FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/23UD/LSC/2024/0007**
Property	**:**	**Numbers 17, 22, 24, 26, 28, 30, 31, 34, 37, 51, 61, 71, Darfield Road Guildford GU4 7YY**
Applicant	**:**	**Mrs A Moore and others**
Representative	**:**	**None**
Respondent	**:**	**Anchor Hanover Group**
Representative	**:**	**Counsel Mr S Keeling-Roberts**
Type of Application	**:**	**Determination of liability to pay and reasonableness of service charges Section 27A Landlord and Tenant Act 1985. Orders 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**
Tribunal Members	**:**	**Mr I R Perry FRICS Mr E R Shaylor MCIEH Mr P E Smith FRICS**
Date of Hearing	**:**	**22nd November 2024**
Date of Decision	**:**	**22nd November 2022**

DECISION

Summary of Decision

1. The Tribunal determines that the service charge for 2023/24 is reasonably incurred and is therefore payable except for £240 in respect of cleaning within the service charge which shall be repaid to the Leaseholders within 14 days of the receipt of this decision. This sum to be credited to the service charge account for the current year 2024/25.

2. The Tribunal finds that the service charge applied for 2024/25 is reasonable and is payable by the Leaseholders.

3. In this case the Respondent has previously confirmed that it will not oppose the Applicant's application under Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Accordingly, the Tribunal orders that the costs incurred in this hearing are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any tenants party to these proceedings.

Background

4. On 12th January 2024 Mrs A Moore, the leaseholder of 28 Darfield Road, Guildford, GU4 7YY applied to the Tribunal for determination of liability to pay and the reasonableness of service charges for the years 2023/24 and 2024/25 relating to estate charges for the Darfield Road leasehold retirement development ("the Estate") in Guildford. 11 other leaseholders joined the original Application. The Application was made in respect of 12 properties.

5. The Applicant disputes various increases in service charge items and questions whether repairs and maintenance have been carried out to a reasonable standard and are reasonably incurred by the Respondent, namely Anchor Hanover Group ("Anchor").

6. The Applicant also sought orders 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, suggesting that this should apply to all the properties in the Estate.

7. The Tribunal issued directions on 12th July 2024 for a Case Management Hearing to be held on 28th August 2024. Following that hearing further directions were issued on 28th August 2024 and the matter was set down for a hearing on 22nd November 2024, to be preceded by a site inspection.

8. The Tribunal was provided with an electronic **hearing** bundle of some 151 pages. References within square brackets [ ] refer to the electronic numbered page within that bundle.

9. The Tribunal was also provided with a **document** bundle of 256 pages for which references will be prefixed D, thus [D] and a bundle of **photographs** referred to as [P].

10. The Tribunal emphasises that these reasons are not a record of the oral hearing or a recital of all the written arguments and evidence before the Tribunal. Not only is that not its purpose, but if it sought to do these things, the document would become extremely long and its purpose in providing a basis for the Tribunals decision would almost certainly be obscured, and not enhanced. The Decision therefore only sets out those matters received which were relevant to and assisted in the making of the decisions the Tribunal was required to make in determining the various issues and Applications.

The Law

27A Liability to pay service charges: Jurisdiction

(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.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

The Inspection

11. The Tribunal inspected the Estate at 10.00 am on Friday 22nd November 2024 accompanied by Mrs Moore, Ms M Chalk – the resident Estate Manager, Mr D Whitfield and Mr A Hesford – both of Anchor Housing, and Mr S Keeling-Roberts – Counsel for Anchor. The parties were asked to point the Tribunal to any specific items they wished the Tribunal to inspect.

12. The Estate comprises a development of some 35 2-bedroom bungalows and 8 1-bedroom flats for people over the age of 60, all situated on the north-east side of Guildford, about 2½ miles from the centre of the city. The development was built in the late 1990's as part of a larger mixed residential development. The Tribunal was told that each property has a garage. The garages are within small blocks dotted around the Estate. There is a site plan within the lease for number 28 [D34].

13. The Tribunal explained its jurisdiction in this case as per the Application, specifically that it was looking at the reasonableness and payability of works carried out by the Applicant, and it could not require the Applicant to carry out any specific future works.

14. The Tribunal was specifically referred to a distorted fence panel on the north-east boundary of the site, several garage doors where the paint surface is peeling away from the metal door, flaking paintwork to garage door frames, the guttering to number 24 where a repair has been completed, the repointed walls to the bin store, a number of new replacement fence panels and gates the colour of which does not match the older fencing, ivy growing up the wall of the garage marked 391 on the plan [D34], the small fence separating the patios to numbers 28 and 24 where ivy has been removed from the garage at the rear of number 28. And where a path has been reinstated to number 47.

