



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

Case References : BIR/44UB/LSC/2014/0019
 BIR/44UB/LIS/2015/0004
 (Consolidated)

Property : Flats 1 – 14 St Peter’s Place Church Lane
 Kingsbury Tamworth B78 2LR

Applicant : Ms Tracey Fox

Joining Applicants : Recorded Below

Respondent : Holding & Management (Midlands) Ltd

Representative : Taylor & Emmet LLP

Type of Applications : 1) An Application for the determination of
 liability to pay and reasonableness of service
 charges pursuant to section 27A of the Landlord
 and Tenant Act 1985 and
 2) An Application for an order for the
 limitation of the landlord’s costs in the
 proceedings under section 20C of the Landlord
 and Tenant Act 1985

Tribunal Members : V Ward FRICS (Chairman)
 P Hawksworth – Lawyer Member

**Date and venue of
Hearing** : **19 May 2015**

**The Tribunal Hearing Suite
Fifth Floor Priory Court
33 Bull Street
Birmingham B4 6DS**

Date of Decision : **25 June 2015**

DECISION

Introduction

- 1 On 24 September 2014, the Tribunal received an Application from Holding & Management (Midlands) Ltd, the maintenance trustee responsible for the management of properties at St Peter's Place, Church Lane, Kingsbury, Tamworth. The Application was under section 27A of the Landlord and Tenant Act 1985 ("the Act") for the determination of reasonable service charges payable by the leaseholders in respect of the subject properties for the service charge year 1 April 2014 to 31 March 2015.
- 2 Following a case management conference in relation to that Application, on 15 January 2015 the Tribunal received a further Application ("the Second Application") from Tracey Fox, the leaseholder of 13 St Peter's Place. The Second Application requested the Tribunal to make determinations under section 27A of the Act as to the reasonable service charges payable by the leaseholders in respect of the subject properties for the service charge years 2005/2006 to 2010/2011 and 2014/2015 and also under section 20C of the Act for an order for the limitation of costs. The leaseholders of seven other flats at the development joined the Application as follows:

B Middleton	5 St Peter's Place
K Thomas	7 St Peter's Place
G Miles	8 St Peter's Place
L Halpin	9 St Peter's Place
M Ellis	10 St Peter's Place
J Twist	11 St Peter's Place
E Lane	14 St Peter's Place
- 3 The Tribunal consolidated the two Applications under section 27A and, since the Second Application covered the service charge year which is the subject matter of Holding & Management's Application, the Tribunal, to avoid duplication, proceeded on the basis of determining the Second Application as that included all years in dispute. Accordingly, Ms Fox is referred to as the Applicant whilst Holding & Management (Midlands) Ltd is referred to as the Respondent.
- 4 Following Directions issued by a procedural Chairman, it was directed that the matter be dealt with by way of an oral hearing. Prior to the Hearing, written representations from the Applicant and the Respondent were received. These representations were copied, as appropriate, to either side.

Background

- 5 The documentation relevant to the issues before the Tribunal is two-fold comprising:
- (a) A Lease ("the Lease") dated 28th January 1986 made between (1) Walker Homes Limited, (2) Holding & Management (Midlands) Limited and (3) Seth Ellen and Jean Margaret Ellen for a term of 99 years from the 25th March 1985. The Lease became vested in Ms Fox (full name Tracy Leigh Fox) on the 16th February 1996.
 - (b) A Trust Deed ("the Trust Deed") dated the 19th April 1985 made between Walker Homes Limited (1) and Holding & Management (Midlands) Limited (2) under which the latter agreed to manage and administer the development.
- 6 The Tribunal have construed the Lease and Trust Deed for service charges purposes as linked documents (see further below on this point), since the Trust Deed contains the service charge provisions relating to the development and the Lease effectively obliges the tenant to pay the service charge. The documentation above was standardised for all the units comprised within the Development and neither party at any time raised any issue on the documentation or its interpretation and construction.

Inspection

- 7 The Tribunal carried out an inspection of the Development on 19 May 2015, accompanied by Ms Fox.

The Development comprises 14 properties formed out of former school premises with communal gardens and car parking.

The Law

- 8 The Act provides:

Section 19 Limitation of service charges: reasonableness

- a) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period – only to the extent that they are reasonably incurred, and 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;*
- b) *and the amount payable shall be limited accordingly.*
- c) *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 of subsequent charges or otherwise.*

Section 27A Liability to pay service charges: jurisdiction

- 1) An application may be made to a leasehold valuation tribunal [now the First-tier Tribunal Property Chamber (Residential Property)] 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 [First-tier 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 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.
- 4) No Applications 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 as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to the Application under this provision.

Section 20c Limitation of service charges: costs of proceedings

- 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 leasehold valuation 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 person specified in the application.

