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| Crest |  | FIRST-TIER TRIBUNAL**PROPERTY CHAMBER** **(RESIDENTIAL PROPERTY)** |
| **Case reference** | **:** | CHI/43UC/LSC/2023/0148 |
| **Property** | **:** | 100 East Street, Epsom, Surrey KT17 1EB |
| **Applicant** | **:** | Maria D R Huerta Del Rio (Flat 1)Joseph Thompson & Charlotte Buttery (Flat 2)William Hayden (Flat3)Ross Dearman (Flat 4)Ariana Soheili (Flat 5)Kate Landowska (Flat 6) |
| **Representative** | **:** | Ariana Soheili[arianasoheili@hotmail.co.uk](file:///C%3A%5CUsers%5CNick%20Jutton%5CDownloads%5Carianasoheili%40hotmail.co.uk) |
| **Respondent** | **:** | Blueplan Limited |
| **Type of application** | **:** | For the determination of the payability and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985 |
| **Tribunal members** | **:** | Tribunal Judge H LumbyMr P Smith FRICSMr E Shaylor MCIEH |
| **Venue** | **:** | Havant Justice Centre |
| **Date of hearing** | **:** | 18 September 2024 |
| **Date of decision** | **:** | 19 November 2024 |

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| **DECISION** |

**Decisions of the tribunal**

1. The Tribunal determines that no service charge is payable by the Applicants in respect of the 2022 service charge year.
2. The Tribunal determines that the aggregate management fee payable by the Applicants for the 2021 service charge year is £375 plus VAT and that no amount is payable in respect of Sundries.
3. The Tribunal determines that no amount is payable by the Applicants in the 2021 service charge year in relation to accounting fees – annual certification.
4. The Tribunal determines that the appropriate aggregate level of the Applicants’ contribution towards communal electricity for the 2021 service charge year is £220 plus VAT.
5. The Tribunal determines that the appropriate aggregate level of the Applicants’ contribution towards communal cleaning for the 2021 service charge year is £300 plus VAT.
6. The Tribunal determines that no amount is payable by the Applicants in the 2021 service charge year in relation to landscaping and grounds maintenance.
7. The Tribunal determines that no amount is payable by the Applicants in the 2021 service charge year in relation to window cleaning.
8. The Tribunal determines that no amount is payable by the Applicants in the 2021 service charge year in relation to the emergency lighting system, fire alarm testing and risk assessments and audits.
9. The Tribunal determines that the appropriate aggregate level of the Applicants’ contribution towards general maintenance for the 2021 service charge year is £400 VAT.
10. The Tribunal determines that the aggregate amount of £1,055 demanded in respect of insurance for the 2021 service charge year is reasonable and payable.
11. The Tribunal determines that the aggregate amount of £1,000 demanded in respect of the reserve fund for the 2021 service charge year is reasonable and payable.
12. The Tribunal accordingly determines that the total aggregate service charge payable by the Applicants for the 2021 service charge year is £3,050 plus VAT where applicable and that nothing is payable by them in respect of the 2022 service charge year.
13. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord’s costs of the tribunal proceedings may be passed to the Applicants as lessees through any service charge.
14. The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under the Applicants’ leases.

**The application**

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Applicants in respect of the 2021 and 2022 service charge years, with the total value of the dispute amounting to £21,650.00.
2. The Applicants further seek 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.
3. No service charge accounts had been received from the Respondent or its managing agents for the years in question, instead the managing agents had provided a budget for 2021 and an identical budget for 2022. The Applicants question all the sums on both budgets. They also question whether the application of Section 20B of the 1985 Act absolves from any liability for service charge for these years.
4. The sums in dispute are therefore in respect of both years and are as follows for each year:
5. Management Fees £1,500.00
6. Accounting fees - Annual Certification £600
7. Sundries £100
8. Communal Electricity £370
9. Communal Cleaning £2,000
10. Landscaping / Grounds Maintenance £800
11. Window Cleaning £500
12. Emergency Lighting System £500
13. Fire Alarm Testing £ 500
14. Risk Assessments & Audits £500
15. General Maintenance £1,400
16. Building Insurance £1,055
17. Reserve Fund £ 1,000

