



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

**Case Reference** : **MAN/00BS/LSC/2019/0092**

**Property** : **17 Hollybank Court, Cheadle Hulme,  
Cheshire SK8 7HL**

**Applicant** : **Ms Josephine Rich**

**Respondent** : **The Guinness Partnership**

**Type of Application** : **Landlord & Tenant Act 1985 – Section  
27A(1)  
Landlord & Tenant Act 1985 – Section 20C**

**Tribunal Members** : **Judge C Wood  
Tribunal Member I James**

**Date of Decision** : **13 August 2020**

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**DECISION**

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## **ORDER**

1. The Tribunal orders as follows:
  - 1.1 that the service charges charged/estimated in respect of estate service costs and gardening and/or tree works in the service charge years 2014/15 – 2019/20 (inclusive) are reasonable, and the Applicant is liable to pay them;
  - 1.2 that the service charges charged/estimated in respect of communal electricity in the service charge years 2014/15 – 2018/19 are reasonable, and the Applicant is liable to pay them;
  - 1.3 that the service charges (actual and estimated) in respect of communal electricity in the service charge years 2018/19 and 2019/20 are not reasonable and are reduced to £14.54 in each case;
  - 1.4 that the management fees in respect of each of the service charge years 2014/15 – 2019/20 (inclusive) are reduced to £150 in each year.
2. The Tribunal did consider that it was fair and equitable in the circumstances to grant the Respondent's s20C application, which is granted accordingly.

## **BACKGROUND**

- 2.1 By an application dated 14 November 2019, ("the Application"), the Applicant sought determinations as to the reasonableness and/or payability of certain service charge expenditure for the service charge years 2013/14 to 2019/20 (inclusive).
  - 2.2 The Application also contained:
    - (i) an application under section 20c of the Landlord & Tenant Act 1985, ("the 1985 Act"); and
    - (ii) the Applicant's consent to the Application being determined on the papers.
  - 2.3 Directions dated 21 January 2020, ("the Directions"), were issued. The Directions provided that the Tribunal considered it appropriate that the Application should be determined on the papers and without a hearing, in the absence of any request from either of the parties for a hearing. No request has been received.
  - 2.4 Pursuant to the Directions, both parties made written submissions.
  - 2.5 Having reviewed the parties' submissions, the Tribunal is satisfied that this matter is suitable to be determined without a hearing; the issues to be decided have been identified in their respective statements of case, which also set out their competing arguments sufficiently to enable conclusions to be reached properly in respect of the issues to be determined, including any incidental issues of fact.
3. The Application was listed for determination on Friday 3 July 2020.

## **INSPECTION**

4. The Tribunal conducted an external inspection of the Property, and of the development on which it is located. In compliance with covid-19 procedures, the Tribunal did not inspect the internal communal areas. Neither of the parties attended the inspection.
5. The Tribunal noted the following at the inspection:
  - 5.1 the Property is a ground-floor flat in a two-storey block of 4 flats. The block is one of 4 blocks which comprise the development of 2 two-storey and 2 four-storey blocks. In total, there are 28 flats at the development held on mixed tenure;
  - 5.2 the site includes extensive communal gardens, car parking areas, garages and a bin store;
  - 5.3 the gardens appeared poorly-maintained with accumulations of leaves at various places around the site;
  - 5.4 the Tribunal noted that there was a fence panel missing from the corner of the perimeter fence to the rear of the block in which the Property is located;
  - 5.5 as at the date of the inspection, there were items of furniture and other items of rubbish outside the bin store enclosure;
  - 5.6 paintwork on some of the blocks was peeling;
  - 5.7 fascia boards were damaged/missing on some of the blocks;
  - 5.8 overall, the external appearance of the development demonstrated a lack of maintenance and a minimum amount of care and attention in respect of the external communal areas.

## **LAW**

- 6.1 Section 27A(1) of the Landlord and Tenant Act 1985 provides:  
*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.*
- 6.2 The Tribunal is “the appropriate tribunal” for this purpose, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

- 6.3 The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It 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.*
- 6.4 In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:  
*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.*
- 6.5 “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:  
*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.*
- 6.6 There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, he will need to specify the item complained of and the general nature of his case. However, the tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant’s case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.
- 6.7 Section 20C of the 1985 Act permits the Tribunal to order that the costs incurred by the landlord in connection with these 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 by any other person specified in the application for the order. The Tribunal may make such order as it considers just and equitable in the circumstances.

