FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/16UD/LSC/2021/0019**
Property	**:**	**65 Greta Gardens, Crow Park Road, Keswick, CA12 5EL**
Applicant	**:**	**Mr. Thomas Wilson Rennie**
Respondent	**:**	**Castles & Coasts Housing Association Ltd.**
Representative	**:**	**Ms. Amy Kelly**
Type of Application	**:**	**Under s.27A of the Landlord and Tenant Act 1985**
Tribunal Member	**:**	**Judge P Forster** **Mr. W Reynolds MRICS**

DECISION

Decision

The Tribunal determines that a service charge of £4,233.32 is reasonable for the year 2021/22 and is payable by the Applicant.

Introduction

1. This is an application under s.27A of the Landlord and Tenant Act 1985 ("the Act") to determine the reasonableness of the service charge claimed in respect of 65, Greta Gardens, Crow Park Road, Keswick, CA12 5EL ("the Premises") for the 2021/22 service charge year.

2. The Applicant, Mr Thomas Wilson Rennie, and his wife, Sylvia Rennie, are the leasehold owners of the Premises which they hold under a lease ("the Lease") dated 18 March 2016 made between Derwent and Solway Housing Association Ltd. as landlord and them as tenant for a term of 125 years from 1 April 2015. The Respondent, Castles & Coasts Housing Association Ltd., has held the freehold since 31 March 2017 and is the current landlord. The Premises is registered at HM Land Registry under title number CU131246.

3. The Tribunal is asked to determine whether the service charge payable by the Applicant and his wife is reasonable. The Applicant accepts that the Respondent is obliged to provide the relevant services, he does not question the standard of the work and he accepts that he is liable to pay for the services under the terms of the lease. There is no issue about how the service charge has been calculated. The only question is the reasonableness of the amount claimed.

4. The Premises is one of sixty nine flats in a four-storey "extra care scheme" for "older persons" in Keswick. The Applicant has a two bedroom flat which he describes as being very comfortable. He has no complaints about his flat. Twenty two of the flats are leasehold and the other forty seven are let to tenants under short tenancies. The scheme is a large modern building with several facilities such as a beauty salon, a hairdresser and a communal lounge and onsite staff, including care staff.

5. Directions were issued by the Tribunal on 1 June 2021 that required the parties to exchange statements of case, copies of all the documents on which they intended to rely and any witness statements. The parties have complied with the Directions. The Respondent's letter dated 23 July 2021 stands as his statement of case together with a schedule in which he identifies twenty three disputed items. The Respondent's case is set out in a document dated 13 August 2021 and in a counter schedule. The Tribunal has a bundle of documents running to 218 pages.

6. The Tribunal did not inspect the Premises. The hearing was held by video on 4 November 2022. The Applicant represented himself and the Respondent was represented by counsel, Ms. Amy Kelly. The Tribunal heard evidence from the Respondent's Income Manager, Ms. Liz Preston.

The Applicant's case

7. The Applicant believes that Derwent and Solway Housing Association's principle aim when it set up the scheme was to recover the cost of development as well as the running costs from leaseholders.

8. The Applicant asks for "full transparency in the pricing policy". He believes that some leaseholders, by implication him and his wife, subsidise other categories of residents. The Applicant asks if "all the charges contain an excess 'profit' charge above the actual cost? He asks, "what is included in the Sundry Services…in the two Management fees…[and] in the Maintenance Charge?" The Appellant asks how the annual charge of £2,850 for the Sinking Fund is justified?

9. At the hearing, the Appellant based his case on three points: (1) a comparison between what he pays and what a tenant pays, (2) a comparison between what he pays and what other UK leaseholders pay, and (3) on loss of amenity.

10. The Applicant states that "in order to dispute the very high annual cost of residence for homeowners in the scheme, I have had to adopt the same principles of addressing each and every item in the lease holder's agreement". He does this in a spreadsheet. The Appellant concludes that "it is totally unacceptable for a homeowner to have to pay £285,000 for the purchase of an apartment…and then to have to pay additional annual charges totalling £7,084".

The Respondent's case

11. The Respondent relies on the terms of the Lease. It denies that the service charge includes the initial cost of developing the scheme along with the current running costs. It states that only the actual costs incurred, plus a management fee, is charged to leaseholders. The Respondent denies that some leaseholders subsidise other categories of resident. Leaseholders pay 1/69th of the total costs to run and maintain the scheme. It denies that there is any profit element in the service charge. The Respondent only passes on the actual costs incurred. The only income that the Respondent receives comes from the management fee. The Respondent is transparent about what is included in the service charge and how it is calculated. The Respondent addresses the specific items raised in the Applicant's spreadsheet in a counter schedule.

The Law

12. The law relevant to the application is set out in the annex to this decision.

Reasons for the decision

13. The Applicant had no previous knowledge or experience of leasehold property when he purchased his flat and he did not obtain any legal advice before making his application. This is evident from the approach he has taken to the case. The Applicant states in his application that having paid £285,000 in 2016, it is excessive for him to pay over £7,000 per year on a property he owns. He says this is well above the industry norm and that

similar properties incur total charges in the region of £4,000 per year. He states that anything over £5,000 is expensive and says that the Tribunal "should definitely be asking questions". The Respondent demonstrates a basic lack of understanding about the basis on which the service charge is made.