15. The Tribunal further noted a wall to an electricity sub-station that has been partially demolished with the site now protected by Heras fencing. The Tribunal was informed that the is the responsibility of the relevant electricity company.

16. The Tribunal noted that the gardens and lawns are all maintained by the Respondent although most residents maintain a small patio area at the rear of their property, and some maintain a small border at the front. This is done by consent from the Respondent

The Lease

17. The Tribunal was provided with a copy of the original lease of 28 Darfield Road which is now owned by Mrs Moore, this to be an example of all the leases on the Estate.

18. The lease is dated 26th July 1999 for 99 years from that date. The property is subject to a service charge described at paragraph 3 [D20] and defined at Part I of Schedule 3 [D29]. Part II of that schedule sets out the terms of a Sinking Fund [31].

19. The items included within the service charge are not disputed, but the Tribunal specifically notes that the cost of providing accommodation for a resident warden are included [D30].

The Applicants' Case

20. Mrs Moore succinctly sets out the case for the Applicants in a signed position statement [45] which is best detailed as seven separate issues relating to whether costs were reasonably incurred, namely gardening, repair contractors, refurbishment of Estate Manager's accommodation, garages, fences gates and walls to dustbin area, cleaning and window cleaning. Additionally, the Applicants also dispute the reasonableness of the budget for 2024/25 namely the overall increase of service charge more than Retail Price Index ("RPI") or Consumer Price Index ("CPI"), and insurance.

21. Anchor provided their response in an undated position statement [87-88] and provided a witness statement from Mr Darren Whitfield [89-100]. Mr Whitfield is the Home Ownership Compliance and Support Lead for Anchor. Mr Keeling-Roberts had provided a skeleton argument in advance of the Hearing and Mrs Moore had added her own comments to that document. This greatly assisted the Tribunal.

The Hearing

22. At 11.40 am on 22nd November 2024 a hearing was held at Guildford County Court. Mr Keeling-Roberts appeared for Anchor with Mr Hesford and Mr Whitfield in attendance. Mrs Moore represented the Applicants but none of the other Applicants appeared to support her.

23. The Tribunal first considered the issue of gardening. The Applicants' case was that the work had fallen below the expected standard and no-one from Anchor was monitoring the work. Mrs Moore quoted someone from a meeting in summer of 2023 who said that "all contractors have to do is turn up and they get paid, regardless of whether they carried out the schedule of work". The only evidence provided was two black and white photographs [114 and 115]. Mrs Moore says that the leaseholders had not received value for money.

24. The Tribunal was referred to the minutes of a budget meeting held with leaseholders in November 2022 when the budget for grounds maintenance for 2023-2024 was reduced at the leaseholders' request by £6,376 to £8,124 per annum [D256]. Anchor's submission is that it is not surprising that the standard of work reduced. Mr Whitfield confirmed that £400 had been credited back to the service charge account for two missed visits by the gardeners and noted that at the meeting the following year the budget was increased to £12,500. It was noted that the number of visits changes through the year due to the season itself and weather conditions.

25. Secondly the Tribunal considered the issue of repair contractors. Mrs Moore referred to a number if items which do not form part of the service charge, namely the damage to and repair of her own bathroom. None of these costs had been met from the service charge account and were not within the remit of the Tribunal.

26. In her submission Mrs Moore referred to a gutter repair to the rear of the property adjoining her own home. The Tribunal had noted this during its

inspection. Mrs Moore explained that the first repair had proved ineffective, and the contractor was therefore required to return. Mr Whitfield that this was a patch repair and explained that if any work was done to a poor standard the contractor would be required to return and remedy the fault. The repair has held up to date.

27. Mrs Moore referred to the replacement fence panels and gates around the Estate which had not been treated/painted to match the existing fences. A discussion followed as to whether the fences and gates would be made of pre-treated timber but in any case Mr Whitfield said that he did not know whether the specification for those works would have included any additional treatment, but surmised they might not have done, so the leaseholders had not been charged for that which had not been done. Mr Whitfield stated that Anchor were considering external redecoration of the whole site in 2025/26 which would include all previously painted surfaces for example fences, gates, fascias and soffits, garage doors and frames. Mr Whitfield thought that the garages had last been "decorated" about 10 years ago. The Tribunal has no jurisdiction to require Anchor to do any work it has not yet done.

28. Mrs Moore suggests that repair items are being replaced with the cheapest materials but provided no direct evidence of this which relates to matters within the service charge. It was an assumption she made due to the first gutter repair having to be re-done.

29. Thirdly Mrs Moore referred to work carried out by Ian Williams Limited to refurbish the Estate Manager's home. This work comprised the refitting of the bathroom and kitchen which both dated from when the properties were first built. It was suggested that using this national contractor to carry out the works on the property, which is effectively owned by Anchor, is evidence that local contractors used for other works were of lesser quality, otherwise why were they not used for the refurbishment? A question was raised as to whether using a national contractor might be more expensive than using someone more local.