The Hearing

- 9 Following the inspection, a Hearing was held later the same day at the Tribunal Hearing Suite, Priory Court, Bull Street, Birmingham. The Applicant was present, accompanied two of the Joining Applicants, Ms Elaine Lane and Ms Laura Halpin. For the Respondent, Mr James Morman of Holding & Management (Midlands) Ltd was present, represented by Ms Cassandra Zanelli of Taylor & Emmet Solicitors.
- 10 The Applicant, within the Second Application challenged service charges for the range of years indicated above. A formal statement of case had not been provided as required of the Applicant by the Directions but rather the queries raised were those as identified within the application forms to the Tribunal. These were of a general nature rather than by a specific challenge to a particular element of the service provided by the Respondent or with reference to a specific invoice provided within the Respondent's bundle. As such, the Respondents were in some difficulty in knowing what was challenged and why. When this was pointed out to the Applicant and Joining Applicants they apologised and said they had not appreciated the need for precision in the items challenged. The Hearing was adjourned for a short time to enable the Applicant to specify more particularly the issues they had.

At the resumed hearing, the issues in dispute were stated to be as under:

- (a) The Applicant was of the opinion that the management of such factors as external lighting to the Development was poor and quoted an instance where there was no external lighting for five weeks due to an issue with power;
- (b) In respect of gardening, the Applicant was unhappy with the lack of estimates provided and further considered that the standard of gardening provided on site was below what would be considered an acceptable standard. The Applicant did, however, accept that the Respondent had recently changed gardening contractors;
- (c) The Applicant raised issue with several invoices that had been provided by the Respondent within their bundle but in principle they were satisfied with the answers or the explanations provided by the Respondent at the Hearing.

The Tribunal issued supplementary Directions at the Hearing to enable the Respondent to answer more fully the queries which had not been particularised as part of a statement of case.

- 11 In summary, the Applicant stated that all owners were unhappy with the management of the Development, although it was accepted that they had to pay for certain services but the overall view was that the services provided were simply not of reasonable standard or quality
- 12 Countering, the Respondent did not accept that the standard of services provided at the development was poor or unreasonable. At a Residents' meeting in August 2013, the consensus was that the gardening was good and the services in general were reasonable.
- 13 Following this meeting, on 18 February 2014, the managing agents wrote to all owners setting out their intentions for works required at the property. Specific projects mentioned were external decoration, external ground work and works to the car park. At the current level of service charge, the managing agent had calculated that it would take approximately seven years to accumulate the funds necessary to carry out the suggested programme and accordingly it was proposed that the service charge be increased from 1 April 2014 on the basis that all works can be completed in two years.
- 14 In their Application, the Respondent requested a determination under section 27A of the Act for the service charge year ending 2015. The Tribunal's Determination was not requested on the basis of actual accounts but rather on an estimate for this year which was follows:

ST PETER'S PLACE, CHURCH LANE, KINGSBURY, TAMWORTH

ESTIMATE FOR THE YEAR ENDING 31ST MARCH 2015

<i>EXTERNAL LIGHTING ELECTRICITY</i>	<i>80.00</i>
<i>GARDENING</i>	<i>1800.00</i>
<i>BUILDING REPAIRS Known</i>	<i>6000.00</i>
<i>REPAIRS General</i>	<i>750.00</i>
<i>WINDOW CLEANING</i>	<i>700.00</i>
<i>BUILDING INSURANCE</i>	<i>2400.00</i>
<i>RESERVE CONTRIBUTION</i>	<i>1750.00</i>
<i>TRUSTEES FEE</i>	<i>1786.10</i>
<i>AUDIT FEE</i>	<i>200.00</i>
<i>ADMINISTRATION & MANAGEMENT FEE</i>	<i>1400.00</i>
<i>TOTAL ESTIMATED EXPENDITURE</i>	<i>£17,216.10</i>

DIVIDE BY LEASE PERCENTAGES

- 15 On behalf of the Respondent, Ms Zanelli said that they were not seeking dispensation for these items but rather confirmation that these items were

recoverable from the Lessees under the terms of the lease and that the costs proposed were reasonable.

The Lease and the Trust Deed

- 16 Having considered the provisions of the Lease, the Tribunal notes the Lessee's obligation to pay a service charge is contained with clause 4:

Lessee's Further Covenants

4. The Lessee hereby further covenants with the Maintenance Trustee and with the Lessor as follows:-

4.1 (a) In respect of every Maintenance Year to pay the Maintenance Contribution to the Maintenance Trustee by two equal instalments on the half-yearly day immediately preceding the commencement of the Maintenance Year and on the half-yearly day in the Maintenance Year and also to pay a due proportion of any Maintenance Adjustment pursuant to paragraph 4 of the Third Schedule to the Trust Deed. Provided that in respect of the Maintenance Year current at the date hereof the Lessee shall on the execution hereof pay a due proportion of the current Maintenance Contribution specified in paragraph 10 of the Particulars.

(b) To pay to the Maintenance Trustee on demand any Special Contribution.

The Maintenance and Special Contributions are defined thus:

The Maintenance Contribution

1.8 "the Maintenance Contribution" means a sum equal to the percentage proportion appropriate to the Flat (as specified in the Second Schedule to the Trust Deed but subject to the provisions of Clause 3, 4 thereof) of the aggregate Annual Maintenance Provision for the whole of the Building for each Maintenance Year.