14. When determining the amount of a service charge, s.19 of the Act requires the Tribunal to consider whether the relevant costs which make up the charge are reasonable in amount. This means looking at the individual items that make up the total amount of the charge. This is not an exercise in comparing the total amount of the service charge for one leasehold property against averages or norms for other properties. The Applicant's approach is fundamentally flawed.

15. The Tribunal requires evidence on which to make its decision. The Appellant asserted that the average service charge bill in London is about £1,800 to £2,000 a year, but he did not provide any evidence to support his statement and when asked about this at the hearing he referred to the website of the Homeowners Alliance. To this site, he attributed the statement that anything over £5,000 is expensive. The Applicant did not produce relevant parts of the website to be considered by the Tribunal. In any event, such information is not relevant to the Tribunal's consideration of matters.

16. The Applicant accepts that he is bound by the Lease and he confirmed at the hearing that he and his wife were advised about its terms when they purchased their flat in 2016. He said that he went into matters with his eyes open. The Lease fixes the basis on which the service charge can be made.

17. The service charge provisions are set out in clause 7 of the Lease. The Applicant agrees in the Lease to pay the service charge which is the estimated expenditure likely to be incurred in the account year in respect of the specified matters. The service charge is based on the actual costs incurred the previous year, adjusted for inflation and any expected variation. There is a reconciliation process at the end of the year and any surplus or deficit is reflected by an adjustment to the service charge expenditure in the following year.

18. As part of the service charge, the Applicant is liable to pay "an appropriate amount as a reserve for or towards the matters specified …". This "Sinking Fund Provision" is defined in Schedule 6. It includes the costs or anticipated costs of renewal or replacement or major overhaul of the matters covered by the service charge and "all such other items of future contingent capital expenditure as are not recovered by the Service Charge".

19. Further, the Applicant is liable to pay a "Sinking Fund Contribution" which is defined in Schedule 6 as the Percentage of the Market Value of the Premises as at the date of an assignment of the Lease. The "Percentage" is defined as "1% for each year (after the date of this Lease) (apportioned if necessary on the basis of complete months) of the Leaseholder's occupation of the Premises".

20. The Applicant did not provide any evidence to support his assertion that he is paying for the initial costs of the development as part of the service charge. He was unable to explain the basis of his statement when he was asked about it at the hearing. The Applicant's assertion is without any foundation.

21. The Applicant asks for "full transparency in the pricing policy". This is to be found in the terms of the Lease and in the comprehensive documents that the Respondent has produced.

22. The Applicant believes that he is subsidising other categories of residents and relies on conversations he has had with some of his neighbours to back this up. He has not provided anything to back up his belief. The Applicant's assertion is contradicted by the evidence. The breakdown provided by the Respondent to the Applicant with his annual service charge statement shows that his share of the Total Service Charge and the Amenity Charge is calculated as 1/69th of the total. There are sixty nine flats in the scheme.

23. The Applicant failed to explain his assertion that the Respondent adds a profit element to the charges it makes. The documents produced by the Respondent demonstrate that items are charged at cost.

24. The Appellant's case is that his service charge for 2021/22 is £7,084. To arrive at this figure, he has added £2,850 to the £4,233 shown in his annual statement. £2,850 is 1% of the purchase price of £285,000, the Applicant and his wife paid in 2016 and represents the annualised equivalent of the one off Sinking Fund Contribution which is only payable when the Premises is assigned at some future date. The Applicant's figure of £7,084 is therefore overstated. He contractually agreed to pay the Sinking Fund Contribution when he signed the Lease. It does not form part of the Service Charge. The provision is unusual and onerous but the Applicant is bound by it.

25. The amount claimed from the Applicant for 2021/22 is £4,233.32. In his written submission, the Applicant states that anything more than £5,000 would be expensive, suggesting that £4,233.32 could be acceptable to him. The application relates to the service charge demanded for 2021/22 which represents the budget estimate for that year as opposed to the actual service charge incurred which will not be determined until an end of year reconciliation and statement is prepared by the Respondent.

26. The Notice of Service Charge Increase dated 18th February 2021 breaks down the service charge into three parts: (1) "Service Charge - £51.73" per week (£2,689.96 per year), (2) "Amenity Charge - £19.33" per week (£1,005.16 per year) and (3) "Management and Maintenance - £10.35" per week (£538.20 per year). The total is £81.41 per week (£4,233.32 per year). The Notice incorrectly refers to 'Management & Maintenance" whereas the accompanying schedule clearly identifies that in fact, management charges are only levied on the Service Charge and the Amenity Charge with the reference in the Notice to "Management & Maintenance" more correctly identified in the accompanying schedule as "Total Maintenance Charges" which do not attract any management charge. The Applicant is charged 1/69th of the service charge and amenity charge and 1/22nd of the Total Maintenance Charges because these are only relevant to leaseholders.

