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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UB/LSC/2015/0011**
Property	:	**20 Oakwood Grove,** **Wickford Avenue,** **Pitsea,** **Essex SS13 3HT**
Applicant	:	**Keith A. Elcock**
Respondent	:	**Basildon Borough Council** **Represented by Liam Sullivan of counsel**
Date of Applicant	:	**2nd February 2015**
Type of Application	:	**To determine reasonableness and payability of service charges**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Marina Krisko BSc (Est. Man.) FRICS** **Peter Tunley**
Date and venue of hearing	:	**27th April 2015 at the Court House, Great Oaks, Basildon, Essex SS14 1EH**

DECISION

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1. The Tribunal's decision is that the £38 extra per month demanded by the Respondent in 2014 for the reserve fund is reasonable and payable.

2. **UPON** counsel for the Respondent local authority agreeing, on its behalf, not to charge any future service charge account with the costs of representation in respect of this application, the Tribunal did not enquire of the Applicant whether he wanted an order pursuant to section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act").

Reasons

Introduction

3. This is an application by the leaseholder of the property, which was made the subject of a long lease as part of a development for people aged 55 and over. Instead of paying his service charges as a lump sum every year, they are payable on a monthly basis. According to his application, he has received a demand for payment of £150 per month for 2014 as opposed to £112 per month previously

paid.

4. In his application he says "*is it fair to demand such a large amount (£38.00) in one payment? An annual bill of £456.00 extra*". He then adds "*my service charge is increased by £38.00, from £112.00 to £150.00. I consider this to be extremely high. An increase of up to £5.00 would be reasonable, demanding £38.00 they did not consider my ability to pay it. I am apprehensive that without due care and attention they could randomly demand larger amounts in the future from the vulnerable, just because maybe they can*".

5. In the Respondent's statement in response, it is explained that there was an annual general meeting of the 'scheme' on the 24th September 2014 when it was explained that the reserve fund i.e. monies set aside to deal with large amounts of expenditure in the future, was in deficit by £2,163.00. A rescue plan (at page 47 in the bundle provided for the Tribunal) was put to the residents showing that if the monthly service charge figure was increased from £112.00 to £150.00 per month, then, over a 10 year period, the reserve would be up to £10,000.00 which is what they describe as a 'healthy' amount. It is said that the residents agreed to this.

6. Having said that, the Applicant denies that he was invited to any annual general meeting and he certainly did not agree to the rescue plan.

The Law

7. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

8. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

The Lease

9. The bundle includes 2 copies of what appears to be the counterpart lease although as the description of the Estate is somewhat vague and the description of the flat refers only to colouring on a plan which is not in fact coloured, the Tribunal had some difficulty in accepting that this lease related to the property. However, as it is assumed that all leases on the development are the same, no point will be made about this.

10. This lease is dated 4th December 1986 and is for a term of 125 years commencing on the 1st October 1986 with a ground rent of £35 per annum.

11. It contains the usual covenants on the part of the landlord to insure and maintain the structure of the buildings and the grounds of the Estate. According to paragraph 20 of the Sixth Schedule to the lease, the Applicant has to contribute a 'One Thirtieth share' of the costs incurred by the Respondent. In paragraph 21 is a rather complex arrangement for payments on account which contains at least one typing error and is extremely difficult to understand.

12. However, under paragraph 12 of the Seventh Schedule, the Respondent must prepare an account as at the 31st March in each year and the Applicant must pay any shortfall or receive any overpayment.

13. Of particular relevance to this dispute is paragraph 11 in the Seventh Schedule which allows the Respondent landlord to create a reserve fund "*and in subsequent years expending such sums as it considers reasonable by way of provision for depreciation or for future expenses liabilities or payments whether certain or contingent and whether obligatory or discretionary*". The paragraph then goes on to say that these monies are to be held on trust for the lessees.

The Inspection

14. The members of the Tribunal inspected the property on a fresh but sunny spring morning. It is a relatively modern estate of 10 bungalows, 21 flats and caretaker's accommodation.

15. Of particular relevance to the issue in this case is the state of repair of the estate and expenditure which may be needed in the foreseeable future. All the dwellings except one bungalow appear to have uPVC window frames. The buildings are of brick construction under concrete interlocking roof tiles. The top parts of the blocks of flats have wooden cladding and facias around them which is showing signs of needing attention both decoratively and possible rotting of the wood. A piece of lead flashing appears to have slipped and needs some attention to avoid water damage which would not be visible from ground level.

16. The grounds themselves appear to be well kept save that the wooden fence at the rear is in disrepair. There is also a gap between the fence and a metal fence of what appears to be a school next door, which is overgrown and may be a habitat for vermin in due course.

17. The guttering at the rear appears to be spilling water which, in turn, appears to be splashing up the wall at the bottom. This needs to be investigated as the water splashing is obvious and may be starting to damage the brick work. It seemed to the Tribunal that either the gutters are blocked or joints are leaking water or the gutters and downpipes are simply too small for the job. It is probably a combination of one or more of these.

18. The surface of the car park, apart from the entrance drive, will need attention in the not too distant future. There also appear to be one or two signs of possible subsidence or heave with small cracks in the walls of the flats which are not easy to see. This may or may not be covered by insurance if it becomes a more serious problem. Tribunal should make it clear that these observations arise from a walk round part of the buildings and not a detailed survey of the estate.

