



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

Case Reference : **CHI/18UB/LSC/2021/0018**

Property : Flat 3, Aliston House, 58 Salterton Road, EX8
2EQ

Applicant : Mr and Mrs Henck

Representative : Mr Henck

Respondent : (1) Mrs A M Braddick
(2) Aliston House Management Company
Limited

Representative : Mr Jonathan Braddick

Type of Application : Determination of liability to pay and
reasonableness of service charges

**Tribunal
Member(s)** : Judge D R Whitney
Mr M Ayres FRICS

Date of hearing : **20th July 2021**

Date of determination : **27th July 2021**

DETERMINATION

Background

1. The Applicant made application for determination of their liability to pay service charges for the year 2019/2020 and orders as to costs pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
2. Directions were issued on 9th April 2021 and further directions on 19th May 2021. The Tribunal has received statements of case from both parties and a brief reply from the Applicants. Various documents are appended including certain copy invoices.
3. The hearing was attended by Mr Henck and by Mr Jonathan Braddick.

The Law

4. The relevant law is set out in Sections 19 and 27A of the Landlord and Tenant Act 1985 a copy of which is annexed hereto marked Annex A

Hearing

5. The hearing took place remotely by video. Both parties were able to join and take part throughout the hearing. The parties were reminded that the hearing was being recorded and that each of them would be given every opportunity to say anything they so wished.
6. The below records the main parts of the hearing but is not a verbatim account.
7. The Tribunal confirmed that it had read each parties statements of case, the Applicants reply and also considered the two previous tribunal decisions which the parties had referred to which are registered under case numbers CHI/18UB/LSC/2019/0042 and CHI/18UB/LSC/2020/0022.
8. At the start of the hearing Mr Henck clarified that he was not challenging the reasonableness of certain charges. By reference to the document found at Exhibit 7 of the Applicants statement of case and titled "Actual Costs of the Landlord (A M Braddick) for the period 03 August 2019 to 02 August 2020" the items accepted as being reasonable are:

- Busy Bees
- Cleaning ABC
- EDF Electricity
- SWW water external
- J S Electrics

9. The remaining items were in dispute. The Tribunal proposed that Mr Braddick would present the case for the freeholder first.

10. Mr Braddick explained that he represented his mother Mrs Braddick who was demanding service charges. The Company was dormant and did not manage. He explained they had offered to agree the service charges at the level agreed previously but Mr Henck did not accept this concession. As a result he invited the Tribunal to agree all the charges were reasonable.

11. Mr Braddick explained that only 4 of the 11 flats had been sold on long leases. He occupied one of the 4 flats on a long lease. His mother retained the other flats. He explained that his Mother had always dealt with the service charges and not the Company. This was explained to the Applicants when they purchased. He relied upon the lease, a copy of which was exhibited to the Applicants statement of case being a lease dated 3rd August 2016 and made between the Applicants and the Respondents for the Property. The Applicants service charge percentage was defined as 9%. Mr Braddick relied upon the Accounts referred to in paragraph 6 above which he says sets out the expenditure for the service charge year 3 August 2019 to 2 August 2020.

12. Mr Braddick stated that in his opinion the accounts did not need to be certified by a Chartered Accountant given only 4 flats are let on long leases and the requirement under paragraph 2 of the Fourth Schedule of the lease does not in his opinion mandate this happening. The clause states:

“The Management Company shall as soon as convenient after the end of the Financial Year prepare an account showing the Annual Expenditure for the Financial Year and containing a fair summary of the expenditure referred to in it and upon such account being certified by a qualified accountant appointed by the Management Company it shall be conclusive evidence for the purposes of this lease of all matters of fact referred to in the account”

13. Mr Braddick suggested that the wording did not mandate certification but that this could be undertaken at the discretion of his mother.

14. Turning to the items within the accounts and firstly the gardening expenses. Such works were undertaken by a firm called Hurfords House Works. Copies of their invoices had been provided by the Respondent and were attached to the Respondents statement of case. Mr Braddick explained that the gardener provides invoices and these

are paid. He said other quotes had been sought although none were in the bundle. He was unsure as to how the gardener calculates the amounts of the invoices.

