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Friday, October 09, 2015

Dear Sirs,

NOTIFICATION OF DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Please find enclosed a copy of the Tribunal's decision for your information.

Yours faithfully,

Katarina Luck
Case Officer

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/26UJ/LSC/2015/0047**
Property	:	**Durrants House, Gloucester Court, Croxley Green, Rickmansworth, Hertfordshire WD3 3FT**
Applicant	:	**Mr S M Langley (Flat 6)** **Mrs H Chick (Flat 9)** **Mrs L Ferrari (Flat 11)** **Mr & Mrs Mills (No 3 The Courtyard)** **Mr & Mrs B Giles (Flat 15)** **Mrs A Levesconte (Flat 7)**
Representative	:	**Mr S M Langley accompanied by Mrs Langley and Mr Miles**
Respondent	:	**The Beachcroft Foundation**
Representative	:	**Mr A Walder of Counsel** **Mr B Williams and Ms L Collis both of ELM Management Limited** **Mr C Thompson of the Respondent Company**
Type of Application	:	**Application under Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr N Maloney FRICS** **Mr N Miller BSc**
Date and venue of Hearing	:	**Watford Employment Tribunal on 21st September 2015**
Date of Decision	:	**9th October 2015**

DECISION

DECISION

The Tribunal finds that the amount sought as an estimated service charge for the management of the property Durrants House Gloucester Court, Croxley Green, Rickmansworth, Hertfordshire WD3 3FT for the year 2015/16 of £10,148 inclusive of VAT, is reasonable and payable for the reasons set out below.

The Tribunal declines to make an order under Section 20C of the Landlord and Tenant Act 1985 (the Act) for the reasons set out below.

BACKGROUND

1. This application was made by Mr Langley and other residents as set out on the front of this decision seeking a determination as to whether or not the management fees sought for the year 2015/16 in the sum of £10,148 inclusive of VAT were reasonable.

2. The property at Durrants House comprises a converted Grade II Listed house with courtyard development and a modern addition giving some 19 flats of which we were told at the time of the application some five were still empty. The managing agents for the respondent company are Ethical Leasehold Management Limited (ELM) who have been involved in the development since its inception. The service charges payable by each leaseholder are one 19th of the total cost and the only issue that we are asked to determine is whether or not the estimated service charge in respect of management for the year 2015/16 is reasonable.

3. Prior to the hearing we received a bundle of documents divided into a number of sections and containing the application and directions from the Tribunal, the Applicant's and Respondent's statement of case, witness statements, the form of lease applicable to the flats within the development and certain other correspondence and information which we will refer to as necessary during the course of this decision.

4. Mr Langley, who is himself a chartered surveyor and a director of Langleys Chartered Surveyors in London, had provided a helpful statement of case dated 22nd July 2015. This statement of case set out the description of the development and his challenges made to ELM management seeking to establish certain matters relating to their involvement with the estate. Part of his complaint was that firstly a budget meeting called by ELM in April of this year gave little notice to the resident and secondly at such meeting it was made clear to ELM that the service charge element relating to managing agents fees would be challenged.

5. As part of his submission he put forward documentation provided by Ryland Associates, intended to be comparable evidence as to managing agents fees, who appear to have prepared an alternative budget, which was less than that prepared by ELM for the year in dispute. Further they indicated that their management fees would be less and indeed agreed to underwrite certain elements of the service charge costs. There was also some documentation from Letting Plus who quoted a rate of £150 plus VAT per flat but gave little or no further information.

6. The Respondents replied to the statement of case by inserting their comments against the various paragraphs and confirmed that ELM's management fee was set at a rate of £438 plus VAT per flat per year. It was confirmed also that this could not increase by more than the RPI on an annual basis. We were told that ELM manages some 426 properties for Beachcroft on 21 developments and had a relatively long period of involvement with the respondent company. We were told also that Durrants House forms part of a much larger development undertaken by Barratt Homes, which in turn includes extensive grounds and sports facilities managed separately by the Merchant Taylors Place (Croxley) Residents Management Company Limited. The managing agent for this company is Ian Gibbs Estate Management to whom an annual levy is also paid by the leaseholders in addition to the service charges payable to ELM. The statement also went on to confirm that 14 units have been completed, a further two are exchanged, two are reserved and one is still available.

7. Mention is made of a Reservation Agreement (the Agreement) signed by Mr Langley in November of 2014 where it is said he had accepted a level of service charge at £2,874 per annum together with an additional sum of £397.96 payable to Ian Gibbs Estate Management for the remainder of the estate. It is suggested that Mr Langley, being an experienced chartered surveyor, clearly knew the arrangements that he was signing up for. It was also said that neither ELM's management charge nor indeed the service charges as a whole had significantly increased since the leaseholders made the decision to buy a flat at Durrants House.