**The background**

1. The Property is a building comprising six one bedroom flats. The building was converted from a former office building, with the leases being granted and occupation given in late 2020. The Property forms part of a wider estate shared with another building.
2. The Applicants are the six leaseholders of the Property and the Respondent is the landlord.
3. The Respondent’s managing agents were initially Landside Property Management Limited but they were replaced by The Larksworth Group in January 2023. The dispute in this case relates solely to the tenure of Landside Property Management Limited as managing agents.
4. The Respondent carried out an extension of the Property from October 2021, to create a further three flats. As part of these works, openings were created from the extension into the Property and a new front door was added. The erection of the extension made the interior and the windows of the Property dirty and caused substantial change and disruption to the external areas. The Applicants say that the works are still not fully completed.
5. In addition, there was a leak in the roof of the Property which was reported on 14 October 2022 but not addressed during the tenure of Landside Property Management Limited, exacerbating the issue and leading to the communal ceiling collapsing in December 2022.
6. The Applicants’ application was initially served on Landside Property Management Limited. Directions were issued by the Tribunal on 20 February 2024 and 22 March 2024. The Directions issued on 22 March 2024 set the date for the hearing of the case as 12 June 2024. The Applicants provided a bundle for the hearing and three of the Applicants attended in person. However, no responses to any communications were received by the Tribunal from either the Respondent or Landside Property Management Limited and no one from the Respondent or anyone representing it attended that hearing.
7. The Tribunal could not be sure that the Respondent had been notified of the existence of the case or the occurrence of the hearing on 12 June 2024 and so the hearing was adjourned until 18 September 2024 with the application and the directions all served directly on the Respondent at its registered office. A response was received from the Respondent which appeared to be a completed County Court questionnaire. The Tribunal is satisfied that the Respondent had notice of the hearing. No further responses were received from the Respondent and no one attended the September hearing on its behalf.

**The lease**

1. A specimen lease was provided by the Applicants and confirmation received that the other leases were all in the same form.
2. The lease provides for five different categories of service charge (being an apartment service charge, a residential service charge, a building service charge, an estate service charge and a parking service charge). The budgets provided for 2021 and 2022 did not distinguish between these charges, simply reciting global sums against items of charge. In each case, the tenant is to pay a fair and reasonable proportion of the costs properly incurred by the landlord.
3. The tenant is to make half yearly payments of service charge on account by reference to the landlord’s proper estimate of the likely charges for the service charge year ahead. Any excess over the estimate is payable within 14 days of demand. Any excess paid by the tenant is credited against future service charges.
4. The recoverable costs are broadly drawn and cover the categories referred to in the budgets provided. This includes payments towards a reserve fund.

**Tribunal determination**

1. As referred to above, the Respondent did not attend the hearing. Three of the Applicants appeared in person, being Ms Landowska, Ms Soheili and Mr Dearman. Ms Soheili acted as representative but all three participated, answering questions in a credible, coherent and open manner. The documents that the Tribunal were referred to are in a bundle of 165 pages, the contents of which the Tribunal have noted. The bundle included the Applicants’ statement of case (including extensive email correspondence between the Applicants and the managing agents and site photographs showing its condition during the extension works), the specimen lease and the Tribunal’s directions.
2. Having considered all of the documents provided and heard the submissions made by the Applicants, the Tribunal has made determinations on the issues as follows.

**Issue of demands**

1. Invoices were provided by the managing agents for the 2021 service charge year. The Applicants accept that these were properly served. The Tribunal found these in compliance with the section 47 of the Landlord and Tenant Act 1987. The Applicants stated that no invoices were provided for the 2022 service charge year, despite these being requested. They say that all they received was an email dated 19 September 2023 from Landside Property Management Limited with what purported to be the 2022 service charge budget pasted into the email. The Applicants questioned whether and to what extent the application of section 20B of the 1985 Act meant that they were not liable for any expenditure for the 2021 and 2022 service charge years.
2. Section 20B of the 1985 Act provides:

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2)  Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