## **REASONS**

7. In reaching the decisions set out in paragraph 1 of this Decision, the Tribunal had regard to the following matters:
- 7.1 the Tribunal noted that the issues for determination as raised by the Applicant in the Application were different to those set out in the Applicant’s Statement of

Case. The Tribunal considers that Respondent’s response in addressing only those issues as set out in the Applicant’s Statement of Case is reasonable;

- 7.2 The Tribunal noted that the Application covered the service charge years 2013/14 – 2020/21 (inclusive) and listed the following heads of expenditure as being in dispute in respect of each year: estate service costs; fly tipping and bin hire; communal electricity; accountancy fee; and management fee. Of these, neither fly tipping and bin hire nor accountancy fees appear in the Applicant’s Statement of Case.
- 7.3 Save for the accountancy fee of £22 and the management fee of £200.85 in the service charge year account (actual) 2018/19, the Tribunal was unable to reconcile the amounts cited by the Applicant in the Application with the amounts which appeared in the “actual” service charge accounts for the remaining service charge years.
- 7.4 Fly-tipping and bin hire appears as a separate head of expenditure only in the service charge account for 2018/19. The amount included in the estimated service charge account was £51.60. In the service charge account for actual costs incurred 2018/19, the charge was reduced to nil. There is no evidence of any amount having been charged in any of the other service charge years. In the circumstances, the Tribunal considered it appropriate not to make any determination.
- 7.5 The amounts for accountancy fees for the service charge years 2013/14 – 2019/20 (inclusive) as cited by the Applicant and the amounts which appear in the service charge accounts are as follows:

S/c year	Amount as claimed by Applicant	Amount charged by Respondent
2013/14	£ 22.00	£ 47.50
2014/15	£ 22.00	£ 46.00*
2015/16	£ 22.00	£ 48.00
2016/17	£ 22.00	£ 49.00
2017/18	£ 22.00	£ 49.50
2018/19	£ 22.00	£ 22.00
2019/20	£ 22.00	£ 22.50*

\* estimates

As previously noted, the Respondent has not addressed these costs in its response. As a general comment, the Tribunal considers that it is more usual to see an increase in professional fees over time rather than a decrease as is the case here. To that extent, it raises a question regarding the Respondent’s procurement of this service in previous years but, in the absence of any evidence from the Respondent, it considers it inappropriate to make any determination.

- 7.6 The Applicant’s Statement of Case identifies the following items as in dispute, as follows:

<u>Year</u>	<u>Estate Service Costs*</u>	<u>Gardening</u>	<u>Electricity</u>	<u>Management Fee</u>
2014/15**	£141.42	-	£16.44	£184.00
2015/16	£141.14	-	£12.99	£188.00

2017/18	£172.14	£83.57	£29.52	£195.00
2018/19	£166.56	£22.63	£14.54	£200.85
2019/20**	£154.42	£17.86	£31.48	£206.88

- 7.7 \* “Estate service costs” appears as a separate item of expenditure only in the service charge accounts for 2015/16, 2016/17, 2017/18 and 2018/19. In the 2013/14 and 2015/15 service charge accounts, what the Tribunal took to be the same expenditure appears under the heading “Mobile estate team”, whilst in the 2019/20 account, the item appears under the heading “Scheme staff”. The Tribunal considered that such heading changes without explanation did not enhance the clarity of the service charge account for the leaseholder.
- 7.8 The Respondent provided a breakdown of the services included within the heading “Mobile Estates Team” in Appendix 1 to its Statement of Case. This is divided into weekly, monthly and annual services. Both the monthly and annual services include gardening eg mow grass, dig over communal flower beds.
- 7.9 Further, the Tribunal noted the Respondent’s explanation of the head of expenditure “other variable estate costs” which appears in each of the service charge accounts for 2013/14 – 2017/18 (inclusive). The Respondent states that these are costs of “maintaining the landscape and communal areas around blocks or communal gardens where this is delivered by staff of TGPL...”, presumably as opposed to by contractors. The circumstances in which such services would need to be so provided is again not clear to the Tribunal ie again there appears to be some overlap/possible duplication of costs. However, in the relevant years where information of actual costs is available, the only charge made was £9.59 (2013/14). Further, although the estimated charge in 2014/15 was £35.76, in other years where the estimated charge was similar, the actual cost was nil. The Tribunal also noted that, since 2018/19, this head of expenditure has not appeared in the service charge accounts.
- 7.10 \*\* These are estimated figures based on budget service charge accounts. The Tribunal accepts the Respondent’s reason for the unavailability of the 2019/20 actual figures. The Tribunal is less persuaded of the acceptability of the Respondent’s reason for the unavailability of the 2014/15 “actuals” ie “We are currently awaiting access to our legacy systems...”, a statement which is also repeated by the Respondent in respect of the unavailability of certain invoices.
- 7.11 Estate service costs: having regard to the size and layout of the development, including, without limitation, the number of units, the extensive external communal areas, including gardens and car parking, and presumed substantial internal communal areas, the Tribunal considered that charges of £141.12 (2014/15), £141.14\* (2015/16 \*estimate), £172.14 (2017/18), £166.56 (2018/19) and £154.42\* (2019/20 \*estimate) were reasonable. In making this determination, the Tribunal is not endorsing the adequacy of the services provided. Specifically, at the inspection, the Tribunal noted that there was a missing fence panel to the rear of the block in which the Property is situated; also there were some small accumulations of leaves around the site. Whilst the Tribunal noted moss growth on roofs, it was considered unlikely that, on its own, this would cause damp in the Property. However, accumulations of moss and leaves in the gutters, something of which it was noted had been a cause of complaint by the Applicant, could be. At the date of

inspection, no such accumulations were visible to the Tribunal.