15. Mr Braddick stated the gardener comes weekly and all work is undertaken to a high standard. He explained that certain of the photos the Applicant relies on are of a composting area. He accepts there were some bags of garden debris left there which was due to the tip being shut to commercial waste due to Covid. Another photo shows leaf mulch having been placed on a flower bed which is appropriate. The flower beds are maintained to a high standard.
16. The charge for IT services is to provide an email address.
17. The charge for “Hurford’s garden consumables-say £275” is for additional items such as rat traps, tree bark etc. The Tribunal raised that these amounts seem to be included already in the invoices provided by Hurford’s. He stated he does not believe there are invoices and may cover items his mother and father buy for the gardener.
18. Turning to the fire risk assessment “on a get on with it basis” charge of £1235 Eco Architects as managing agents deal with these matters. He explained he is not involved in this company, it is now his sister who lives in Buckinghamshire although the registered office is at the accountants in Taunton. It was previously him but he ceased being involved. He explained the managing agents charge £95 per hour. He is not sure who actually spends 15 minutes a week on this item.
19. As to the annual report he says this is reasonable.
20. For the managing agents charges he believes £95 per hour is reasonable. He confirmed that was the rate he always used and his sister has adopted this. She has no experience of block management and manages no other blocks. He described trying to keep everything human and reasonable and is very proud of the standards achieved.
21. He confirmed the incidental costs are for essentially responding to any correspondence from Mr Henck.
22. On questioning by the Tribunal Mr Braddick explained Hurford’s had been providing services before the flats were sold and his mother just kept them on. Hurford’s would tend to the lawns, hedges, Leylandii, rat traps etc. He recalled he had approached other contractors, but their costs were higher. He recalled one wanted £500 per month. The current contractor comes once a week and twice a week during the height of Summer. Mr Braddick suggested the grounds are not communal, part of the estate but residents do not have access.
23. Mr Braddick confirmed of the flats retained by his mother she lives in one, 4 are let on assured shortholds and two retained by his mother principally for storage.

24. Mr Henck then questioned Mr Braddick.
25. Mr Braddick confirmed that he ceased being involved in Eco Architects and left it to his sister so that the company could manage without any personal interest of those living in the building given Mr Braddick now owns and lives in one of the 4 leasehold flats. He confirmed all invoices for the company are retained at the accountants in Taunton.
26. Mr Braddick stated in his opinion providing an accountant certificate would be a pointless exercise as Mr Henck would still challenge the accounts.
27. This concluded the case for the Respondents.
28. At this point the Tribunal adjourned for a short break for all participants.
29. Mr Henck explained that Eco Architects are a company run by a lady who works part time and lives in Buckinghamshire. He suggested that emails sent actually go to Mr Bob Braddick and Eco Architects is a façade. He does not understand why they require him to go to Taunton to view invoices which he submitted actually come in the first instance to the property.
30. Mr Henck suggests the gardener comes for a couple of hours each week in the Summer and at other times of year fortnightly. He said even if you work on 60 hours per year plus an extra 5 hours given the going rate in his opinion for a gardener is £15 per hour the price is far too high. Even if you allowed £20 per hour this would only amount to £1,300 per annum. Mr Henck took the Tribunal through the invoices demonstrating that the hourly rates were substantially higher on the basis of 2 hours per week and it was unclear how the amounts were calculated. Often hourly rates amounted to more than £40 per hour.
31. In respect of the IT charge Mr Henck said there was no good reason for this to be included within the service charge. He relied upon the fact he has been told Eco Architects don't have an email address although he says this is a blatant lie. He referred to one of the Busy Bee invoices which included an email address.
32. As to the garden consumables he states this amount is included every year. There is no evidence as to the costs.
33. For the Fire Risk Assessment the Respondent's rely on a letter from the local Fire Service. Mr Henck suggests the fire alarm is rarely tested and it should be a competent contractor and there is no evidence that there is.
34. As for the managing agent he suggests it is Mr Bob Braddick who does everything and not Eco Architects. He explained that he only replies to

correspondence he received so does not understand the incidental costs. Mr Henck suggested he does not wish to go to the Tribunal every year but the service charges are not being dealt with properly and a large amount of what is charged goes directly back to the Braddick family.

