



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

Case Reference : **MAN/00BU/LSC/2019/0096**

Property : **76, Lingfield Avenue, Sale M33 4 QR**

Applicant : **Irwell Valley Homes**

Respondent : **Michael Armer
And Xiuhong Liang**

Type of Application : **Reasonableness and payability of service charges
Landlord and Tenant Act 1985 section 27A**

Tribunal Members : **Mr J R Rimmer
Mr J Faulkner**

Date of Decision : **17th August 2020**

Order

The service charges raised in relation 76, Lingfield Road, Sale for the years 2017-8, 2018-19 and 2019-20 are disallowed for the reasons set out herein.

Application and background

- 1 The Applicants are the Housing Association having responsibility for the provision of extensive social housing, much of which is situated in the Borough of Trafford, and within its sphere of responsibility is the provision of services associated with the occupation of the relevant dwellings.
- 2 The Respondents are the assured tenants of the property at 76 Lingfield Avenue, Sale, one of such dwellings and apparently forming part of a block which also houses nos 75 and 77-78 and in respect of which a number of common parts are serviced by the Applicant and/or its contractors.
- 3 A dispute has now arisen whereby the Respondents have challenged the reasonableness of the service charges and the Applicant now seeks to recover the arrears.
- 4 The tenancy under which the Respondents occupy the property is an assured tenancy agreement dated 23rd August 2011 and made between the Applicant and the first named Respondent. At the time of the inception of the agreement there was no separate service charge element. The rent, including services, was £76.91 per week.
- 5 By letter dated 23rd September 2016 the Applicant proposed to amend the agreement to include a variable service charge. It is able to do this by virtue of section 2 of the tenancy agreement. The service costs are described in the notice as
“the costs the Association has incurred and expects to [incur] in providing services to your home and shared areas”
- 6 The Respondents are aggrieved at the change in the way in which services are charged for and, very broadly, take the view they get little for what they are required to pay for. The ability to change to a variable charge, separated from the rent, is clearly with the scope of the original agreement.
- 7 In the current situation surrounding the Covid-19 virus it was considered that this matter was suitable to be dealt with by way of a determination upon the papers submitted by the parties and there was no need to inspect the subject property.

The law

- 8 The law relating to jurisdiction for service charges, falling within section 18 Landlord and Tenant Act 1985 is found in section 19 of the Act which 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 in the provision of services or the carrying out of works, only if the services are of a reasonable standard.

9 Further, Section 27A of the Act provides;

(1) An application may be made to a (First-tier Property 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

And the application may cover the costs incurred in providing the services etc. and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (Subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

The issue

10 The Applicants state their concerns very clearly in their case submitted to the Tribunal, setting aside the issue of whether the agreement could be changed to one including a variable service charge, mentioned above at paragraphs 5 and 6. They may be summed up thus:

(1) There are a number of heads of charge that are made which subsequently do not appear as actual charges when final accounts are drawn up.

(2) They identify in their statement of case a number of shortcomings and offer criticism of those services that do appear to be provided.

- (3) They allege that enquiries that are made to seek to establish the correctness of the charges levied are not met with an appropriate response
 - (4) Where documentary evidence is provided it is sparse and without a clear breakdown of how charges across large numbers of properties are apportioned to individual properties.
 - (5) They suggest the variable service charge is just an income enhancement for the Applicant, to charge separately for what was formerly within the rent.
- 11 The Applicant, in its statement of case, sets out the basis of the variation of the lease, the charges that are actually levied, and the nature of the services provided under each head of charge.
 - 12 It is perhaps important to point out that the charges within the application are based on costs actually incurred. They appear to be calculated to 31st March in each year and added to the rent from 30th September in the same year by way of a budget which is then reconciled at the end of the year with actual costs. It is only those that have actually been provided that can be determined, together with those were likely to be incurred for the current year and will presumably now have crystallised.
 - 13 When the Tribunal first sat to consider the application it was of the view that the information supplied by the Applicant was extremely limited and the Tribunal found itself unable to make a determination, one way or the other, as to whether the charges were reasonably incurred at reasonable cost. It therefore requested further information from the Applicant.
 - 14 A request was received from the Applicant seeking a further 8 weeks to comply with that request in view of the lockdown situation then prevailing. In the light of the initial directions in the case from a Deputy Regional Judge as to what was required the Tribunal considered a period of 4 weeks to be sufficient.

Consideration and Determination

- 15 Notwithstanding the provision of further documentation from the Applicant the Tribunal was left with the view that the Applicant was expecting the Tribunal to do its work for it in justifying the charges levied.

