



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

Case Reference : MAN/00EQ/LSC/2022/0075 and
MAN/00EQ/LSC/2023/0015-0017

Property : Ella Grove, Off Mobberley Road, Knutsford,
Cheshire, WA16 8UT

Applicant : Peaks and Plains Housing Trust:

Respondents : NJ Walton, HM Garner, VM Hudson, VM Hudson

Type of Application : Landlord and Tenant Act 1985 – s27A

Tribunal Members : Judge K Southby
Mr H Thomas

**Date and venue of
Hearing** : 7 July 2023
Paper determination

Date of Decision : 10 July 2023

DECISION

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DECISION

- A. The sinking fund elements of the service charges for 2021-22 and 2022-23 are not payable at this point in time.**

REASONS

Preliminary and background

1. An application dated 10 August 2022 was made to the Tribunal by the Applicant under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination of liability to pay, and reasonableness of the sinking fund element of the service charges in relation to flats 15, 25, 29 and 31 Ella Grove, off Mobberley Road, Knutsford WA16 8UT (“the Properties”). The application related to the service charge years 2021-22 and 2022-23 inclusive and was made by Peak and Plains Housing Trust as the Freeholder/Landlord.
2. The Respondents are named as Ms NJ Walton, Ms HM Garner, Mrs VM Hudson, Ms L Jones, being the Leaseholders at the Properties.
3. Directions were issued by Legal Officer David Higham on 13 April 2023 and all parties agreed to this matter being determined by way of a paper determination. No inspection of the property was considered necessary.

The Leases and the service charge machinery

4. The Tribunal was provided with copies of the Leases for all of the properties which are identical.
5. Clause 3 (vii) deals with service charges and requires the leaseholder...
“to promptly contribute and pay the fair proportion of costs and expenses outgoings and matters mentioned in the Fifth Schedule hereto including all and any Value Added Tax due thereon in advance...”
“the Council shall on or before the First day of April in every year estimate what shall require to be done in respect of such matters mentioned in the Fifth Schedule during the year then next ensuing or such extended period as the Council shall deem necessary including allowances for future major expected items of expenditure and any amortization necessary subject (as too such extended period) to the agreement of the Lessee and failing agreement then the provision relating to disputes in this Lease shall apply (and any costs thereof shall be borne by the Lessee) making all necessary allowances for surpluses or deficiencies and of previous estimates and payments and shall certify the proportionate amount of such costs which each Lessee shall be liable to contribute as aforesaid and such certificate shall be binding and conclusive...”
6. Clause 8 deals with disputes and states:

“If any dispute or difference shall arise between the parties hereto in respect of anything other than a matter for which dispute or arbitration procedures have already been laid down aforesaid under this Lease such dispute or difference shall be referred to the determination of a single arbitrator to be agreed by the parties or failing agreement by two arbitrators one to be appointed by each party or their umpire under the provision of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.”

7. The Fifth Schedule describes the service charge matters. Relevant wording is extracted below:-

“1. The costs and expenses of maintaining cleaning replacing repairing making good structural defects redecorating and renewing (including day to day repairs and any taxes) of:

(a) The main structure and in particular the roof chimney stacks gutters and pipes walls beams sewers supports drains and foundations of the Estate insofar as they support and benefit the Block and the Structural Envelope and Structural Fabric of the Block (being all that part of the block not hereby specifically demised

(b) The gas and water pipes drains electric cables conduits and wires and other services and pipes in under or from the Demised Premises and the Estate and enjoyed and used by the Lessee in common with the owner and lessee and other tenants of the Council of other flats in the Estate

(c) The entrances passages lights landings door glass balustrades and staircases together with all surfacing materials thereof and any furniture and fittings therein or thereat of the Block

(d) The boundary walls doors gates hedges and fences footways paths amenity and drying areas refuse disposal and bin store areas and any sheds and/or lock up facilities (if any) of the Block and also the paved and car parking areas adjacent to the vehicle parking space demised to Lessee and/or garage(s) (if any)” 9 “2. The costs and expenses (including any taxes thereon) of:.....

(e) Periodically carrying out schemes of improvement and modernisation.....”

“4. The fees costs and expenses of all general expenses properly payable or incurred in the good management of the Block.....together with such reasonable sum as the Council shall in their discretion deem a proper reserve to meet an appropriate part of the estimated future obligations and liabilities in respect of any of the matters referred to above

Law

8. Section 27A(1) of the 1985 Act 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.*

9. The Tribunal is “the appropriate tribunal” for these purposes, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
10. 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.*
11. 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.*
12. “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.*

The Issues

13. The sole issue before the Tribunal is to determine whether service charges in relation to the Sinking Fund are payable and/or reasonable. The application concerns the 2021-22 and 2022-23 service charge years.