35. On questioning by the Tribunal Mr Henck agreed there could be management fees but in his submission Eco Architects are a pure fiction. As to the gardening Mr Henck does not challenge the price if a good job is done but in his opinion it is not. The front is done well but the rear garden is left in a poor state.
36. Mr Braddick then questioned Mr Henck.
37. As to gardening he stated why was a contractor from Exeter employed with the added expenditure.
38. In respect of the managing agents he would have thought a cost of £2500 would be reasonable. Mr Henck stated it was not so much the amounts but the fact work was not being done properly. He stated he is happy to pay for a service if the work is done to a proper standard.
39. Upon being questioned by the Tribunal Mr Braddick stated that he had not got any written quotes from other agents. He had 'phoned a couple who told him they would charge £400/500 per unit per annum for managing. He confirmed he was told this was for residential block management.
40. Mr Henck confirmed he invited the Tribunal to make the costs orders he had requested on the basis of what he has said in his case.
41. Mr Braddick suggests no orders should be made as they had previously offered to reduce the amount to that which was agreed by Mr Henck last year. He did not think they had behaved unreasonably.

Determination

42. The Tribunal thanks both parties for the helpful way they presented their respective cases. It is plain there is animosity between the parties.
43. Both parties relied upon their written statements of case to which they added in oral evidence. We have read all within those and taken account of the documents attached in reaching our decision.
44. Turning firstly to whether there has been a valid demand. Mr Braddick suggests the document called "Annual Expenditure" and referred to in paragraph 6 above amounts to a valid demand.
45. We are not satisfied that this is correct. Whilst both parties accept that Mrs Braddick as freeholder continues to manage and effectively clause 4.3 of the lease is engaged which entitles the freeholder to manage if

the Management Company is not she is still required to comply with the statutory requirements and the lease.

46. Further it appears to be accepted by both parties that the service charge year has been amended to run from 3rd August in one year until the 2nd August the following year.
47. Whilst not raised by the parties the supposed demand does not include details of the landlords' name and address together with an address for service. There was no evidence that a summary of rights and obligations was served with it. We make these points as observations to assist and are not the basis for our decision.
48. We find that the accounts are required to be certified by a chartered accountant. The Fourth Schedule which is headed "The Service Charge Provisions" sets out the requirements. We have set out paragraph 2 in full above. We find that this paragraph does require the accounts to be certified and this requirement in our judgment is not discretionary as suggested by Mr Braddick. This is a not uncommon requirement within a lease and is considered good practice even when not required particularly given this is a development of 11 flats notwithstanding only 4 are let on long leases.
49. Turning to the individual items Mr Henck conceded certain sums. He accepted that all heads of expenditure were matters which subject to being reasonable were payable under the terms of the lease.
50. The items conceded (see paragraph 8 above) require Mr Henck to pay 9% of the totals. We record that his share of these amounts are £246.54.
51. We look next at the gardening. Whilst both parties told us they had looked at alternatives neither produced any evidence of alternative quotes. We note from the lease plans that the communal areas are relatively large. We have looked at the invoices from Hurfords. The invoices have been produced and are in the bundle. Mr Henck accepts some work is done but challenges the hourly rates. He suggests significantly cheaper quotes could be obtained.
52. It is disappointing that the Respondent has no idea how the invoices are calculated. We would have expected there to be some written explanation as to what works the gardening contractor is required to do and confirmation as to how their charges will be calculated. Such charges could then be properly benchmarked against others to ensure they are reasonable.
53. We note that the Applicant has no alternative proposals save he suggests gardeners can be found for £15 per hour. He calculates that the hourly rate may be over £40 per hour. He also suggests having a contractor from Exeter adds to the costs given the travel requirement.