16 Consideration of the charges for the 2018 and 2019 years showed the following

17 Communal electricity

Electricity charges for both years are each supported by two documents in evidence. Authorisations to pay the energy supplier are provided: an amount of £26704.01 in March 2018 is reduced into a schedule with all information redacted except for an entry for 75-78 Lingfield Road, showing a charge of £18.24 for the four properties for March 2018. Thereafter a similar payment authorisation for May 2018 (and therefore in a new accounting year) is in the sum of £21365.60 and the redacted schedule shows a charge of £17.29 for the four properties.

18 No information is supplied as to how many properties the charges relate to, nor what the annual cost is to the Applicant overall. What the Tribunal cannot see is an explanation of how some sort of (unknown) gross figures reduces to the amount shown for the four properties, nor can it see how the differing charges for the 2 months, if apportioned on the same basis each time, produce monthly amounts for the four properties that are clearly not in the same proportions.

19 Communal ground maintenance

For communal ground maintenance 2 invoices are produced, one for each year, relating to Greenfingers Group, each in the sum of £25,798.07, inclusive of VAT. They are accompanied in one case a list of properties with accompanying figures, conceivably showing that the amount that relates to the Sale Estate is £79960.60, once VAT is added. In the second case a redacted list shows the same amounts in relation to one entry, the Sale Estate. The Tribunal assumes that it is intended to add up 12 monthly bills, making an annual cost of £309,576.84, then assume that the apportionment in respect of the Sale Estate is correct (given that the list provided does not produce the total amount suggested and therefore is incomplete) and then accept that the estate amount be divided equally between 1,443 properties (presumably the number of properties on the estate). to produce an annual cost for each property.

20 Even if the calculations from that paucity of evidence is accepted by the Tribunal as accurate and assuming the Tribunal will do the work to check the arithmetic, nowhere does the Applicant address the issues raised by the Respondents as to the shortcomings in the service they identify.

21 Further concern is caused for the Tribunal that although a common theme in the limited information provided is a working basis of a 50 week year the tenancy agreement speaks in terms of a 52 week year, or,

according to the service charge notification in September 2019, a 53 week year.

22 Communal cleaning and window cleaning

Window cleaning charges are represented by two invoices, for June 2017 and June 2018 from which it may at least be seen clearly which amounts are relevant, both in respect of interior cleaning and window cleaning, to the Sale Estate. Without repeating the figures at length, it is not clear whether the amount charged are the same for different months. If they are, the Tribunal fails to reach the same service charge amounts as are apparently charged to the Respondents, if the Tribunal is to assume an apportionment in respect of 1,443 properties. It asks itself what are the annual amounts in either year for communal cleaning and window cleaning and how are they then apportioned to produce the amounts levied? It makes so bold as to suggest it cannot tell.

23 Communal repairs

These appear in only one year, in an amount of 47p. This would appear to relate to reflagging to the pathway to one of the flats in the block for 75-78 Lingfield Road. The amount in the invoice, £94.49 divides equally between 4 properties to a weekly sum of 47p.

24 The Tribunal, however, asks itself 2 questions. Firstly, why is it divided by 50 to produce 47p when there are 52 weeks in the years in question and not 50? Division by 52 produces a weekly amount of 45p. the difference is very little, but when the arithmetic is done in full the extra charge to the whole block of 4 properties is £3.80. Secondly, why is the repair treated in isolation and apportioned only between the block? Should it not be added to the other relevant repairs to the housing stock and apportioned amongst that? Suppose it was not flagging, but a new roof, or new glazing? Would that cost be divided only between 4 dwellings?

25 Lighting services contract

The only other expenditure incurred appears to be in respect of the lighting contract to service emergency lighting. The 2p weekly charge to the Respondents would appear to be an apportionment of a total annual charge of some £11,088.00. this is presumably spread over the whole housing stock of the Applicant, but we are not told precisely how, or to which properties it may, or may not relate.

26 The Tribunal's view is that it is placed in a quandary. Common sense suggests that some services have been provided and that this will have been at a cost. It cannot however determine from the information

available what that cost is in relation to 76, Lingfield Road, even in relation to 2p per week for the lighting contract.

- 27 The Tribunal does not think that it could even make a calculated assessment of what the cost should be when the lack of information is coupled with the observations of the Respondents as to what service is provided. This is all the more important given that it is the Applicant which has to prove its case and, on balance, does not do so.
- 28 It is perhaps fortunate for the Applicant that their application is against a lone pair of tenants and not a larger group of occupiers. The Tribunal is prepared to disallow all the costs claimed for the years to 2018 and 19, because it cannot make a reasoned assessment. On the basis that the budget for 2019-20 is based on the same flaws that are apparent in the supposed costs for the previous years the tribunal is also minded to disallow those service charge costs as well.
- 29 The Respondents may well be considered to be fortunate, but even setting aside the complaints about the change to the tenancy agreement and whether there has been fraud, as opposed to a simple lack of transparency, they have raised legitimate issues with the Applicant that have not been answered.

J R Rimmer

Chairman