8. The alternative quotes put forward by Mr Langley were dealt with by ELM on the basis that Rylands is a company based in Essex, which is said only covers that area and has only been trading for a short period of time. Information relating to Lettings Plus was limited. This was contrasted with the ELM history having been established for over 40 years and setting out those matters which were included within the management fee that may not be the case with many other managing agents.

9. In addition to these submissions, there were witness statements from Miss Lorraine Collis, the Chief Executive of ELM Group of companies. In addition there were short written responses by Mr and Mrs Giles, Mr Miles, Mr Peter Tett of 4 The Courtyard, Mr Patrick Weatherilt, Mrs Chick, Miss Elkin, Mr J Burman and Miss L Ferrari. All were noted and all lessees comments appeared to be indicating that the management fees were excessive. We have also noted the correspondence passing between Mr Langley and ELM and the respondent company as well as correspondence passing between the respondent company and Ryland.

10. In a skeleton argument produced the evening before the hearing, Mr Walder Counsel for the Respondent, made two points. One was a point of law. This was that the Applicants had all signed the Agreement (Mr Langley's copy being amongst the papers before us) which included an estimated cost for management services that contains the wording *"by signing this agreement, I/we are agreeing to the terms and conditions as listed."* It is said that by agreeing these terms and conditions an agreement had been reached which prevented the Applicants bringing a case to the Tribunal under the provisions of Section 27A(4).

11. The second limb of the Respondent's argument was that if the jurisdictional point was not accepted by us, then giving consideration to all the facts, the RICS code and the evidence of Lorraine Collis it was quite clear that the fees charged were reasonable. The skeleton argument went on to address the reasonableness point and argued for the application to be dismissed.

INSPECTION

12. Prior to the hearing we inspected the subject premises in the company of Mr Langley and Mr Mills for the Applicants and Mr Williams from ELM. We were also provided on site with an estate layout plan. The plan was of assistance and on our inspection we noted the substantial wooded area lying to the west of the development. The listed building is a substantial and elegant house to which there has been a modern addition added on the eastern side. To the northern side are courtyard accommodation and the whole gives an appearance of affluence and a well-cared for development. There is ample car parking, some under cover, and garden areas to be enjoyed. It is an impressive development.

HEARING

13. At the hearing Mr Langley represented the various Applicants. It was confirmed that he had purchased his property shortly before making the application to the Tribunal, indeed perhaps no more than two or three months beforehand. He said that he had talked with ELM and had been told that the Estate Manager probably spent some three hours per day, five days a week in dealing with the estate. It was submitted by Mr Langley that he did most of the things that a managing agent would organise such as the cleaning of the common parts and the gardening. However he confirmed that the challenge was only made to the managing agent's fees. A complaint was made about the late calling of the meeting in April and that the budget arrangements were unreliable given that until February of 2015 only four flats were occupied. Mr Langley's concern was that ELM's management fees were based on social housing recommendations but that this property was not social housing or indeed retirement accommodation. The only limitation was that nobody under the age of 16 could reside permanently at the development. ELM had produced the list of estate manager's duties, which he said seemed to be more appropriate for retirement accommodation. He felt that generally the fees were far too high bearing in mind they had an estate manager was charged separately and dealt with such things as cleaning and gardening. Mr Langley also took us to the quotation given by Rylands, although we were told that Rylands had not visited the site. As far as the Agreement was concerned, he indicated that this contained only estimated costs for 2014/15 and he was not complaining about those but the following year. He did not consider it constituted an agreement under Section 27A(4).

14. For the Respondents, Mr Walder made two submissions, which repeated his skeleton argument. The first related to whether or not the Agreement constituted a binding agreement between the Applicants and the Respondent and the second on the question of reasonableness. He reminded us that the service charges were not generally an issue and that if there were to be alternative managing agents put forward he thought that we would want to hear from them. The quotes that we

had been provided were not helpful and he was doubtful that Rylands could provide the level of services that ELM did for the charges levied.

15. We then heard from Ms Collis who had provided us with a witness statement. She told us that Durrants House was a high quality estate comprising listed buildings and new buildings. The lease allowed the residents to use exclusive parts of the development as external sitting areas but that these were maintained by the Respondent. There were substantial grounds with a number of trees some of which were subject to tree preservation orders. She took us through the works undertaken by ELM and the estate manager. The latter attends site each day and the tasks include some gardening and cleaning but not organisation of works, which was left ELM to deal with. She told us that this was a "high end" estate with people who expected good levels of services. She told us that ELM was a 'not for profit' body of charitable status. They covered a number of mixed sites which huge diversity of residents. The Respondent did not expect a bargain price for the works that ELM undertook and she was of the opinion that ELM spent some 30 hours a month dealing with the administration for the development. There was a great deal of work to prepare the budget and they had offered to set up a residents association. She told us also that she had carried out a "confidential survey" which involved speaking with contacts that she knew in the managing agents 'world' that had satisfied her that the fees being charged by ELM were reasonable.

