



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

Case Reference : **MAN/00BR/LSC/2019/0008**

Property : **9 Stancliffe Drive, Pendlebury, Swinton, M27 4FU**

Applicant : **Residential Management Group Limited**

Representative : **PDC Law**

Respondent : **Mr Chung Wong and Mr William Wong**

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

Tribunal Members : **Judge T N Jackson
Ms D Latham MRICS**

Date of Decision : **23 August 2019**

DECISION

Decision

We determine that the service and administrative charges in the service charge years set out below are payable and reasonable:

2015

Service charge: £73.03 (£91.35 minus credit of £18.32)

Reserve Fund: £8.35

Reminder fee: £25.00

2016

Service charge: £97.47

Reserve Fund: £8.69

Year End Deficit (2014): £0.36

Reminder fee: £25.00

Land Registry Search fee: £21

Administration fee: £48.00

2017

Service charge: £105.82

Reserve Fund: £8.47

Reminder fee: £25.00

Administration fee: £80

PD Collections fixed fee: £192

2018

Service charge: £104.35

Reserve Fund: £9.59

Reminder fee: £34.00

Administration fee: £80.00

PD Collections fixed fee: £192

Reasons for decision

Introduction

1. By order of District Judge Osborne sitting in the County Court at Hertford on 3rd January 2019, the Tribunal is required to make a determination as to whether service and administrative charges in respect of the Property are payable and/or reasonable.

Background

2. The Applicant is the Management Company responsible for the maintenance of the estate known as Nightingale Gardens. The Respondent's Property is situated within this estate. The Respondent was registered as the proprietor of the leasehold title on 26th June 2013 and the title to the Lease is registered under title number MAN210705.

3. The Respondent has failed to make any payment towards the service charge required by the Lease since purchasing the Property in 2013. The Applicant referred the matter to its in-house collection team who sent several reminder letters to the Respondent.
4. The Respondent failed to make payment of the arrears and the Applicant referred the matter to an external debt collection agency, PD Collections Ltd, (PDC) on 24th February 2017 and again on 20th February 2018. On each occasion PDC's fixed fee of £192 was applied to the Respondent's account.
5. In 2017, PDC issued numerous letters to all the Respondent's known addresses requesting payment of the service charge arrears and their fixed fee. No response was received. The Applicant instructed PDC to close their file in June 2017 as it was not considered to be cost effective to continue.
6. In 2018, PDC were again instructed and wrote to the Respondent informing them of its instruction and requesting payment of the service charge arrears and fixed fee.
7. As the Respondent failed to make payment of the arrears, the Applicant instructed PDC Law to issue proceedings in the County Court. PDC Law were instructed on 9th April 2018 and the claim was issued on 18th May 2018 and deemed served on 24th May 2018.
8. The Respondent filed a Defence on 1st June 2018. Following the filing of the Defence, the Court ordered that the claim be transferred to the Tribunal for determination as to whether the service and administrative charges were payable and/or reasonable. We have therefore considered the service and administration charges made up to 24th May 2018, i.e. those the subject of the County Court claim.
9. Please note that in this decision numbers in bold square brackets refer to pages in the Applicant's bundle.

The Lease

10. The Property is subject to a Lease dated 26th April 2013 ('the Lease') made between (1) Taylor Wimpey UK Limited, (2) Chung Ho Victor Wong and William Wong and (3) Residential Management Group Limited for a period of 250 years from 1st January 2012.
11. The Service Charge Year runs from 1st January. The Service Charge Statement of Accounts divides Income and Expenditure between the areas of Estate; Parking; Bins and Apartments and also contain a cumulative total of the four areas. It appears from the Statement of Anticipated Expenditure for 2018 [27] that the Respondent's proportion is 0.847458% of expenditure relating to the 'Estate' only. Relevant provisions of the Lease are set out below.

12. Clause 2 Definitions

'Amenity Areas'

The woodland area together with any footpaths, cyclepaths, parking areas open space areas courtyards pedestrian ways forecourts or drives now or hereafter constructed within the Estate and not comprised in the Leases and which form part of the Managed Area including any appropriate Buildings erected thereon [6].