1. Valid demands for payment of the on account service charge for 2021 were made within that year, although no year-end accounts were produced or final invoice for any balance due issued. Any further demand for payments for 2021 would be substantially after the 18 month period for their demand after they had been incurred and so would be time barred by Section 20B.
2. The impact of on account demands in this context was considered in the case of *Gilje v Charlegrove Securities Ltd* [2003] EWHC 1284 (Ch). In that case, Etherton J held that Section 20B did not apply where (a) payments on account are made to the lessor in respect of service charges, (b) the actual expenditure of the lessor does not exceed the payments on account and (c) no request by the lessor for any further payment by the tenant needs to be or is in fact made. The only difference between that case and this one in respect of 2021 is that in *Charlegrove* the on account payments had been made, in this they merely were validly demanded. However, it cannot be correct that a lessee would be able to rely on Section 20B where it has defaulted on a payment that had fallen due but would lose that benefit if it had complied with the demand.
3. Accordingly, the Tribunal concludes that the Applicants cannot rely on Section 20B to escape liability for the 2021 service charge year, save to the extent that the Respondent seeks to demand year end sums higher than set out in the budget provided for 2021. In addition, the sums payable will be subject to the findings of the Tribunal pursuant to this application. If the sums determined to be payable by the Tribunal are lower than those budget figures, that is the maximum amount payable.
4. The findings in *Charlegrove* do not apply to the 2022 service charge year because no sums have been validly demanded in respect of that year. In the case of *Skelton v DBS Homes (Kings Hill) Ltd* [2017] EWCA Civ 1139, the Court of Appeal held that the date of demand for the purposes of Section 20B is the date when a fully valid demand was received. As over 18 months has elapsed since the end of that year without valid demands for payment being served on the Applicants, the application of Section 20B(1) would prevent the Respondent recovering any service charge for that year unless Section 20B(2) applies.
5. That sub-section provides that Section 20B(1) will not apply if the lessees are notified within 18 months of the sums being incurred that the costs had been incurred and they would subsequently be required under the terms of the lease to contribute to them.
6. In this case, the Applicants were notified of the service charge budget for 2022 by an email in September 2023. However, the Tribunal does not consider that merely pasting a budget that was identical to the previous year into an email fulfils the requirement of Section 2oB(2). This did not amount to notification that the sums had been incurred or that they would subsequently be required to contribute towards them by way of service charge. The purpose of Section 20B, as confirmed by the Court of Appeal in *Skelton*, is that the lessee should have a proper demand for the service charge within 18 months of the relevant costs being incurred. On the evidence before it, the Tribunal finds that has not occurred and the Respondent cannot rely on Section 20B(2) to extend that period. As a result, the Tribunal concludes that the application of Section 20B means that the Applicants have no liability to pay any service charge for the 2022 service charge year.
7. The Tribunal determines that no service charge is payable by the Applicants in respect of the 2022 service charge year.

**Service charge sums in dispute**

1. The Tribunal has considered each of the service charge items set out in the budgets provided. It included the 2022 service charge in its consideration in case there were valid invoices served in relation to that year. However it has only included the decisions made in in relation to 2021 in its final decision at the start of this in relation to 2021 as it has already determined that no sums are payable for 2022. The sums payable in the event that valid invoices are found for 2022 are clearly identifiable in the text below.
2. As no accounts have been provided by the Respondent, the Tribunal has used the budget figures provided. However, as both these years have completed, it has made an assessment on what the year end figures should have been, based on the Respondent’s actions. It could have instead considered these figures at the commencement of the year based on what was reasonable at that point. However, given the failure to produce year end accounts, there is no legal route pursuant to the 1985 Act for the Applicants to recover any overpayment. Furthermore, it is inappropriate that the Respondent or its managing agents should benefit from receiving and retaining higher sums than is reasonable when those higher sums were payable as a result of its own default.
3. In some cases, the Tribunal has reached a decision on appropriate levels and these are the sums the Applicants should pay. However, if it transpires that the expenditure for that category is lower, the excess should be carried forward against future service charges. If that expenditure is in fact higher, no further sums beyond the Tribunal’s determinations will be payable. This accords with its determination in respect of Section 20B of the 1985 Act above.
4. As no submissions had been received from the Respondent, the Tribunal just considered the bundle provided by the Applicants and the submissions made by them at the hearing.