7.12 **Gardening:** the Applicant's issues concern the failure to cultivate communal gardens, accumulations of leaves and hedges not being trimmed. The Tribunal considers that these are services provided under "estate services", and that the confusion has arisen because of the inclusion of "Gardening and/or tree works" as a separate head of expenditure in the 2017/18, 2018/19 and 2019/20 accounts. The invoices provided by the Respondent in support of the expenditure in 2017/18 and 2018/19 make it clear that this was "tree work" and not "standard" gardening services. The Tribunal is satisfied that the costs charged are reasonable.

7.13 **Communal electricity:**

- (i) the Respondent has only provided electricity invoices for the period August 2017 – March 2018, and from April 2018 – March 2019, although this was raised as an issue for each of the service charge years 2014/15 – 2019/20 (inclusive). The Tribunal's view on the unavailability of invoices is set out in Paragraph 7.10 above;
- (ii) in its Statement of Case, the Respondent states that, for the 2017/18 service charge year, "the actual spend was £1771 for the entire Scheme..." of which £29.52 was charged to the Applicant. The Respondent then further states that, "[T]he aggregate amount of the bills between this period (ie April 2017 – March 2018) is £1369.90". The Respondent has not provided an explanation for the discrepancy in these two figures. Further, the aggregate amount of the invoices provided for the period August 2017 – March 2018 is £1503.21 and, again, there is no explanation of this discrepancy;
- (iii) likewise, the aggregate amount of invoices provided by the Respondent for the 2018/19 service charge year is £889.19, although the Respondent confirms that the "actual spend" was £872.52. Again, there is no explanation of the discrepancy;
- (iv) the Tribunal noted that the invoices related to the provision of an aerial to the block, as well as for the general electricity supply;
- (v) the Tribunal noted that, in respect of the years in dispute, there was a significant increase in the amount charged in 2017/18, (£29.52) and the amount estimated in 2019/20, (£31.48) when compared with the other years: £16.44 (estimated 2014/15), £12.99 (2015/16), £13.37 (2016/17) and £14.54 (2018/19), and, in particular, in the amounts for the consecutive years 2017/18 and 2018/19 (where there was a c35% reduction in 2018/19 as compared with 2017/18) where the Tribunal would expect a relatively constant charge with few significant fluctuations;
- (vi) to the extent that the costs are supported by invoices and/or are at a similar level across service charge years, the Tribunal determines the charges to be reasonable. In the absence of any satisfactory explanation, the Tribunal excludes from its determination the 2017/18 actual charge and the 2019/20 estimated charge, which, in each case, is reduced to £14.54.

7.14 **Management fee:** in making its determination on management fees, the Tribunal had regard to the generally poor condition of the development, as seen by the Tribunal at its external inspection, eg missing fence panel, untidy/unkept communal areas eg bin store, peeling paintwork, damaged fascia boards. Further, the Tribunal noted the Respondent's statement that it would "arrange an inspection" in response to the Applicant's complaint that the communal lighting is not working. No evidence was provided by the Respondent as to whether or not this inspection has taken place. As monthly inspections of the buildings form part of the

services comprised within the “estate services”, the Tribunal is surprised that the Respondent did not appear to know definitively whether or not the communal lighting was working, or that a specially-arranged inspection to ascertain the position was required. In view of the above, the Tribunal considered that the amounts charged for the management fee were not reasonable, and should be reduced, in each year, to £[150?].

8. Having regard to the Tribunal’s determinations regarding communal electricity charges and management fees, the Tribunal considered that it was fair and equitable to grant the Applicant’s application under section 20C of the 1985 Act.
9. For the sake of completeness, the Tribunal also considered the following matters which the Applicant had referred to in the Application and/or in supporting documents to the Statement of Case:
  - 9.1 replacement of windows: this is not a matter within the Tribunal’s jurisdiction in respect of this Application, although it considers it reasonable to expect that the costs would be met (partially or in full) from the reserve funds;
  - 9.2 Rent Assessment Decision 15 March 1989: the decision was made prior to the Applicant’s acquisition of her leasehold interest in the Property on 29 April 1992. The decision did not make any determination regarding the service charge payable by the Applicant as tenant. Following the Applicant’s acquisition in 1992, calculation of the service charge payable is determined by the terms of the Applicant’s lease. This may result in a different charge by way of service charge to leaseholders and tenants, notwithstanding that they live on the same development, and is not evidence that the service charge payable by leaseholders is unreasonable.
  - 9.3 Whilst the Applicant has not directly raised a question regarding apportionment, the Respondent has stated that service charges have been apportioned in accordance with the terms of the Applicant’s lease. There is insufficient evidence before the Tribunal to confirm this.

**Judge C Wood**  
**13 August 2020**