The Hearing

19. The hearing was attended by the Applicant, Mr. Elcock, counsel for the Respondent, Mr. Liam Sullivan together with 3 officials including the witnesses Terry Peter Everett and Joanne Clements.

20. Ms. Clements gave evidence. She was only appointed Home Ownership Manager responsible for this estate in 2014. She realised that there was a problem with

the sinking fund in that it was £2,163 in deficit. She spoke to colleagues about correcting the situation and a 5 year rescue plan was devised but considered too radical in the sense that if would require the leaseholders to pay too much. The 10 year plan was then devised and put to the AGM of leaseholders on the 24th September 2014 after accounts had been sent to them on the 2nd September.

21. Ms. Clements also gave evidence about what had happened earlier about the sinking fund. At the beginning of 2014, the fund was £9,824 and at the beginning of 2013 it was £17,839. In the last 3 years there have been repairs and renewals costing about £19,000 including re-surfacing the driveway from the road to the car park. She was unaware of any cyclical 30 year plan setting out what major expenditure was due within that time and what service charges would have to be collected to cover those costs. She acknowledged that these were probably available for other developments.

22. Of significance, was the amount of service charge instalments over the last few years. For the last 2 years it was £112 per month, £100 for the 2 years before then and £116 per month before then. She said that the £10,000 surplus in the reserve or sinking fund was 'policy'.

23. Upon questioning from Mr. Elcock, and with help from one of her colleagues, said that about 20 leaseholders were present at the AGM. She said that the leaseholders were not happy about the increase. The Respondent had clearly been anticipating a problem as they had no less that 8 officers present at the meeting. However, she said that eventually the leaseholders reluctantly accepted the 10 year plan involving monthly payments of £150 starting on October 2014.

24. Mr. Elcock told the Tribunal that he thought that the Respondent had behaved badly in not planning ahead for this and he did not see why the leaseholders should have to pay to make up for such failure. It should be said that he behaved properly and courteously throughout the hearing.

Conclusions

25. It is clear that the problem highlighted by the Applicant was created by the Respondent which had obviously failed to keep an eye on the reserve fund. As a simple example, it is perfectly obvious when a driveway has reached such a poor condition that it needs resurfacing. The cost of resurfacing is something that can be estimated with some accuracy. If, knowing that this has to be done, results in a reduction in the monthly amount paid to include the reserve or sinking fund, one does wonder about the competence of those overseeing this estate.

26. The only question raised by the Applicant is, in effect, should the Respondent be able to rectify its mistake by recovering more money than would be expected, to make up for the shortfall? This is an interesting moral question because the Respondent knew that it was running an estate of residents who were 55 years of age and over i.e. people who may well be retired with limited incomes who would have to carefully manage their budgets.

27. The problem faced by the Applicant is that he is obliged to pay for the insurance, upkeep and maintenance of the development. Some of those costs and expenses are large such as those which are going to be spent on the matters seen

by the Tribunal. He has to ask himself whether it is better to pay for these things in advance with relatively small contributions or pay 'one off' large sums as and when the expenditure occurs.

28. The error by the Respondent has meant that the Applicant has paid less than he needed to pay in the past but now has to make up for that. Thus it cannot really be said that the error on the part of the Respondent has cost the Applicant anything overall. He feels that affordability should be taken into account but unfortunately that is not one of the terms of the lease or the legislation.

29. There is a further question which arises from the application i.e. whether the rescue plan is, in itself, reasonable because this will obviously affect the amount of the extra sum being demanded. If the Estate is 30 years old and consists of 31 dwellings, which would appear to be the case, a reserve fund of £10,000.00 may actually be seen by some to be rather small.

30. The rescue plan itself does not actually deal with anticipated expenditure. It simply anticipates complying with 'policy' in having £10,000 in it. The reason why this has happened is clear i.e. a lack of planning. With a development such as this one, there has to be a cyclical plan identifying specific large and unusual items of expenditure over at least a 30 year period and then making sure that the reserve has sufficient funds to meet these costs. As a specific example, at or near the end of that period, the various roofs may well have to be replaced and this will be a high cost.

31. The Tribunal is not entirely sure what, exactly, the £19,000 was spent on in the last 3 years. Ms. Clements said that the driveway up to the internal car park had been replaced and the Tribunal noted that this appeared to have been done. However, the cost of that alone would not have been as much as that. She referred to other things. One wonders whether those other things were items of general upkeep or were specific items to be covered by a reserve fund. The terms of the leases are clear. General service charge expenditure should not come from the reserve.

32. It would have been helpful if the Respondent could have put all the additional historical information in its written statements to the Tribunal which would have enabled Mr. Elcock to consider matters and perhaps have taken advice about whether a hearing was necessary. For that reason, as well as the clear deficiencies in past planning on the part of the Respondent, the Tribunal considered asking Mr. Elcock whether he did want to pursue an application under section 20C of the 1985 Act. However, quite properly, the Respondent said that it would not seek to claim the cost of representation from the leaseholders in any future service charge demand.

33. At the end of the day, the Tribunal has sympathy with Mr. Elcock's feeling of grievance about what has happened, but his suggestion that the Respondent should somehow make up the missing amount is not something that this Tribunal or a court would be able to order as he has not actually suffered any loss.

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Bruce Edgington
Regional Judge
28th April 2015