27. The Respondent has provided a detailed breakdown of the actual expenditure for 2019/20 and supported this with certified accounts. A statement is also provided for the sinking fund. The Tribunal has copies of invoices to substantiate the expenditure. The Respondent's documentary evidence is comprehensive in this regard and uses this as the basis for the 2021/22 on account service charge budget making adjustments where it considers these may be required.

28. Some of the terms used by the Respondent lack clarity. "Service charge" should refer to the total amount being claimed from the Applicant, but it is used in the annual statement to cover specific services such as staff costs, monitoring and response, costs eligible for housing benefit and maintenance contracts. One of the largest items is "sundry services" which is not defined. "Amenity charges" are services ineligible for housing benefit but otherwise they are no different from the services covered by "service charge". The distinction is made for the purpose of demonstrating eligibility for housing benefit for those residents who claim it but is of no general application. The Respondent includes under the heading "Total Maintenance Charges" items that are only relevant to leaseholders. Unhelpfully, the term "Maintenance Charge" is repeated but not explained. Building insurance and boiler servicing and repairs are the responsibility of the individual leaseholders and not the landlord. These costs are born by the Respondent as landlord in respect to the tenanted flats and the cost recovered as part of the rent.

29. The Applicant asks, what is included in "sundry services". This is a legitimate question because the answer is not obvious form the paperwork. Doing the best it can on the evidence before it, the Tribunal by a process of elimination has identified the items from the "service charge computations – Greta gardens actual service expenditure for year ended 31st March 2020" which lists each individual item of expenditure. The same is true of the "maintenance charge" which is only payable by the leaseholders.

30. "Management fees" are charged under both "Total Service Charge" and "Amenity Charges". This is because of the artificial distinction made between the two categories. The result is no different because 15% is charged on the combined total. The Applicant states in his spreadsheet that the charge is excessive and provides no benefit to residents. He says that he does not know what he is paying for. Clause 7 of the lease allows the landlord to charge management fees which are a necessary cost of putting in place, monitoring and administering the services provided to the property.

31. Relevant guidance is set out in the Royal Institution of Chartered Surveyors' Residential Management Code and in the Association of Residential Housing Managers Code of Practice for Private Retirement Housing. Both sets of guidance are approved under s.87 of the Leasehold Reform, Housing and Urban Development Act 1993 which gives them additional weight. With respect to management charges, the RICS guidance identifies that "…basic fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income. This method is preferable so that leaseholders can budget for their annual expenditure. ….". The ARHM Code of Practice provides that "Managers should calculate management fees as an average cost per unit of accommodation. Managers should not use any other method of calculating management fees unless the lease specifically provides for another method of collection, or unless it can be shown that such an arrangement does not operate to the advantage of leaseholders."

32. The Tribunal will apply the RICS and ARHM guidance rather than the Respondent's 15%, for which there is no express provision in the Lease. The Respondent's service charge budget identifies the total projected expenditure on actual services to be provided under the service charge provisions for 2021/2022 to be £125,502.11 with management charges at 15% being £18,825.32 equating to £272.83 for each of the 69 flats within the scheme. Based upon its knowledge and experience, the Tribunal considers the budgeted management charge to be reasonable for a property of this nature which includes some

commercial elements and offers a higher range of services than is typically provided by leasehold residential premises.

33. The Tribunal invited the Applicant to take it through each item in his spreadsheet, but he decided not to do so because he accepted that the Respondent was entitled to charge the costs which are supported by evidence. The Applicant accepted that he had not provided evidence to substantiate his case. For example, the amount claimed for staff costs is £1,325.38 whereas the Applicant put froward a figure of £900.00. This is not based on any proper analysis of the facts which are established by the Respondent in its counter schedule and there is no evidence to support the £900.00. This pattern is repeated throughout the Applicant's spreadsheet. The Tribunal will therefore not consider each individual item raised by the Applicant. The Tribunal has addressed the Applicant's case as it is presented to it and made its determination based on the evidence it has from both parties.

34. The Appellant made three points at the start of the hearing, (1) and (2) asks the Tribunal to make a comparison between what he pays and what a tenant pays, and what he pays compared to what other UK leaseholders pay. This is not the relevant basis on which to determine the reasonableness of the service charge. Point (3) is an alleged loss of amenity in support of which the Applicant relied on the closure of a bistro. This is not a relevant consideration because it does not come within the scope of the service charge. There is perhaps some confusion because of the use of the term "amenity charges".

35. The Tribunal determines that the on account budget service charge of £4,233.32 for 2021/22 is reasonable and is payable by the Applicant.

Dated 10 November 2022

Judge P Forster

ANNEX

S.18 of the Landlord and Tenant Act 1985 defines "service charges" and "relevant costs":

(1) In the following provisions of this Act "service charge" 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.

(2) The relevant costs are 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.

(3) For this purpose—

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

S.19 of the 1985 Act deals with limitation of service charges:

(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.

S.27A of the 1985 Act deals with the liability to pay service charges:

(1) An application may be made to a leasehold valuation 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.

RIGHT OF APPEAL

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.

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.

If the person wishing to appeal does not comply with the 28-day time limit, that 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.

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.