**Management fees (£1,500) and Sundries (£100)**

1. The Applicants argued that the managing agents in the two years in question had provided a poor level of service, pointing to the lack of year end service charge accounts and the failure to respond to the roof leak (and subsequent ceiling collapse) in 2022*.* They sent threatening emails when the sums demanded were not paid, rather than explaining the costs. It was hard to identify anything done by them for their management fee, other than twice arranging communal cleaning in 2021. The Applicants described the agents’ email claims to be taking action as amounting to false promises. They contrast their performance with The Larksworth Group who replaced them in January 2023; their fees were £600 a year less, they prepared year end accounts and they addressed issues not sorted by Landside Property Management Limited, such as the leaking roof. No explanation was provided as to what “Sundries” as a service charge line item covered.
2. The Tribunal noted that, on the evidence provided, all the managing agents appear to have done for the fee was issue two identical budgets, arranged communal cleaning on two occasions, sent various emails and issued invoices in 2021. A management fee of £1,500 per year in total would fall, in the Tribunal’s opinion, within the range of reasonable fees that could be charged if a reasonable service was provided. However, it also notes the limited services actually provided, the approach taken to recover unpaid amounts and the failure to provide year end accounts or evidence of sums incurred. It also considers that “Sundries” should be covered by the management fee. It finds that a 25% fee is appropriate in aggregate and therefore determines a reasonable fee is £375 plus VAT divided amongst the six flats for each of 2021 and 2022. This figure includes “Sundries” and no amount is payable under that heading.
3. The Tribunal determines that the aggregate management fee payable by the Applicants for the 2021 service charge year is £375 plus VAT and that no amount is payable in respect of Sundries.

**Accounting fees – annual certification - £600**

1. The Applicants argued that as no annual certification was carried out, no fee should be payable for either year.
2. The Tribunal has seen no evidence of any form of year end accounts or certification of them. £600 for this in any event appears to be a high fee for what should have been relatively simple accounts to certify. However, as this service has not been provided, it considers that no amount should be payable.
3. The Tribunal determines that no amount is payable by the Applicants in the 2021 service charge year in relation to accounting fees – annual certification.

**Communal electricity - £370**

1. The Applicants explained that the communal electricity only powered six motion sensitive lights in the Property’s common parts. However, they had seen the builders constructing the extension plug in equipment such as power drills to the communal electricity. They had suggested that they should only pay 10% of the amount provided for but accepted this may have been an over estimation of the amount which should be charged to the builders.
2. The Tribunal noted that the figure of £370 was an estimate but there was no evidence to support that amount. In the absence of any evidence, it was entitled to make its own estimate. It considered that a reasonable figure would be £220 per year, made up of a standing charge of £180 and consumption of £40.
3. The Tribunal determines that the appropriate aggregate level of the Applicants’ contribution towards communal electricity for the 2021 service charge year is £220 plus VAT.

**Communal cleaning - £2,000**

1. The Applicants said that the common parts were cleaned twice in 2021 and were never cleaned in 2022. They explained that the cleans in 2021 were fairly rapid but the common parts only really got dirty when the extension works were going on. They estimated that a proper clean would take only 30 minutes, to include ten minutes vacuuming, removal of scuff marks plus a full clean and wiping the handrail and front door glass. They suggested that a sum of £300 was fair.
2. The Tribunal noted that the extension works commenced in October 2021 and continued throughout the service charges years in question. It considered that the cost of cleaning whilst these works were continuing should be borne by the landlord as a result of the dirt caused. In addition, as only two cleans were carried out in 2021 and none in 2022, it concluded that no more than £300 should be payable for 2021 and nothing should be demanded for 2022.
3. The Tribunal determines that the appropriate aggregate level of the Applicants’ contribution towards communal cleaning for the 2021 service charge year is £300 plus VAT.

**Landscaping / Grounds Maintenance - £800**

1. The Applicants explained that the external areas now mostly comprised car parking together with two trees and some hedges. The only gardening or maintenance works seen undertaken by the Respondent were the removal of a hedge and three skinny trees as part of the extension works. They say that a neighbour in the other building on the estate does the external maintenance for no cost. They argue that nothing should therefore be payable for landscaping and grounds maintenance.
2. The Tribunal accepts that the only works undertaken by the Respondent were in connection with the extension development. In addition, based on the Applicants’ submissions and the photographs provided in their statement of case, there was in reality a serious deterioration of the external areas as a result of that development with, for example, broken slabs remaining unremediated. It therefore considers that no amounts should be payable in either service charge year in respect of landscaping or grounds maintenance.
3. The Tribunal determines that no amount is payable by the Applicants in the 2021 service charge year in relation to landscaping and grounds maintenance.

