts; the percentages allocated to each of the flats within the Hall but vary
 - (b) Townhouses-the allocated expenditure of the external parts of the townhouses
 - (c) Estate-the allocated expenditure of the grounds and shared facilities i.e. gates

- (d) Grounds maintenance-this cost is shared by two ground floor apartments who have the exclusive use of the area relating to this cost.
9. The Lessees each pay a percentage of the costs contained within each Schedule as determined by the Applicant to be a fair contribution of the Tenants Proportion as defined by the leases.
10. The apportioned service charge currently includes the maintenance and decoration of the external parts of the townhouses.

The Issue

11. In respect of the service charges for 2019 onwards, the Applicant seeks a determination for the liability of the maintenance and external decoration of the townhouses. The Applicant states the Lease is unclear upon this issue and the funds collected from all the lessees of the Property are for the maintenance of Butley Hall itself and not the townhouses.
12. The Applicant also asks the Tribunal to determine whether the current allocation of the Service Charge, as referred to in paragraph 8, is reasonable.

The Lease

13. The Tribunal has been provided with a copy of the Lease for Cramond House, this being one of the three townhouses at the Property. The Lease is dated 16 January 2015 and made between Edengate Homes (Butley Hall) (1) Butley Hall Management Company Limited (2) and Niall Craig MaClaren and Sheila Mary MaClaren (2) (“the Lease”).
14. The Lease provides the Lessees pay the “Tenants Proportion” of the Service Charge that is said to be, for Cramond House, 8.86% or “*such other percentage as the Landlord or Management Company may notify the Tenant from time to time*”.
15. At the time of the application there was an issue the total percentage contributions from each property did not equate to 100%. The Applicant has confirmed it has made the necessary adjustments to remedy this and it is no longer an issue.
16. The Clause 1 Lease defines the “Retained Parts” as:
- “all parts of the Development other than the Property, Flats and the Townhouses including but not limited to:*
- (a) the main structure of Butley Hall including the roof and roof structures, the foundations, the external walls and internal load bearing walls, the structural timbers, the joists and the guttering;*

- (b) *all parts of Butley Hall lying below the floor surfaces or above the ceilings;*
- (c) *all external decorative surfaces of:*
 - (i) *Butley Hall;*
 - (ii) *External doors;*
 - (iii) *External door frames; and*
 - (iv) *External window frames;*
- (d) *the Common Parts;*
- (e) *the visitor parking spaces, if any;*
- (f) *the Service Media at the Development which does not exclusively serve either the Property, Townhouses or the Flats; and*
- (g) *all boundary walls fences and railings of the Development.*

17. The Common Parts are defined as follows:

“these are those parts of the Property or the Flats or the Townhouses intended to be used by the tenants and/or occupiers of the Flats or Townhouses including but not limited to:

- (a) *the front door, entrance hall, lift, passages, staircases and landings of Butley Hall; and*
 - (b) *the external paths, driveways, yard, staircases, garden areas and Refuse Area at the Development;*
- that are not part of the Property or the Townhouses or Flats.*

18. The Service Charge is defined as *“the Tenant’s Proportion of the Service Costs”*

19. The Service Costs are:

“the total of

- (a) *all the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord and/ or Management Company to be incurred of*
 - (i) *providing the Services; and*
 - (ii) *complying with all laws relating to the Retained Parts;*
- (b) *the reasonably and properly incurred costs fees and disbursements of any managing agent or other person retained by the Landlord and/or Management Company to act on the Landlord or Management Company’s behalf in connection with the Development or the provision of the Services; and*
- (c) *all rates, taxes, impositions and outgoings payable in respect of the Common Parts, their use and any works carried out on them (other than any taxes payable by the Landlord in connection with any dealing with or disposition of its reversionary interest in the Development).*