'The Estate'

All land (excluding the property) in respect of which the Company (or any Company from time to time within the Taylor Wimpey Group of Companies) is or was the registered proprietor under the Title Number above referred to and the buildings thereon and thereover [6].

'Estate Roads'

All roads, verges and footpaths now or hereafter constructed within the Estate which are intended to become highways maintainable at the public expense [6].

'Maintenance Charge'

Means, (subject to the Agreement and Declaration in relation thereto contained in paragraph 8 of the Seventh Schedule) the proportion applicable to this Property of a sum equal to the total amount spent by the Management Company on the matters specified in the Fifth Schedule and so far as the same relate to matters specified in Part II of the Sixth Schedule estimated or adjusted in accordance with Part I of the Sixth Schedule [7].

'Managed Areas'

Those parts of the Estate as are shown hatched green on the Plan and anything erected or constructed on over or beneath such land (but where appropriate excluding the Property) [7].

13. Third Schedule

(Covenants by the Buyer)

Paragraph 1 (a) (i) To pay the Maintenance Charge and the rent on the days and in the manner herein provided without any deduction (whether by way of set off, lien charge or otherwise) whatsoever with the first payment (or a proportionate part thereof) being made on the date of this Lease [11].

Paragraph 22 To pay all expenses (including Solicitor's costs and surveyors fees) incurred by the Company or Management Company in the recovery of any arrears of Maintenance Charge or incidental to the preparation and service of any notice under section 146 of the Law of Property Act 1925 (or any statutory modification or replacement thereof) notwithstanding that forfeiture is avoided (otherwise than by relief granted by the Court) [16].

14. Fourth Schedule

(Covenants by the Company)

Paragraph 2 Estate infrastructure

To construct and maintain the Estate Roads to the specification of the Highway Authority... pending adoption of the same as highways ... maintainable at the

public expense and to indemnify the Buyer and his Mortgagee and their successors in title against any liability in respect thereof until formal adoption **[16]**.

15. Fifth Schedule

(Covenants by the Management Company in respect of the Amenity Areas)

Paragraph 1 Maintenance

*To keep maintain and repair (and wherever necessary renew) the Amenity Areas Service Installations and Buildings and any other structure within the Amenity Areas in a good state of repairs and condition **[17]**.*

Paragraph 2 Clean and Cultivate

*To clean cultivate tidy and maintain any verges floral grassed or recreational areas within the Amenity Areas **[17]**.*

16. Sixth Schedule

Part 1

(Covenants by the Management Company and the Buyer in respect of the Maintenance Charge)

*Paragraph 2 The Buyer shall within 14 days of receipt of the demand therefor pay the Maintenance Charge to the Management company (or to the Company if the Company is carrying out the obligations of the Management Company under the provisions of paragraph 5 of the Fourth Schedule) the first payment or a proportionate part thereof to be made on the signing hereof **[18]**.*

*Paragraph 3 The Management Company shall in respect of each calendar year keep account of the sums spent by it on the matters specified in Part II of this Schedule (Actual Management Costs) in relation to Parts I and II of the Sixth Schedule and shall as soon as practicable after the end of each calendar year notify the Buyer of the Actual Management Costs incurred during such year and the amount of the Estimated Maintenance Costs for the current year notified to the Buyer in accordance with paragraph 1 hereof shall be amended (whether by addition or subtraction) to take into account any excess or deficiency in the Actual Management Costs in the preceding year **[18]**.*

17. Sixth Schedule

Part II

(Expenditure to be recovered by means of the Maintenance Charge)

Paragraph 1 Covenants

*The sums spent by the Management Company of and incidental to the observance and performance of the covenants on the part of the Management Company contained in the Fifth Schedule and Part 1 of this Schedule **[18]**.*

Paragraph 11 Reserve Fund

Such sum as the Management Company shall determine as desirable to be set aside in any year towards a reserve fund to make provision for expected future substantial capital expenditure including (without prejudice to the generality of the

foregoing) the resurfacing of any roads, footpaths and paving areas comprised in the Amenity Areas [19].

Hearing

18. As the Respondent had failed to submit a Statement of Case, the matter was considered on the papers. No hearing or inspection took place.