Evidence

14. Flat 15 lease is dated 22/11/2004, between Macclesfield Borough Council and Natalie Jane Walton. Current leaseholder is Ms Natalie Jane Walton
15. Flat 25 lease is dated 18/02/2002, between Macclesfield Borough Council and Helen Mary Garner. Current leaseholder is Ms Helen Mary Garner
16. Flat 29 lease is dated 09/09/1996, between Macclesfield Borough Council and Valerie Maud Hudson. Current leaseholder is Mrs Valerie Maud Hudson

17. Flat 31 lease is dated 19/04/2004, between Macclesfield Borough Council and Stephen William Valentine and Andrea Feketeova Valentine. Current leaseholder is Mrs Lyndsey Jones
18. All of the above leases have the same wording.
19. It is common ground between the parties that Sinking Fund charges have not been charged throughout the lifetime of the Lease. They were introduced and included with service charge demands in the financial year 2021/22.
20. The Applicant states that there was consultation with the Leaseholders, that the Sinking Fund is held in a separate bank account in compliance with s42 of the Landlord and tenant Act 1985 and that the calculation of the sums charged through the service charge account in respect of the sinking fund were arrived at following a survey process by Savills.
21. The Leaseholders dispute that there was meaningful consultation and query the period of time which forms the basis of the sinking fund calculations, and the amounts charged to the fund.

Decision and reasons

22. We are asked to consider firstly whether or not the sinking fund charges are payable and also whether, if they are payable, whether they are reasonable.
23. Our starting point is the Lease. The fact that an element of service charge has not been levied by the Landlord historically does not mean that it cannot be charged, if it is recoverable under the terms of the lease. Whilst this may be an unwelcome change for Leaseholders, previous failure to levy a charge which operated in their favour does not prevent a landlord from operating the service charge in accordance with the terms of the lease.
24. We carefully considered the terms of the lease. We note that the extract from the Lease which the Applicant includes in their statement of case does not include the latter section, which we consider to be important.
25. We accept that there is provision under the Lease for the operation of a sinking fund. Clause 3(vii) provides for both a service charge which is estimated in advance for sums payable during the forthcoming 12-month period (which is then balanced against actual expenditure) and also 'such extended period as the Council shall deem necessary including allowances for future major expected items of expenditure'. In our view this latter part gives the Council the opportunity to operate a sinking fund.
26. However, the clause also states that the application of this extended period is subject to the agreement of the Lessee. Indeed, the Lease explicitly refers in brackets for the avoidance of doubt, that the agreement referred to is agreement as to this extended period. In our view this means that under the terms of the Lease if the Lessees do not agree to the extended period deemed necessary by the Council for the purposes of operating the sinking fund, then it

cannot be operated by the Landlord without first being referred through the disputes procedure in the Lease. In the case of this Lease clause 8 sets out that matters of dispute should be referred for arbitration.

27. We first considered whether we were satisfied that there is an absence of agreement as to the extended period that the Council has deemed necessary. We find that there is. The extended period is the basis for the sinking fund, and it is clear from their written submissions that the Leaseholders take issue not only with the amount charged through the sinking fund but with the period of time chosen as the basis for the calculations. We are mindful that the Leaseholders are not legally represented and therefore it is not wholly clear whether the Leaseholders reluctantly accept the existence of the sinking fund, but object to its basis of calculation, or object to its existence in its entirety. In any event, even if the Leaseholders do not object to the sinking fund itself it is clear by their resistance to paying the sums involved and their written explanations for why, in challenging the Applicant's claim to the Tribunal that there is no agreement here as to the extended period which the Landlord has deemed necessary. On that basis, at this point in time, and unless and until the terms of the lease regarding disputes have been complied with, the charges levied to the sinking fund are not recoverable as service charges under the Lease.
28. On the information we have been provided with, this has not taken place. Accordingly, we find that the elements of service charge which relate to the sinking fund are not payable by the leaseholders at this point in time. This does not preclude them from becoming payable in future if the terms of the Lease are complied with.
29. We make no findings as to the reasonableness of these sums at this stage as the sums are currently not payable, and therefore the issue does not arise and to do so risks trespassing on the role of the arbitrator, should the matter be referred in that manner.

Tribunal Judge K Southby
10 July 2023