30. Mr Whitfield explained that Anchor uses Ian Williams Limited for planned works across the country and the company has many bases around the country. Because of this they use a national long term qualifying contract. It was established that the cost of the works to the Estate Managers home cost £11,865, albeit there were additional administration charges. No evidence was given that this was not a fair and reasonable cost for the works done, and in the Tribunal's expert opinion the cost was within a range of reasonableness for the work done.

31. In an email to Mrs Moore dated 23rd August 2024 Mr Hesford, Head of Litigation at Anchor, refers to a 'quote' of around £60,000 to repaint the garages and all fences on the Estate. Mrs Moore thought this was evidence of how expensive Ian Williams Limited is. Mr Hesford explained that this had been a 'ballpark' figure and not an accurate tender for the works, and no order had been placed. Mr Hesford also suggests that external redecoration of the whole estate is overdue.

32. Fourthly Mrs Moore referred to garage maintenance. During the earlier inspection the Tribunal had taken note of the decorative condition of the garages, fences and gates. Most of the garage doors had small areas of peeling paint and rust at the base of the doors, and the frames showed small areas of peeling paint (consistent with last painting 10 years ago as stated by Mr Whitfield). They had also noted that the bin store now had a gate, and the walls of the store have been repointed. The cost of any works to the garages appears to be included within the overall account for the Estate. The Respondent emphasised that Anchor is keen on transparency, it may wish to consider showing expenditure to the garages as a separate item in their accounts.

33. Fifthly Mrs Moore turns her attention to the fences and gates around the Estate. She suggests that the replacements are of the cheapest quality and "are not withstanding the elements of the grounds". Further, that new panels and gates have not been aligned to the paving.

34. In her statement Mrs Moore refers to various issues with the Bin Store area and claims that a contractor repointed a small section at the top of the wall but that had been 10 weeks before her submission at which time no further work had been done. She accepts that the wall had now been completely repointed and a new gate installed.

35. Mrs Moore referred to two issues regarding some subsidence/settlement and a drainage issue detailed within a statement from Mr Hurlow who lives at 47 Darfield Road. Mr Hurlow is concerned that works required to the drain close to his property needs some further attention. No cost for these has been made within the service charge so this is not an issue that can be considered by this Tribunal.

36. Sixthly Mrs Moore refers to cleaning of the limited common parts in the two blocks of 4 flats. The leaseholders suggest that this work is not being monitored and is unsatisfactory. As evidence they provide photographs [130-132] and an email dated 28th March 2023 [115] from Mr B Nicholson who is a resident within the block at 24-30 Darfield Road. The Applicant's case was that during 2023/24 the cleaner was not working to a good enough standard.

37. For the Respondent Mr Whitfield explained that the cleaner they use is a direct employee, has worked for Anchor for some 14 years, and he has been aware of concerns regarding the standard of work. Anchor suggest that the service is reasonable for the cost charged.

38. The last specific area referred to by Mrs Moore relates to window cleaning. She suggests that no-one is checking whether the works are being done in accordance with the contract, that there have been missed visits for which they should not pay. Mrs Moore said that during 2023/24 a reduced price contract was accepted by Anchor, which resulted in the window cleaners missing several windows on each visit and uses brushes rather than cleaning by hand, resulting

in poor quality cleaning. Her argument was that the contract was for full cleaning, therefore the reduced price was not a relevant excuse.

39. Mr Whitfield informed the Tribunal that to reduce costs for leaseholders that Anchor had appointed a contractor who had quoted £124 per month for a visit to deal with 40 properties and it was unsurprising that the service provided was not at the required standard but that they had effectively received the service they had paid for. A new contractor has been appointed at a cost of £240 per month. There have been no known complaints with the new contractor.

40. Finally in her submission Mrs Moore had questioned to overall budget costs for 2024-2025 and refers to Anchors estimated rate for CPI of 7% for 2023-2024 but the actual rate was only 2.3% in April 2024 and CPIH, which includes housing costs, which was 3% in April 2024.

41. For the Respondent Mr Keeling-Roberts reiterated that some costs had risen far more than the inflation rate. Specifically, the increased gardening budget, replacement heating systems and insurance.

42. Mr Whitfield explained that the insurance policy for the Estate forms part of a national block policy which is negotiated with the insurer on a 3-year rolling basis to provide the best policy which would include consideration of the amount of any excess. He told the Tribunal that the premium had risen by £7,421 in one year (more than double the previous premium) for a number of reasons including that in the previous 12 months there had been a high number of small claims across the policy, the cost of claims made on the policy were 136% of the premium, and that the value of the properties insured had all risen.