16. Under cross examination she was asked why the management agreement in the papers before us did not specifically refer to Durrants but she told us the wording of the agreement was the same and the only item that needed updating was the schedule of properties that were managed and which should include Durrants House.

17. In final submissions to us Mr Walder returned to the argument with regard to the no jurisdiction element. He told us that in his opinion Mr Langley and the other Applicants had entered into what he considered to be an 'equitable tenancy' and that therefore they were prohibited from challenging the service charges it seems both now and going forward.

18. If we did not agree that, then he said the costs had been reasonably incurred. We had sight of the agreement between the Respondent and ELM and the lease clearly allowed the recovery of managing agents' fees. He reminded us that it appeared that the services being provided were accepted as being satisfactory as they were not challenged and that the comparable evidence was not compelling. Mr Langley confirmed that it was not suggested that Rylands would take on the management it was intended to show the costs by ELM were too high. We also had our attention drawn to a letter from the Respondent in which an offer was made to cap the service charge in respect of the managing agents' fees for the last six months so that it was in line with the Rylands quote but this had been rejected by Mr Langley.

19. An application was made by Mr Langley for reimbursement of the application and hearing fees and an objection made by him under Section 20C asking that the costs of the proceedings should not be recoverable as a service charge.

20. In response Mr Walder told us that the Respondent was intending to seek to recover these costs as a service charge and reminded us that Mr Langley had only

been at the property some three months before he sought to bring the application and that there had been a 'waiver' on offer from the Respondent in respect of the management fees which had been rejected.

THE LAW

21. The law applicable to this matter is set out in the attached annex.

FINDINGS

22. We think we can take this matter reasonable shortly as the only issue is the question of the management fee.

23. We reject Mr Walder's argument that the signing of the Agreement by Mr Langley (we had copies of no other agreements from other Applicants) is somehow binding on the Applicants. We will accept that the Agreement was signed by all the Applicants, this not being challenged, but it seems to us that this cannot be an agreement within the meaning of Section 27A(4) of the Act. A service charge is a liability between landlord and tenant. At the time the Agreement was entered into there was no such relationship between any of the Applicants or the respondent company. We do not know what is meant by an 'equitable tenancy' and this was not explained. The Applicants were at this time merely prospective purchasers. Furthermore, the Agreement can be avoided and the only loss is the administration fee of £500. It was also suggested by Mr Walder that if this Agreement was taken to its logical conclusion, that provided the estimated service charges remained at that sort of level going forward, there would be no ability for the Applicants to challenge the service charges in future years. This cannot be right. The Agreement cannot have been intended to oust the jurisdiction of the Tribunal under s27A. We therefore find that the jurisdiction of the Tribunal is not fettered by the Agreement and we can, therefore, move on to consider whether or not the management fee is reasonable.

24. We find that it is. This is a high class development. Our inspection of the property indicated that this was an extremely 'up market' estate, if we may use the vernacular, the common parts being akin to a five star hotel. The garden areas were well maintained and the property was well looked after. This comes at a cost. We can fully accept Ms Collis's view that the residents would not expect there to be sub-standard services provided. We do accept that the service charge in respect of the management fee is not insignificant. However, we are satisfied that it is a reasonable fee to pay and in the future is only increased by RPI. We also consider that Mr Langley by entering into the Agreement accepted the estimated budget for the year 2014/15 which included the management fee to be charged for that period at £9,986 inclusive of VAT. This set a certain benchmark. The increase in the following year is only in line with the RPI uplift, which is provided for in the management agreement. Whilst, therefore, we do not, as we have said above, consider that the Applicants are bound by the Agreement for the purposes of this application, nonetheless it is good evidence to show that they were fully aware of the level of service charge costs that were applicable to the estate before they entered into the contract to purchase.

25. Furthermore the comparables put forward by Mr Langley are of no assistance to us. The Lettings Plus quote is contained in nothing more than an email and has no substance to it. As far as Ryland is concerned, it does not appear that they have inspected the property. Their estimate appears to have been based on the estimate prepared by ELM and the terms upon which they will take on the development do not seem to be comparable with the basis upon which ELM conducts the management, for example costs of Section 20 consultation. In the light of the documentation before us and the evidence of Ms Collis we are satisfied that the management fee of £10148 inclusive of VAT, presently charged for 2015/16 and assuming it does not depart from the estimate, is reasonable and should be paid by all concerned.

26. Finally, as Mr Langley and the Applicants have not been successful we decline to make an order under Section 20C. Further, we decline to make any order reimbursing the Applicants with the application or hearing fee because of our decision in this case.

Judge: *Andrew Dutton*

A A Dutton

Date: 9th October 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) 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 or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a leasehold valuation tribunal 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 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 would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application 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 to have agreed or admitted any matter by reason only of having made any payment.