54. The above being said it is for the Respondent to determine what works are undertaken and how often. It is the Respondent who appoints the contractor and we are mindful that reasonable does not mean cheapest. We certainly accept continuity of contractor maybe beneficial to all. On balance on this occasion we find the sum claimed being £2698.50 to be reasonable and that the charges do not appear so high as to be unreasonable.
55. We would expect the Respondent however in respect of the gardening to agree a written specification with her gardener, including as to how charges are to be calculated and to obtain further quotes to check that the sum charged remains competitive. Freeholders and their agents are required to keep such charges under review to ensure that a quality service is maintained but at a price reasonable for the work undertaken. A failure to do so may mean that charges are not deemed reasonable in the future.
56. We do not allow the sum claimed for “Garden consumables”. A number of the Hurfords invoices refer to including what were described as consumables (see invoice dated 30.9.19 Order No. 685 for example). No separate receipts were provided or proper explanation. Given what we have said above in respect of gardening we find it is entirely reasonable to assume the Hurfords charges included for any and all consumables.
57. We have no hesitation in disallowing the IT service charge of £66. This is an expense of the landlord or managing agent. No invoice was supplied or good reason advanced as to why this should be a service charge item.
58. We turn next to “Fire Risk Assessment”. This consists of two heads of expenditure. Firstly what is called “On a get on with it basis 15 mins per week as D&SFRS”. We presume this relates to the letter from the local fire service dated 8th May 2019. This refers to the need for a fire risk assessment and the alarm to be tested weekly.
59. No invoices were produced and Mr Braddick was not able to properly say who was providing this service. It was calculated at £95 per hour being the price he charged when he was running Eco Architects. No invoices were produced or logs as to when the alarms were tested. Mr Henck said in all his time at the Property he only recalls an alarm test on one occasion.
60. We find that there was no evidence any such work was undertaken and we find that this item is not payable.
61. This leaves the “Annual Report Competent Person” charge of £262.56. Again no invoice has been produced nor a copy of the assessment. It appears it may be Jonathan Braddick who does this. He is a chartered architect. Whilst plainly undertaking a Fire Risk Assessment is a legal obligation upon every freeholder and managing agent it must actually

be undertaken. Here we have no evidence despite this point being raised in this case and previously by Mr Henck.

62. We find on the evidence that no fee is payable for this item.
63. This leaves costs payable to Eco Architects. No invoices or contract was produced. Again we heard how Mr Jonathan Braddick no longer has anything to do with this company but leaves it all to his sister in Buckinghamshire. She has adopted the hourly rate he charges and charges one hour per week. There are then further charges for what are said to be Incidental costs.
64. Mr Braddick candidly admitted there is no experience of block management. No evidence was supplied that the company is a member of any redress scheme or adheres to the RICS Service Charge Code. There appears to be no contract and we had no documentation from Eco Architects. Mr Braddick says he has made enquiries and local block agents would charge in excess of £5000 per annum to manage. For these reasons he believes the charges are reasonable.
65. Mr Henck disputes these charges saying they are simply money for the Braddick family. On the evidence this seems true.
66. The way the management was described and the evidence presented to us was shambolic. Given the landlord retains the management she has obligations to the leaseholders. Whilst she is free to instruct whomever she chooses if the costs are to be recovered it must be undertaken to a proper standard and be reasonable. We do not accept Jonathan Braddicks evidence that a local agent would charge £500 per unit per annum for managing a development of this type.
67. We have found no valid demands have been issued and the supposed accounts do not follow the terms of the lease. It would appear there is little or no supervision of contractors and no one from the agents gave any evidence yet we are led to believe Mr Braddicks' sister as a director of Eco Architects undertakes the work.
68. We find none of the costs of management or incidental management are payable or reasonable.
69. This then leaves the various costs applications. Mr Braddick criticises Mr Henck for not accepting the offer that he just pays the same amount he paid the previous year. Mr Henck set out clearly his case. We accept he has no desire to keep returning to the Tribunal which is caused by Mrs Braddicks failure to ensure the development is properly managed as envisaged in the lease she granted to Mr and Mrs Henck.
70. Whilst the making of the Orders sought are discretionary we are satisfied on balance it is reasonable to make an Order pursuant to section 20C of the Landlord and Tenant Act 1985 that none of the costs of these proceedings may be recovered from the Applicant. Further we

also make an Order pursuant to paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 that no costs may be recovered from the Applicants in relation to these proceedings as an administration charge. Mr Henck has been successful in almost every area of challenge. We have determined currently no sums are payable and out of those claimed by the Respondent we have reduced the amounts by approximately 2/3rds.

71. Finally we determine that the First Respondent, Mrs Braddick shall reimburse the Applicants with the fees paid to the Tribunal of £300 within 14 days of the date of this decision.

Conclusion

72. We determine that currently no monies are due and owing by the Applicants to the Respondents as no valid demand has been issued.
73. We find that the reasonable service charges for the year ending 3rd August 2020 amount to £5437.81 of which the Applicants percentage would be £489.40.
74. We make the orders requested that the Respondent may not recover any of its costs of these proceedings from the Applicants.
75. We order the First respondent to reimburse the Applicant the Tribunal fees totalling £300 within 14 days.

76.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking