FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00EF/LSC/2019/0090**
Properties	**:**	**23 and 67 Sheepfoote Hill, Yarm** **84 and 134 The Meadowings, Yarm**
Applicant	**:**	**HOWE PROPERTIES (NE) LIMITED**
Respondent	**:**	**ACCENT HOUSING LIMITED**
Type of Application	**:**	**Section 27A, Landlord and Tenant Act 1985**
Tribunal Members	**:**	**A M Davies, LLB** **J Jacobs, MRICS**
Date of Decision	**:**	**15 December 2021**
Date of Determination	**:**	**15 February 2022**

DECISION

The service charges demanded by the Respondent in respect of the Properties are payable by the Applicant in full.

REASONS

1. The Applicant holds long leasehold interests in four flats on a residential estate owned by the Respondent, situated about half a mile from the centre of Yarm. The Applicant purchased the flats on the following dates:
   84 The Meadowings 31 March 2016
   23 Sheepfoote Hill 6 May 2016
   67 Sheepfoote Hill 26 May 2017
   134 The Meadowings 19 January 2018.

2. The Applicant disputed service charges demanded by the Respondent, and on 4 November 2019 applied to the Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 as to the service charges payable for the years ending 31 March 2017, 2018 and 2019. This determination relates to the service charges payable by the Applicant for each of its properties with effect from their respective dates of purchase until 31 March 2019.

3. Over a long period of correspondence and delays caused by the Covid pandemic the parties' attempts to reach a settlement failed. The application was set down for a hearing. On 13 December 2021 the Tribunal visited all parts of the estate under the guidance of the Respondent's estate services officer Mr Long, accompanied by the Respondent's solicitor and the Applicant's Ms Burns with her counsel Ms Feng. Witnesses were heard in Darlington on 14 December. Ms Feng for the Applicant and Mr Bates of counsel for the Respondent presented their arguments by video link on 15 December 2021.

THE ESTATE

4. The Respondent's Yarm estate is built on a steep-sided site with a stream running through it. Originally laid out in the 1970s, it was conceived for communal living in that all areas outside the buildings were left open for general use by all residents. It is a relatively large estate, containing some 138 flats and houses, of which some are freehold, the majority are let on assured tenancies, and the remaining 31 properties

are subject to long leases expiring on 30 June 2112. There are no buildings on the estate above 2 stories high, ie ground and first floor.

5. The estate covers an extensive area and includes grassy areas with trees, shrubberies and steep banking between levels as well as the high sided "wild" banks of the stream. Roads, most footpaths and parking or open tarmacked areas on the estate are owned and maintained by Stockton Borough Council at no direct cost to the residents. Flagged footpaths and marked flagged parking bays are owned and maintained by the Respondent.

6. The boundaries of the estate are mainly wooden fences, some of which appear to be coming to the end of their useful life. Adjacent to the estate are housing in other ownership and wooded areas owned by Stockton Borough Council and others.

7. On inspection, the Tribunal found the estate to be in good order, with evidence that excess ivy had been cut back from the walls of buildings, trees and handrails. Undergrowth on the banks of the stream had died back for winter. It was apparent that the original vision of an open plan estate had largely failed, in that many residents had enclosed areas adjacent to their properties and had planted and furnished them as private gardens. Such enclosures are in breach of the Respondent's lease terms but many are longstanding, and the Tribunal was told that rights to sole possession had been attained in respect of an unidentified number of such private garden areas. The private gardens were variously enclosed by wooden fences and hedges. The Tribunal understands that when and where possible the Respondent removes any boundaries that are in breach of lease but it is clear that these attempts have had a limited effect on the estate overall. In addition to enclosed gardens, it was apparent that some residents had provided their own planting or landscaping to small areas between their properties and the footpaths.

THE LEASE

8. The Applicant's leases are similar to each other, and (apart from the term start dates) rendered identical by a longstanding agreement that each long leaseholder's service charge contributions for maintenance of the estate are fixed at 1/138 of the whole. Insurance contributions are calculated on the basis of the Respondent's group policy costs and divided by the total number of properties covered. The Respondent's

management fees are charged according to a 5-tier system of fixed annual fees representing the level of management services provided. The Applicant's Properties attract a tier 3 fee, which is £300 per year. Annual ground rents are £10.

9. At clause 4 of the lease the Lessor covenants, among other things, to enforce the regulations set out at the First Schedule, to maintain the structure of the buildings and the common parts of the estate, and at sub-clauses 4(4), 4(6) and 4(7) -

"*4(4) so far as practicable to keep clean and reasonably lighted and in a tidy condition the passages lifts staircases entrances paths forecourts roadways and driveways and all other the parts of the Buildings* [ie blocks of flats and grounds] *enjoyed or used by the Lessee in common with the other Lessees or occupiers of* [the same] *and also keep the gardens and grounds of the Buildings in good order and condition PROVIDED ALWAYS that the Lessor shall not be liable to the Lessee for any failure in or interruption of such services due to circumstances beyond the reasonable control of the Lessor AND PROVIDED FURTHER that the Lessor may alter or modify the services referred to in sub-clause (6) of this clause if by reason of any change of circumstances during the term hereby granted such alteration or modification is reasonably necessary or desirable in the interests of good estate management or for the benefit of the occupiers of the Buildings…..*

4(6) that the Lessor will engage and employ and discharge the wages and salaries of such staff as shall from time to time during the said term be reasonably required for carrying out works of maintenance cleansing repair and other work to the parts of the Buildings used by the Lessee in common with the other Lessees or occupiers of the Buildings (including the common roadways paths forecourts driveways and grounds thereof) and for the carrying out of such other duties authorised by the Lessor as are usually performed in blocks of flats with grounds and which are reasonably required for the proper maintenance running and management of the flats and parking spaces and grounds of the Buildings.

4(7) that the Lessor will at all times during the said term…..insure ….the Buildings …to the full replacement value thereof…against loss or damage by fire and such other risks as are normally covered by a policy of comprehensive insurance….."

10. Clause 5 of the lease provides for payment of service charges so far as relevant as follows:

"*(1)(b) on the 1st April next and on each subsequent 1st April the Lessee shall pay to the Lessor such sum as the Lessor shall reasonably require as payment in advance of the estimated amount of the Lessee's* [1/138th] *share for the period of one year commencing on the said 1st April….*

(2) The Annual Service Charge shall be the total of all sums actually expended or provided either directly or as in the case of service by the Lessor's own staff indirectly by the Lessor during the period to which the relevant Service Account relates in connection with the management and maintenance of the Buildings, and in particular but without limiting the generality of the foregoing shall include the following:-

(a) the costs of and incidental to the performance and observance of each and every covenant on the Lessor's part contained in sub-clauses 2, 3, 4, 5, 6 and 7 of Clause 4 of this lease….

(d) all fees…..payable to any agent or agents whom the Lessor may from time to time employ for managing and maintaining the Buildings and all salaries and other payments made to staff and employees of the Lessor where works are undertaken by the Lessor without employment of an agent including an element of profit to the Lessor."

THE LAW

11. Section 27A of the 1985 Act enables either party to a lease to apply to the Tribunal for an order as to whether a service charge is payable under the terms of the lease and, if it is, as to the amount which is payable.

12. Section 19(1) of the 1985 Act provides as follows:

"Relevant costs [ie costs incurred by or on behalf of the landlord] *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."

13. "Service charge" is defined at section 18(1) of the 1985 Act as

"*…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…."

14. Section 18(3) provides that "*"costs" includes overheads*".

DISPUTED SERVICE CHARGES

15. The Applicant is wholly owned by Ms Sarah Jane Burns. In her witness statement dated 18 August 2020 Ms Burns disputed the following service charge contributions:

	y/e 31 3 17	y/e 31 3 18	y/e 31 3 19
	£	£	£
Grounds Maintenance	184.94	146.09	221.48
Tree Management	-	-	38.83
Buildings Insurance	33.00	35.00	32.50
Homeowner Repairs	no dispute	50.95	-
Management fee	300.00	300.00	300.00

These figures represent the leaseholders' contribution to costs as certified for years ending 31 March 2017 and 2018 by Grant Thornton, and for the year ending 31 March 2019 by Beever and Struthers, Chartered Accountants. Prior to these years the Respondent certified its own service charge accounts, a practice that was permitted by the lease but discontinued when Ms Burns raised queries about the accuracy of the 2016/17 service charges. On examining the Respondent's supporting documentation, Grant Thornton adjusted the costs figures, reducing the payments due from leaseholders. The Respondent refunded excess service charges, and told the Tribunal that it is now their settled practice to have the service charge accounts independently certified each year.

16. The Applicant's grounds for disputing the service charges were
(a) that the Respondent had failed to prove that it had incurred the expenditure as claimed, or alternatively had failed to incur the expenditure specifically in relation to the Yarm estate;
(b) in relation to Grounds Maintenance, that the cost was too high and the work had not been carried out to a reasonable standard;
(c) in relation to Tree Management, that the expenditure had not been reasonably incurred;
(d) in relation to insurance costs, that the contribution of each leaseholder had not been properly calculated;
(e) in relation to Homeowner Communal Repairs, that the Applicant disputed whether any such work had been carried out; and
(f) in relation to management fees, that the amount charged was unreasonable and the work had not been carried out to a reasonable standard.

RESPONDENT'S EXPENDITURE

17. Under cross examination, Ms Burns agreed that in each of the three years under discussion the Respondent had supplied the certifying accountants with sufficient material for the preparation of service charge accounts that were both accurate and related to the Respondent's Yarm estate. However, she disputed the figures because she herself had not seen the information that the chartered accountants had seen, to enable her to understand and verify the sums claimed.

18. The Tribunal finds that the figures certified by chartered accountants – including the figures for homeowner repairs - for each of the three years in question accurately record the Respondent's expenditure on service charges in relation to its Yarm estate. The Respondent is not required to explain the methodology used, or to continue providing information until Ms Burns has satisfied herself as to how the figures have been justified. The reliability of these professionally certified service charge accounts is not compromised by the inaccurate account prepared previously by the Respondent. It is not the task of the Tribunal to enter into a minute forensic examination of certified accounts where the resultant service charges are, as appears below, by no means excessive.

GROUNDS MAINTENANCE

19. The Respondent contracted with Greenfingers to manage the grounds of its estates nationally until April 2018, when the contract terminated and -Malc Firth took over the work. During the Greenfingers contract, the Respondent employed a caretaker on the Yarm estate, whose duties included some tidying of the grounds and litter picking.

20. The Applicant called three residents of the estate to give evidence as to the failings of the grounds maintenance contractors. Under cross examination each of these witnesses partially retracted his evidence. These residents told the Tribunal that grounds maintenance was not carried out regularly or consistently, that much work had been done in the weeks leading up to the Tribunal's inspection, and that on occasion hedges, shrubs, grass and ivy on the estate had not been cut back effectively.

21. Photographs taken by the Applicant's witnesses Ms Burns and Mr Young show leaves on the ground, shrubs and hedges needing to be trimmed and grass that is said to be longer than provided for in the contractors' specifications although the length is not possible to assess from the images provided. The Tribunal were also shown pictures of flooding in one of the carparks, drainage having apparently been compromised by a build up of leaf litter or other debris. There were images of tree branches overhanging the building containing the Applicant's flat. However these branches were not the responsibility of the Respondent, but had encroached on to the estate from adjoining property of Stockton Borough Council, which removed them when requested to do so.

22. Those areas of the estate that have been enclosed by residents are not accessible for maintenance by the Respondent's contractors. In places where boundaries have been removed, or where planting by residents has occurred in accessible areas such as alongside pathways, the contractors become liable to provide additional gardening services. It appears that there have been occasions when these additional gardening services have been delayed while the current status of such areas is ascertained. The Tribunal does not find that the Respondent has deliberately or negligently failed to maintain those or any other parts of the estate.

23. The Applicant's evidence was that partly as a result of the Respondent's failure to keep the estate sufficiently tidy wildlife had thrived in the undergrowth, especially along the overgrown banks of the stream, and that in 2018 there had been an infestation of rats, which was noticed in July but not terminated by the Respondent until the end of November of that year. The reason for the increase in the numbers of rats seen on the estate was variously attributed to residents leaving food out for birds, refuse sacks being left outside properties, protection afforded by summer ground cover, the stream level rising during wet weather, and incursions from rat populations in neighbouring wooded areas. No doubt all these factors may have played a part. No evidence was produced to show that there were any more rats along the undergrowth of the riverbank than in other parts of the estate, or that their numbers increased due to any failure to cut back vegetation.

24. The Tribunal heard from the Applicant's witnesses that the grounds maintenance contractors did not always attend when expected, or in sufficient numbers to finish scheduled work in one visit. The Respondent produced a sample of Malc Firth's attendance records, which shows that some 74-man hours of attendance on site took place over five visits in August 2018. Mr Long gave credible evidence as to the Respondent's procedures for supervision of contractors, inspections and quality control. He also told the Tribunal that it is the policy of the Respondent not to cut back hedges or shrubs during the nesting season, but to tidy the estate thoroughly at the end of the year, ahead of new growth in the spring.

25. The Tribunal finds that the Respondent has maintained the estate to a reasonable standard. That is not to say that the grounds have always been as neat and tidy as all the residents might have wished, or that the exact specification of the grounds maintenance contracts has invariably been achieved on time. Overall an acceptable standard of service has been provided. As described to the Tribunal by witnesses who were long-term residents, the estate has changed over the years and now supports mature trees and shrubs. Some previously open areas reached by way of informal paths have become overgrown and inaccessible. It appears from the evidence of Mr Long that grounds maintenance methods and aims may also have changed, to encourage an element of biodiversity. The Tribunal has seen no evidence that these changes operate to the detriment of the residents or adversely affect the value of their properties.

26. Fees paid to Malc Firth are appreciably higher than the charges previously paid to Greenfingers. Mr Long described to the Tribunal the tendering process, which followed OJEU (Official Journal of the European Union) guidelines but ultimately resulted in a choice between only two alternatives. The cost of employing a caretaker has been saved. The cost of grounds maintenance per long leaseholder was £4.46 per week in the year ending 31 March 2019. No alternative cost quotation for maintenance of the estate was produced by the Applicant. The Tribunal finds that the cost in each of the three years in question is reasonable.

TREE MANAGEMENT

27. The Tribunal accepts the Respondent's statement that there are over 500 trees on the estate, and that these require three yearly assessment for their condition and the health and safety of residents. This is specialist work and the Tribunal does not accept the Applicant's argument that the cost should be included in the grounds maintenance contract.

28. The Respondent has entered into a 3-year contract for tree management. Payment of the contract price for services provided on the Yarm estate has been certified by independent accountants. The price is reasonable and no alternative quotation for the work was provided by the Applicant.

INSURANCE

29. Mr Whitfield for the Respondent gave evidence as to how the apportionment of insurance costs across the Respondent's entire housing stock was calculated prior to and after April 2018. A change in methodology had taken place, to improve fairness and comply with lease terms. Despite Ms Feng's lengthy cross examination of Mr Whitfield, Ms Burns for the Applicant had already agreed that the figures for insurance in the certified accounts accurately reflect costs incurred for the Yarm estate. She had also agreed that it would not be possible to obtain buildings insurance at a lower cost.

30. The Tribunal finds that insurance costs are reasonable and payable by the Applicant.

MANAGEMENT FEES

31. The Applicant claimed that annual management fees charged by the Respondent should not exceed 15% of the service charges payable for that year. Ms Burns stated that the services she received were not worth £300 per year, and also argued that services provided to all residents on the estate were identical and therefore the long leaseholders and every other resident should pay the same management fee.

32. The Respondent produced a written explanation of its five-tier system of charging fixed annual management fees to long leaseholders in accordance with current RICS guidelines. The Applicant has not demonstrated that a lower fee would be charged by any alternative manager of the estate. The Tribunal notes that the statutory framework governing social tenants is not the same as that for leaseholders and finds that an annual management fee of £300 per long leaseholder on the Yarm estate is within the spectrum of reasonable charges for the work undertaken.

33. The Applicant further claimed that the level of service provided by the Respondent was unreasonable. Ms Burns agreed that the Respondent's managers corresponded with her and attended meetings with her as requested from time to time, but said that she should not have to make complaints in the first place, as infringements by residents or failures of contractors should be identified by the Respondent itself. She cited in particular the Respondent's failure to manage the rat infestation between August and November 2018 inclusive.

34. Having heard the evidence of Mr Long, the Tribunal finds that the Respondent manages the Yarm estate generally to a high standard. The Respondent has demonstrated that it works effectively with Stockton Borough Council when required, and that problems – including the vermin problem and the many queries and complaints of the Applicant - have been dealt with properly within a reasonable timescale.

Tribunal Judge : A M Davies
15 December 2021