20. The Services are defined within Clause 1 as follows:

- (a) cleaning, maintaining, decorating, repairing and replacing the Retained Parts;*
- (b) providing heating to the internal areas of the Common Parts during such periods of the year as the Landlord or Management Company reasonably considers appropriate, and cleaning, maintaining, repairing and replacing the heating machinery and equipment;*
- (c) lighting the 'common Parts and the Parking Spaces if considered reasonably appropriate by the Landlord or Management Company to do so and cleaning, maintaining, repairing and replacing lighting, machinery and equipment on the Common Parts;*
- (d) cleaning, maintaining, repairing and replacing the furniture, fittings and equipment in the Common Parts;*
- (e) cleaning, maintaining, repairing operating and replacing security machinery and equipment on the Common Parts;*
- (f) cleaning the outside of the windows of Butley Hall and the Townhouses;*
- (g) maintaining any landscaped and grassed area of the Common Parts;*
- (h) cleaning, maintaining, repairing and replacing the floor coverings on the internal areas of the Common Parts;*
- (i) maintaining, repairing and replacing the access gates to the Development on the Common Parts;*
- (j) cleaning, maintain and repairing the Parking Space;*
- (k) maintaining the garden forming part of the Property (if any); and*
- (l) any other service or amenity that the Landlord or Management Company may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Development."*

Submissions

- 21. In its written submissions the Applicant sets out its understanding of its obligations in accordance with the Lease and that is all external parts of the Property are to be maintained by it and that is the basis upon which it has operated to date.
- 22. The Applicant confirms that upon its interpretation of the Lease the definition of the Common Parts includes the Townhouses but the definition of the Property excludes the Townhouses as a common part. Further, Schedule 1, defining the Property, makes no reference to the external parts of the property.
- 23. In its statement it clarified as follows:
"It is the intention of the management company to carry out its obligations of setting a reasonable proportion, payable by each leaseholder, and to continue with the apportionments as per the current and previous financial periods. The applicant seeks

determination on whether it is reasonable to continue with their planned collection of service charges for the maintenance and decoration of the Townhouses or exclude any provision towards maintaining the Townhouses from future budgets. It is intended the “operating costs” (e.g. cleaning) be shared amongst those that receive the benefit of them. For costs which are not specific to a building (e.g. insurance), it is intended to split these costs across the whole development. ...

The Management Company seeks determination on whether the Townhouses should contribute to the operating costs of the Hall from which it receives little benefit as is interpreted currently in the lease, such as utilities, cleaning or minor internal repairs. The Directors are of the understanding that the general wishes of the majority of leaseholders are that the repair and maintenance of the whole property is inclusive of the Townhouses and the main Butley Hall building, with all contributing towards their own building from which they benefit.

If it is reasonable for the company to recover costs for the maintenance of the Townhouses, the company seeks determination whether it would be reasonable to separate these costs from the general service schedule in the form of a reserve fund and general maintenance schedule. The company will also set up a general service charge fund and reserve fund for the Hall and grounds maintenance.”

24. The Applicant confirms its present method of apportioning the Service Charge is to divide the Service Charge into 3 Schedules with a sub-division. Consequently, the flats in the Hall pay their cleaning costs and other items solely relating to the Hall in such shares that total 100.07%. The costs attributed to the Townhouses are then divided equally between them, so each pay 33.42% or 33.43%, totalling 100.27%. The Estate charges are divided between all the properties, each paying 10%. The sub-division is the gardening for the two flats that enjoy that area and each pay 50% of those costs.
25. The Applicant confirms that having adjusted the shares for the Tenants Proportion, these now more accurately reflect the size of the properties and total 100%.
26. The Tribunal has received correspondence from some shareholders of the Respondent, all of whom save one, support the Applicant. Mr Webb, a lessee of one of the flats within Butley Hall argues this was the wrong approach.
27. Mr Webb submits the Applicant’s interpretation of the Lease is wrong. The Lease provides for the maintenance and external decoration of the Townhouses since those are included within the definition of the Retained Parts. The Service Charge includes the “*cleaning, maintaining, decorating, repairing and replacing the Retained Parts*”.