**Window cleaning - £500**

1. The Applicants accept that £500 for window cleaning at least four times a year is reasonable. Mr Dearman had organised their cleaning on two occasions at a cost of about £70 a visit. However, no window cleaning had been carried out by the Respondent at any point in the two years in question and so no service charge should be payable for window cleaning.
2. The Tribunal accepted, in the absence of any evidence to the contrary, that no window cleaning had been carried out over the two years in dispute by the Respondent. It therefore concluded that no sums should be payable by the Applicants in respect of window cleaning.
3. The Tribunal determines that no amount is payable by the Applicants in the 2021 service charge year in relation to window cleaning.

**Emergency Lighting System - £500; Fire Alarm Testing £500; Risk Assessments & Audits £500**

1. The Tribunal considered these three items together as they are essentially related items.
2. The Applicants argued that there had been no testing or risk assessments carried out; if they had, they had seen no evidence of this. They pointed by way of example to the fire alarm which beeped and was never fixed in the two years in question. The new managing agents who took over in January 2023 fixed it, apparently the workman who carried out the work saying that it had never worked.
3. The Tribunal accepts, in the absence of any evidence to the contrary, that no works or assessments on any of these three categories were carried out. It considers that the beeping of the fire alarm would corroborate that no inspections occurred. In addition, it considers that, as the flats were only handed over in late 2020, no works or assessments should have been necessary in the first two years. As a result, it considers that no sums should be payable by the Applicants in relation to any of these items in 2021 or 2022.
4. The Tribunal determines that no amount is payable by the Applicants in the 2021 service charge year in relation to the emergency lighting system, fire alarm testing and risk assessments and audits.

**General Maintenance - £1,400**

1. The Applicants explained that entrance door to the Property did not work when they moved in. This door was in fact replaced when the extension works were carried out as that entrance moved. There were issues with a faulty lock. There was an ICW ten year warranty but that only covered new items, so the original door and the leaking roof in the second year were not covered. They considered that nothing had been spent on general maintenance over the two years.
2. The Tribunal considered that £400 in the 2021 service charge was a reasonable figure to allocate to door works. It also considered that £1,400 was a reasonable sum to set aside in 2022 to deal with the roof works.
3. The Tribunal determines that the appropriate aggregate level of the Applicants’ contribution towards general maintenance for the 2021 service charge year is £400 plus VAT.

**Building Insurance - £1,055**

1. The Applicants accepted that £1,055 per year for insurance was a reasonable amount. That amount also seemed reasonable to the Tribunal.
2. The Tribunal determines that the aggregate amount of £1,055 demanded in respect of insurance for the 2021 service charge year is reasonable and payable.

**Reserve Fund - £1,000**

1. The Applicants argued that as the sums in question had not been spent, it was not reasonable to make contributions towards a reserve fund. The Tribunal explained that the leases allowed for reserve funds to be established as this allows the build-up of a pot to be used in future major works. A reserve fund helps smooth costs and the Respondent is entitled to establish one.
2. Having established that the Respondent was entitled to create a reserve fund and require annual payments into it, the Tribunal next considered whether the amount demanded of £1,000 a year was reasonable. It concluded that the amount provided for in the 2021 and 2022 budgets was reasonable.
3. The Applicants will need to ensure that any reserve fund monies held by the original managing agents is passed to the new managing agents or the Respondent rather than being retained by them.
4. The Tribunal determines that the aggregate amount of £1,000 demanded in respect of the reserve fund for the 2021 service charge year is reasonable and payable.

**Total amounts payable**

1. By adding each of the sums ascertained for the 2021 service charge together, the Tribunal determines that the total aggregate service charge payable by the Applicants for that year is £3,050 plus VAT where applicable. Nothing is payable for the 2022 service charge year.

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

1. The Applicants have 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”).
2. 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…”..

1. The relevant part of Paragraph 5A reads as follows:-

“A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant’s liability to pay a particular administration charge in respect of litigation costs”.

1. 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.
2. In this case, the Applicants have been successful on the biggest substantive issues. The Respondent has not engaged in the process, only serving one document, disregarding the Tribunal’s directions and not attending the hearing. Having read the submissions from the Applicants and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The Tribunal therefore make an order in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.
3. For the same reasons as stated above in relation to the Section 20C cost application, the Applicants should not have to pay any of the Respondent’s costs in opposing the application. The Tribunal therefore makes an order in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under the Lease.
4. The Applicants stated they did not want to apply for an order that the Respondent reimburses to the Applicants the costs of the Tribunal’s application and hearing fees. Accordingly, the Tribunal makes no order in relation to this.

**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 by email to rpsouthern@justice.gov.uk

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.