Submissions

19. We had the benefit of a paginated Statement of Case with exhibits from the Applicant.

20. Whilst the Respondent had not provided a Statement of Case, we noted the Respondent's Defence to the County Court Proceedings, [186 to 187] which refers to a refusal to pay the Service Charges as the Management Company has not fulfilled their agreed responsibilities properly or provided sufficient service to the maintenance of the Amenity Area since the Respondent moved in in 2013, specifically:

- a) Failure by the Applicant to maintain the public pavement and footpath which the Respondent says form part of the Amenity Area.
- b) There is no grassed area outside the Property that needs any maintenance and the closest is 30 metres away. The Respondent says that having carried out work themselves to the front and left side outside of the house, there is also no grass on the Property itself.
- c) The service charges are inappropriate for the above reasons.
- d) The administration and reminder fees and other unknown charges added to the final bill have increased the original amount by five times which is unacceptable.

Deliberations

Payability

21. We must first consider whether the provisions of the Lease allow the items to be charged, irrespective of whether or not they are reasonable. This depends on an interpretation of the Lease.

Service charge-Maintenance of Amenity Areas

22. The Respondent has not suggested that the Service charges relating to maintenance of the Amenity Areas are not payable under the Lease. For the avoidance of doubt, we determine that they are payable under the provisions of Paragraph 1 (Maintenance) of the Fifth Schedule and Paragraph 1 (Covenants) of Part II of the Sixth Schedule.

Administration charges regarding arrears

23. The Respondent appears to suggest that administration charges, reminder fees and other charges are not payable under the Lease. We determine that administration charges relating to a client administration fee, reminder fees and fees for the instruction of debt collectors (PDC) are payable under Paragraph 22 (Covenants by the Buyer) of the Third Schedule, as they are clearly expenses incurred in the recovery of arrears of the Maintenance Charge.
24. We understand the Respondent's reference to 'other charges' to mean the remaining areas on the Statement of Outstanding Arrears namely Reserve Fund; Service Charge Deficit and Land Registry Search **[140]**.

Reserve fund

25. The Reserve Fund charge is payable under Paragraph 11 (Reserve Fund) of Part II of the Sixth Schedule.

Service Charge Deficit

26. The Service Charge Deficit charge is payable under Paragraph 3 (Account and Adjustment) of Part I of the Sixth Schedule.

Land Registry Search fee

27. A Land Registry Search fee is payable under paragraph 22 (Covenants by the Buyer) of the Third Schedule as it relates to expenses incurred in the recovery of arrears of the Maintenance Charge.

Reasonableness

Service charge-Maintenance of Amenity Area

28. The Respondent is required under the Lease to pay the costs towards the maintenance of all of the Amenity Areas within the Managed Area regardless of its location or proximity to his Property. The lack of grass within the immediate vicinity of the Respondent's Property does not negate the need to pay towards the maintenance of the Amenity Areas more generally. The lack of grass on the Property itself is not a matter relevant to the Service Charge as that is within the control and responsibility of the Respondent rather than the Applicant.
29. Regarding responsibility for what the Respondent describes as the 'public pavement and footpath', we have had regard to the definitions within Clause 2 of 'Amenity Areas' and 'Estate Roads'; to paragraph 2 of the Fourth Schedule and to paragraph 11 of Part II of the Sixth Schedule. We find the Lease to be clear as to a distinction between footpaths to be built as part of the infrastructure of the Estate to be adopted by the highways authority as contrasted with footpaths within the Amenity Areas. Once the highways authority has adopted the footpaths that form part of the infrastructure, they become their responsibility. The Applicant is only responsible for the footpaths in the Amenity Areas. We have no evidence that the highways authority

has not adopted the footpaths. The Respondent's description as the 'public pavement and footpath' (our emphasis) suggests that his concern as to the standard and quality of maintenance relates to the adopted footpaths rather than those within the Amenity Areas. The adopted footpaths are not the Applicant's responsibility and the Respondent must contact the highways authority regarding his concerns.

