



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

**Case Reference** : **BIR/00GL/LIS/2019/0042**

**Property** : **2 & 4 Regal Way, Stoke on Trent, ST1 3GD**

**Applicants** : **Carl Devereux (1)  
Sinead Bailey (2)**

**Applicants' Representative** : **None**

**Respondents** : **Wallace Estates Limited (1)  
Wedgewood Gardens  
Management Company Limited (2)**

**Respondents' Representatives** : **Stephensons Solicitors (1)  
Legal Department Avant Homes (2)**

**Type of Applications** : **(1) Application for a determination of liability to pay and reasonableness of service charges pursuant to ss 19 & 27A Landlord and Tenant Act 1985 (the 1985 Act)**

**(2) Application for an order limiting the Respondent's costs in the proceedings under s20C of the 1985 Act and**

**(3) Application under paragraph 5 Schedule 11 Commonhold and Leasehold Reform Act 2002 (CLRA 2002) reducing or extinguishing the tenant's liability to pay an administration charge in respect of litigation costs**

**Inspection & Hearing** : **20 January 2020**

**Tribunal** : **Tribunal Judge Mr.P. J. Ellis.  
Tribunal Member Mr. G. Freckelton. FRICS**

**Date of Decision** : **9 March 2020**

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**AMENDED DECISION**

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**We exercise our powers under Rule 50 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 to correct the accidental omission or clerical error at paragraph 2 below of our Decision dated January 2020. Our amendments are either underlined or struck through. The correction is made in order to assist the parties by clarifying the meaning and effect of our Decision**

Tribunal Judge P.J Ellis

12 February 2020

- 1. The Applicants disputed two items service charges for 2018 namely for ground maintenance and cleaner. The sum of £42.00 for the cleaner is reasonable and payable. The sum of £56.00 for ground maintenance is not payable.***
  
- 2. Pursuant to s27A(3) of the 1985 Act the Tribunal determines that the amount of estimated service charges payable by the Applicants to the Management Company in advance for service charge year 2019 is their reasonable proportion of the sum of £2038.00 for the apartment block comprising 2 Regal Way and ~~£2038.00 for 4 Regal Way and 6 Regal Way.~~***
  
- 3. The Respondents' costs incurred or to be incurred in connection with these proceedings are not relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.***
  
- 4. No litigation costs are payable by the Applicants pursuant to paragraph 5A of Schedule 11 CLRA 2002***

<b>Year</b>	<b>Item</b>	<b>Cost Claimed</b> <b>£</b>	<b>Decision</b> <b>Not more than £</b>
2018	Grounds Maintenance	56.00	Nil
2018	Cleaner	42.00	42.00
2019	Grounds Maintenance	224.00	100.00
2019	Cleaner	445.00	300.00
2019	Carpet Cleaning	25.00	Nil
2019	Drain & Gully Cleaning	150.00	Nil
2019	Gutter Cleaning	200.00	Nil
2019	Day to Day Maintenance	250.00	150.00
2019	Out of Hours	40.00	Nil
2019	Access Control	25.00	Nil
2019	Emergency Lighting	108.00	108.00
2019	Fire Safety Systems	312.00	312.00
2019	TV/Satellite Maintenance	150.00	150.00
2019	Insurance	498.00	498.00 *
2019	Professional Fees (inc VAT)	220.00	220.00
2019	Contribution to Reserves	£400.00	£200.00
	*		
	*see further at paragraph 26		

## **Introduction**

1. This is an application for determination of the reasonableness and payability of service charges and associated applications related to costs by Mr Carl Devereux of 2 Regal Way and Miss Sinead Bailey of 4 Regal Way Stoke on Trent. They were unrepresented. The First Respondent is Wallace Estates Limited (Wallace) who did not attend the hearing but supplied written evidence particularly relating to the insurance premium. The Second Respondent is Wedgewood Gardens Management Company Limited.
2. The Second Respondent was represented by Mrs C. Thompson of the legal department of Avant Homes the developer of Johnsons Wharf being the estate of which the subject properties formed part.
3. Mainstay Management Limited were appointed in October 2018 to act as the managing agents by Avant Homes. Mr Peter Whalley, Associate Director and Mr Elliott Property Manager employed by Mainstay attended the inspection and hearing.
4. By this application the Applicants who are both resident leaseholders sought information relating to the appointment of Mainstay as the managing agents in addition to the request for determination of the payability of service charges.

## **The Subject Properties**

5. Johnsons Wharf is a substantial development of new residential property offered either as terraced or semi-detached houses or apartment blocks. The subject properties are two of three apartments in one such block. 2 Regal Way is on the ground floor. 4 Regal Way is on the first floor. The leaseholder of 6 Regal Way did not take part in these proceedings. Both Applicants described themselves as first time buyers.
6. It was not necessary to inspect the apartments themselves. The Tribunal confined its inspection to street level observations of the apartment block and an inspection of the ground floor internal common parts and stairway.
7. The block was built in 2013 of part rendered brick construction. There is a small garden surrounding the block comprising shrubs and gravel. Entrance

to the block is by a keypad to a corridor leading to apartment 2 and the stairway to upper floors. A notice board is adjacent to the entry door. There are two locked cupboards with storage and service installations. The corridor is carpeted. The walls are painted in plain colour.