28. He further argues this is consistent with Clause 20 of Schedule 5 where the lessee is prohibited from decorating the exterior of their property in any way.
29. The allocation of funds for service charges should not be an issue since the Lease establishes the service costs are to be allocated in accordance with the Tenant's Proportion, whether that is for the Hall or the townhouses.
30. Mr Webb refers to the Applicant's question as to whether the Townhouses should contribute to the maintenance of the Hall, given they receive "*little benefit from it*" He submits the Lease provides for both the lessees of the Hall and townhouses to contribute to the maintenance of the Hall. This forms part of the Retained and Common parts of the Property to which the Service Charge applies.
31. Mr Webb further submits that the Lease clearly sets out how any costs should be allocated and states the proposed allocation of the operating costs "*to be shared amongst those that receive the benefit of them*" is wrong. Again, the Lease states the cleaning of the common parts forms part of the Service Charge to which the Tenant's Proportion applies.
32. It is further submitted that the amendment to the Tenant's Proportion as shown in a Schedule accompanying the Applicant's submissions, reflects the original intentions of the developer that the Tenant's Proportion should reflect the area of each of the properties. This not only corrects the incorrect percentages, but now totals 100%.

Determination

33. The Tribunal determines the Applicant's interpretation of the Lease regarding the Townhouses is incorrect. When looking at the definition of the Retained Parts, it includes "*all parts of the Development other than*" the Property (as defined within the Lease), Flats and Townhouses. It includes those areas referred to at paragraph 16 above.
34. Clause (c) includes "*all the decorative surfaces of*" and then separately describes (i) Butley Hall and continues with "(ii) *all external doors, (iii) external door frames and (iv) external window frames*".
35. The construction of this clause shows that when describing the retained parts, Butley Hall is a separate item. Consequently the reference to the other external areas can only relate to the Townhouses. If the clause is interpreted, as suggested by the Applicant, such that there is no reference to the Townhouses, it would mean Butley Hall's external surfaces are referred to twice, both in (a) and the remainder of the clause.

36. This interpretation is reinforced, as stated by the Respondent, by the terms of Clause 20 of Schedule 5 that prohibits any of the lessees from decorating the exterior of the property in any way.
37. It therefore follows that if the exterior of the Townhouses are included within the Retained Parts they fall within the definition of the Property as contained within Schedule 1 of the Lease. Clause 2 of the Schedule states:
- “2. The Property shall not include any of the Retained Parts.”*
38. The Applicant submits Clause 20 of Schedule 5, requiring that no lessee shall decorate the exterior of the Property is contradictory to Clause 10.1 of Schedule 4. Schedule 4 contains the Tenant’s covenants and Clause 10.1 requires the lessee to keep the Property in good repair. This is not contradictory; the obligation for external decoration and repair falls within the Retained Parts and is not part of the Property to which Clause 10.1 refers.
39. The Tribunal finds the maintenance and external decoration of the townhouses are included within the definition of the Retained Parts. Consequently these items form part of the Services for which the Service Costs (as set out on the Lease) are payable.
40. The Lease thereafter sets out the Service Charge is the Tenant’s Proportion of the Service Costs. The Tenant’s Proportion is given as a percentage within the Lease but may also be such other percentage as the Applicant may notify.
41. There is nothing within the definition of the Services that distinguishes the costs between the Common Parts and Retained Parts. There is nothing to provide for certain services to be allocated to those who have the benefit of them and no discretion appears to be granted by the Lease in this respect. The Lease provides the Service Costs are to be allocated in accordance with the Tenant’s Proportion. There is nothing to distinguish the costs between the Hall and the townhouses. The Tribunal finds the Applicant has no authority from the Lease to allocate the expenses to those who benefit from them, for example the gardening costs between two lessees, as has been done to date. The Services definition makes no such distinction. Each lessee pays their Tenant’s Proportion from which the Services are provided as defined by the Lease.
42. The Tribunal considers the most recent amendment to the Tenant’s Proportion to be reasonable, it reflecting the relative size of the individual properties within the development.

Judge J. E. Oliver
9 September 2019