30. The annual cost of grounds maintenance for the Estate (excluding car parking, bins and apartments) was £1653; £3563 and £2757 in service charge years 2015, 2016 and 2017 respectively. The estimated cost in service charge year 2018 was £1500. The Respondent has not raised an issue with the cost of grounds maintenance and his concerns as to the quality of maintenance relate to areas outside the maintenance responsibility of the Applicant. We find the grounds maintenance element of the Service Charge to be reasonably required and reasonable in amount.
31. As the Respondent has not raised any other issues with other elements of the Service Charge itself, we determine that the Service Charges of £73.03 (£91.35 minus credit of £18.32 for surplus credit for year end 2015 [84]); £97.47 and £105.82 for the service charge years 2015, 2016 and 2017 respectively to be reasonable. Based on the estimated expenditure for service charge year 2018, we determine that the charge of £104.35 is reasonable.

Reserve fund

32. The Respondent has not identified whether he regards the sums charged under this item to be unreasonable, and if so, what he considers to be a reasonable amount and the reasons for so thinking. The accounts have been certified for service charge years 2015-2017 inclusive. In the absence of any evidence to the contrary, we determine that the amounts for the Reserve Fund of £8.35; £8.69 and £8.47 for service charge years 2015; 2016 and 2017 respectively are reasonable. Based on the estimated expenditure for service charge year 2018, we determine that the charge of £9.59 is reasonable.

Service Charge deficit

33. The Respondent has not identified whether he regards the sum charged under this item to be unreasonable, and if so, what he considers to be a reasonable amount and the reasons for so thinking. The accounts have been certified for the service charge years 2015-2017 inclusive. We do not have certified or audited accounts for service charge year 2014 but have no evidence to suggest that they were not certified. We determine that the amount for the Service Charge Deficit (Year end 2014) of £0.36 charged in service charge year 2016 is reasonable.

Administration charges regarding arrears

34. Invoices clearly state that an administration fee is payable if a reminder letter needs to be sent, (the fee is stated to be £25 and £34 on different invoices [81 and 84]. The Respondent was therefore given notice that a reminder fee would be charged by the Applicant. The invoices also contain notes which summarise a tenant's rights and obligations regarding both service and administration charges and gives details as to how they can be challenged by an application to a Tribunal. The Respondent has not

made such an application. There appears to be a discrepancy between the dates of the invoices for the reminder letters and the dates of the reminder letters themselves. However, we have seen copies of the reminder letters dated 6th July 2015, 10th February 2016, 21st March 2016, 6th February 2017 and 5th February 2018. The Applicant is claiming for only four not five reminder letters. We determine that the work was required and the amounts are reasonable. We determine that charges of £25 in each of service charge years 2015, 2016 and 2017 are reasonable as is a charge of £34 in service charge year 2018.

35. Two charges of £192 have been made in relation to the instruction of external debt collectors PDC, detailed in invoices dated 27th February 2017 and 21st February 2018. We note that the Letter of Claim pursuant to the Pre Action protocol for Debt Claims dated 23rd February 2018 sent by PDC to the Respondent refers to their fees of £202, (as opposed to the £192 invoiced by the Applicant). The balancing figure of £10 is included in the Statement of Arrears but does not appear to have been invoiced to the Respondent. We therefore determine that a charge of £192 in each of service charge years 2017 and 2018 for the instruction of PDC is reasonable.
36. Charges have been made for client administration fees of £80 each invoiced on 27th February 2017 and 21st February 2018. It appears from the timing that the fees relate to work required to pass the matter to PDC who were instructed as the external debt collection agency. We find that the fees were reasonably required and are reasonable in amount. We therefore determine that a charge of £80 in each of service charge years 2017 and 2018 is reasonable.
37. £21 has been charged for a Land Registry Search fee and invoiced on 7th April 2016. An administrative fee of £48 has been invoiced on the same date and appears to relate to the work carried out in relation to the search. We determine that carrying out a search is reasonably required in debt recovery proceedings relating to land and further determine that both the search fee and the administrative fee charged to service charge year 2016 are reasonable amounts.

Costs

38. Neither party has made an application for costs and we make no such order.

Appeal

39. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Judge T N Jackson