The Special Contribution

1.9 "the Special Contribution" means a sum equal to the percentage proportion appropriate to the Flat as specified in the Second Schedule to the Trust Deed (but subject to the provisions of Clause 3.4 thereof) of each Special provision certified by the Surveyor for the whole of the Building.

The Second Schedule of the Trust Deed defines the percentage of the maintenance provision payable in respect of 14 St Peter's Place as 5.042%.

The First Schedule of the Trust Deed sets out the items that fall within the maintenance provision which can be summarised as follows:

- 25.1 *Appointment of a surveyor*
- 25.2 *Decoration and repair of structure and common parts and maintenance of grounds*
- 25.3 *Payment of rates*
- 25.4 *Employment of staff*
- 25.5 *Payment of costs incurred in management*
- 25.6 *Audit costs and fees*
- 25.7 *Television aerial radio relay and internal telephone costs relating to the provision maintenance, repair and servicing*
- 25.8 *Enforcing covenants*
- 25.9 *Insuring against fire etc.*
- 25.10 *Third party insurance*
- 25.11 *Payment of taxes*
- 25.12 *Costs of discontinuance*
- 25.13 *Costs of appointment of a new maintenance trustee and retirement fee*
- 25.14 *Staff pensions etc*
- 25.15 *Joint expenditure (relating to adjoining owners)*
- 25.16 *Other services and expenses for which the maintenance trustee may be Responsible*

No issue was raised by the parties on the Lease and the Trust Deed.

The Tribunal's determination

- 17 The Tribunal finds that under the provisions in the Lease and the Trust Deed, the Applicant is liable to pay a defined proportion of what are termed, the maintenance costs of the Development.
- 18 The Tribunal's inspection of the Development indicated the following:
 - a) Hard surfaced areas particularly to the car park and paved slabbed pathways were in poor condition.
 - b) Rot was noted to timber windows and some elements of external joinery.
 - c) The paint work to external brickwork requires renewal.
 - d) Garden areas and borders were in a less than satisfactory condition.
- 19 The Applicant had not specifically challenged any particular invoice in terms of services provided in respect of the Development by the Respondent. As indicated above, comments were all of a general nature applicable to several years in connection with the limited standard of services provided and the poor management of the same by the Respondent. The Applicant indicated that she had

no issue with paying for services and acknowledged her responsibility to the same but was of the opinion they were of a poor quality.

- 20 The Tribunal's inspection confirmed that the standard of maintenance of the Development was substandard and that substantial funds would be required to bring the development back into good order. The Tribunal felt that as is so often the case with an old building, the basic problem for those managing was lack of funds rather than any inadequacy in what was actually done.
- 21 As there has been no specific challenge to any invoice provided by the Respondent, in the opinion of the Tribunal the costs indicated by the same are not excessive. It appears to the Tribunal that the service charge has been kept at what may be considered a level below that necessary to maintain the development in good order for several years. Whilst this could be considered a failure of management, the managing agent's fees are not high and further, in some years no fee has been charged at all.
- 22 The Tribunal, therefore, determines that the service charges levied by the Respondent based on the total Maintenance Fund expenditure, as indicated below, are reasonable and payable:

1 April 2005	to	31 March 2006	£8,058.40
1 April 2006	to	31 March 2007	£8,273.88
1 April 2007	to	31 March 2008	£8,201.47
1 April 2008	to	31 March 2009	£7,792.98
1 April 2009	to	31 March 2010	£7,243.87
1 April 2010	to	31 March 2011	£7,803.76

- 23 In respect of Determination sought by the Respondent for the service charge year March 2015, as there have been no accounts or invoices provided in respect of this period and only a budget estimate of costs given, the Tribunal can give no formal judgement in respect of the same. The items as identified on the budget by the Respondent appear to fall within the ambit of the service charge; however no Determination can be given as to whether or not the amounts are reasonable and payable.
- 24 As a general comment the Tribunal considers that the service charge programme in respect of this development requires a complete reappraisal as has been partially initiated by the Respondent with their letter of 18 February 2014, in order to bring the development into good order and maintain it there. These comments should not be construed, however, as an endorsement for huge service charge increases. The factors to be taken into account in determining whether costs have been reasonably incurred differ in each case and as advocated in *Garside and others v BR Maunder Taylor* (2011) UKUT 367 (LC) (Upper Tribunal), a common-sense approach must be adopted and some account taken of the likely impact of increases on affected tenants.

Section 20C application

- 25 The Applicant has applied for an order, in accordance with section 20C of the Act, that the costs incurred by the Respondent in connection with the proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.
- 26 The Tribunal has found that the services charges levied by the Respondent are payable and reasonable and in view of this finding determines that the Applicant has not discharged the burden of proof imposed under section 20C. Accordingly, the Tribunal finds that it would not be just or reasonable to grant an order under Section 20C in these proceedings.

Appeal

- 27 A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after the date this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Vernon Ward
(Chairman)