### **The Lease**

8. Each lease of the subject property was made on 27 September 2013 in substantially similar terms. The first parties to the lease were Gladedale (South Yorkshire) Limited (the Lessor), the respective Applicants and Wedgewood Gardens Management Company Limited (the Management Company).
9. Relevant clauses are:

At 1.29 *“the Service Charge means a reasonable proportion of the total costs charges and expenses incurred by the Management Company (including the reimbursement of the premium for buildings insurance incurred by the Lessor) in performing its obligations set out in the Seventh Schedule”*

And at clause 9 The Management Company *“covenants with the Lessee subject to the payment by the Lessee of the Service Charge to observe and perform the obligations contained in the Seventh Schedule.*
10. By the Fourth Schedule paragraph 1 the Lessee covenants *“to pay the Rent to the Lessor and the Service Charge to the Lessor or the Management Company on the days and in the manner as referred to in this Lease, and by the Fifth Schedule paragraph 1 the Lessee covenants “to pay to the Management Company in advance on the dates as stated in every year the amount of the Service Charge estimated by the Management Company as being required to enable the provision of the Services during that year and forthwith upon demand to pay to the Management Company any under payment in respect of the provision of Services for any previous calendar year”.*
11. The Seventh Schedule sets out the Lessor’s service obligations and includes at clause 4 an obligation to keep proper books of account of all costs, charges and expenses incurred in carrying out its obligations under this schedule and by clause 4.1 entitles the Management Company *“to appoint managing agents and/or accountants to carry out all or any of its obligations contained in this*

*Lease.*” Clause 4.1 further provides that the fees of the managing agent are deemed an expense properly incurred under the Lease.”

12. The service charge year is the calendar year. The developer had not raised significant service charges until the appointment of Mainstay in October 2018.

### **The Statutory Framework**

13. Sections 18 -30 of the Act provide a statutory framework for the regulation of the relationship between a landlord and tenant of residential property in connection with service charges.

14. Section 19 provides .

*(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 provision 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.*

15. S20(C) (1) provides

*(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 court, residential property Tribunal or leasehold valuation Tribunal or the First-tier Tribunal, or the Upper Tribunal or in connection with arbitration proceedings, 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 persons specified in the application.*

16. S27A provides *(1) An application may be made to the appropriate 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 the appropriate 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.*

17. Paragraph 5A Schedule 11 CLRA 2002 provides

*(1) A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.*

*(2) The relevant court or Tribunal may make whatever order on the application it considers to be just and equitable.*

*(3) In this paragraph—*

*(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and*

*(b) "the relevant court or Tribunal" means the court or Tribunal mentioned in the table in relation to those proceedings.*

### **The Parties Submissions**

18. The Applicants' complaint was that the budget figures presented by Mainstay were higher than before their appointment without any or adequate explanation of either their engagement or the reason for the increase.

19. The Respondent asserted that the charges were estimates and that the accounts would show if actual expenses were not incurred. It admitted that ground maintenance had not occurred in 2018 and referred to the accounts for the year which showed no payment for that year.

## **The Decision**

20. The Tribunal examined the parties respective submissions set out in their schedule of expenses and received oral representations from both sides before coming to its decision as summarised in the table above.
21. The item of charge for 2019 ground maintenance was reduced because it was apparent on inspection that the shrubs were overgrowing notwithstanding they were planted within 6 years of the date of the application. In particular the balcony of apartment 2 was significantly affected by growth of nearby shrubs.
22. Cleaning was reduced as being too high for the area subject to cleaning. Mr Devereux gave convincing evidence that the cleaners attendance was limited in time and both Applicants asserted Miss Bailey took on herself responsibility for some cleaning.
23. The day to day maintenance figure and contribution to reserves figure was reduced as the standard of construction was such that the estimates were creating an over provision.
24. Items were reduced to nil when the Respondent admitted no work was done against the estimates. The charges for emergency lighting, fire safety and tv/satellite provision were allowed as being necessary and the Applicants had not adduced any evidence to rebut the Respondent's estimates.
25. The professional charges were reasonable. Although there are legitimate criticisms of the managing agents, they are undertaking management duties and will continue to do so and are entitled to their fee.
26. As far as the insurance premium was concerned the Applicants complained the sum demanded was significantly higher than previously. The First Respondent adduced written evidence of the quotation for the insurance premium. The only response which the Applicants made was an expression of dismay that the premium was now much higher. The Tribunal is satisfied that the Lessor has an obligation to provide buildings insurance under the terms of the lease and that the sum claimed is within a reasonable range. However, the Lessor should give more information to the Lessees regarding the terms of the policy and the work it has undertaken to ensure the premium payable is reasonable.



## **Costs**

27. The Respondent has not made a claim for any costs of litigation.

Consequently, the Tribunal directs that the Applicants have no liability to pay an administration charge in respect of litigation costs.

28. The Applicants were not unreasonable in bringing these proceedings. The Tribunal is satisfied that the Respondent's and its agent Mainstay had not provided good information to them to explain the appointment of Mainstay and the basis of the budgetary estimates. Accordingly, the Tribunal directs that the costs incurred by the Lessor are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

## **Appeal**

29. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal on a matter of law to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to them (Rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis

Chair