43. Mr Whitfield informed the Tribunal how the premium for the bulk policy is divided between different sites by estate value. He assured Mrs Moore that she was not paying any more for her element of insurance because of other Anchor developments that are more susceptible to claims, such as flood risk, because they are insured separately, he said. He also confirmed that the premium would be tested again in the market in 2025.

44. The overall premium for the Anchor total portfolio has risen from £600,000 in 2021/22 to £3.6m in 2024/25.

45. The disputed budget for 2024/25 also includes £12,000 for repairs to gas, electricity and water systems which is a new item, mostly relating to expectations regarding needs for replacement boilers. Mr Whitfield confirmed that as this is an estimated figure for the budget, if costs are not incurred the balance will be credited back to the service charge account. It was also clarified that a budgeted figure for fire alarms, lighting, door entry systems was not a new cost, but an existing cost split out from a previous budget line.

46. The Tribunal thanked the parties for the courteous way in which they had pursued their case and Mrs Moore was congratulated for having so diligently presented such a detailed case on behalf of her co-leaseholders.

Consideration and Decision

47. At the earlier inspection the Tribunal had walked through the whole site and found the gardens and grounds to be well managed. When the charge for gardens and grounds maintenance were reduced leaseholders had complained about the standard. An increase has now been implemented and the standard as noted by the Tribunal is acceptable. The Tribunal finds that the charge for gardening and grounds maintenance is reasonably incurred and is of a reasonable standard

48. The only repair brought to the Tribunal's attention was the gutter to number 24 which had required two visits from a contractor. The Tribunal considered that the repair was reasonable. There was no evidence of any cheap materials being used for any other repairs, they appeared to be standard. The Tribunal finds that the charges for repair have been reasonably incurred and of a reasonable standard.

49. Ian Williams Limited had been used by Anchor to refurbish the kitchen and bathroom at the Estate Managers accommodation which was originally built some 25 years ago. No evidence is given that the cost of those works, £11,865, was excessive and the lease specifies that the cost of works to that property are to be borne by the service charge. The Tribunal finds that the charge for the Estate Mangers accommodation is reasonably incurred.

50. The Tribunal noted the deterioration in the decorative condition of the garage doors and doorframes and the ivy growing on the wall of the garage numbered 391 on the site plan. Anchor had indicated that these might be decorated in 2025/26. There is no identifiable cost of works to the garages within the service charge accounts. Anchor have indicated that they may introduce a specific line within the service charge accounts to show expenditure on the garages.

51. The Tribunal noted that the walls to the Bin Store had been repointed and stabilised. New fence panels and gates have been fitted at different points around the site. Whilst their colour does not match the older fences there is no requirement to treat/decorate these at the time of installation, they are probably pre-treated, and leaseholders have not been charged for any treatment or decoration.

52. There is no evidence of any expenditure in 2023/24 or 2024/25 on any subsidence, settlement or drain issues within the service charges.

53. The Applicant had clearly demonstrated that the cleaning of the common areas in the two blocks of flats was not done to a sufficient standard and the Respondent had accepted they had issues with the member of staff concerned. The Tribunal determines that the amount charged is not reasonable for the service provided and 50% of the cost of cleaning in 2023/24 in the sum of £240 should be refunded to the leaseholders. This can best be achieved by crediting the amount to the service charge account for the current year.

54. The Tribunal determines that the window cleaning was not done to a sufficient standard, but the contractor has not been paid when the work was not done. The budget for window cleaning had been reduced to such an extent that it is not surprising that the standard was poor and the Tribunal notes that a new contract at a much higher price has been put in place. The Tribunal finds that the charge for window cleaning was reasonably incurred, and the work done was of a standard to be expected for the amount charged.

55. The Tribunal considered the budgeted charge for 2024/25 and noted the effect on the budget due to increased costs of insurance, reinstatement of some grounds and gardening works and £12,000 provision for gas, electric and water. The Tribunal notes that the increase is nearly 19% above the previous year but considers that the budget has been reasonably arrived at and is payable by the leaseholders.

Applications under s.20C and paragraph 5A 23.

56. The Applicant applied for cost orders under section 20C of the Landlord and Tenant Act 1985 ("Section 20C") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("Paragraph 5A").

57. The relevant part of Section 20C reads as follows:- (1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-Tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant…".

58. The relevant part of Paragraph 5A reads as follows:- "A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".

59. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge of the Applicants or other parties who have been joined. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be charged direct to the Applicants as an administration charge under the Lease.

60. The Tribunal has considered the applications for orders 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.

61. In this case the Respondent has confirmed that it will not oppose the Applicant's application under Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

62. Accordingly in this case the Tribunal orders that the costs incurred in this hearing are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants.

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. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.

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.