

**Case Reference**

**Property**

**Applicants**

**Respondent**

**Representation**

**Type of Application**

**Tribunal Members**

**Date and venue of** **Hearing**

**Date of Decision**

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

**CHI/45UH/LSC/2024/0033**

**18 Rotary Lodge,**

**32 St Botolph’s Road, Worthing** **BN11 4JT**

**Pauline Mary Jones and Others (as identified on the** **Schedule annexed to this decision)**

**Anchor Hanover Group**

**Ms Hawkins, Counsel**

**s.27A LTA’85**

**Judge D Dovar**

**Ms C Barton MRICS** **Mrs Wong**

**15th November 2024, Havant**

**18th November 2024**

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**DECISION \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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1.

Thisan application dated 27th

February 2024 for the determination of

2.

the payability of service charges for the years ending 2023-24 and 2024-

25.

The building containing the Property is a 16 year old block of purpose

built flats designed for over 55 year old occupants and to support

independent living.

one bedroom flats.

The building comprises 11 two bedroom flats and 29

There are communal gardens and other facilities

3.

including a restaurant and dining room.

The application form complains of an above inflation increase in the

yearly service charge and considers that it should be brought in line with

inflation. The Applicant states that when she purchased the Property she

was reassured by the estate agent that the service charges were not increased by much and not by more than inflation for the relevant

period. No specific cost headings are identified by the Applicant as being

unreasonable, just the total amount of service charges budgeted.

4.

Initial directions were given by the Tribunal on 26th

July 2024, that

provided for a case management and dispute resolution hearing on 28th August 2024 and gave directions for the parties to provide position statements.

5. At the case management hearing on 28th August 2024, it was noted by

the

Tribunal

that

whilst

the

application

had

been

in

respect

of

the

budgets

for

two

years,

the

actual

expenditure

for

2024

had

been

determined.

2

6.

Those directions also provided for:

a.

The Applicant to provide a statement setting out its case for each

service charge year and each item in dispute by 25th

2024, together with copies of relevant documents;

September

b.

The Respondent to provide a response to the points made by the

Applicant by 9th October 2024; and

c.

Any reply from the Applicant to be provided by 16th

2024.

October

7.

On 29th

October 2024, the Applicant applied to join a number of other

residents to the application.

The Respondent took a neutral stance and

8.

indicated that in any event they would apply the Tribunal’s determination to all the service charges for the building. The Tribunal was satisfied that the additional leaseholders should be added and accordingly they are joined as parties.

The Applicant provided a position statement and then a Statement of

Case. They raised the following issues:

a.

The charges for the year end 2025 were £586 per month which

was an 8% increase on the previous year (from £541.61), compared to inflation of 2%. The previous year had marked an 11% increase over the year before (from £481 per month to £541.61). The Respondent had therefore raised its service charge by 19% in two years. There was a general challenge to the Respondent to justify these increases;

3

b.

c.

d.

e.

A challenge to the charges for the kitchen, its staff and provision

of nine meals a week for the residents and the fact that there was

no ability for residents to opt out of those services and therefore

avoid a £181.51 per month payment;

The service charge costs were not set out in a comprehensible

manner;

There should be a reduction on insurance charges;

The Respondent received commission on the sale of the flats in

the building and added those to the reserve fund. It was

contended that instead, it could use those funds to lessen the

increase in the annual recurring charges.

9.

The Respondent has provided its own position statement, which raises

the following points:

a.

b.

Service charges should not be capped by inflation, but to a level

that satisfied both the requirements of the lease (in this case

clause 2 and the 5th Schedule) and s.19 of the 1985 Act;

The budget is set in accordance with the anticipated costs for the

forthcoming year (and clause 1 of Part 1 of 5th

Clause 2 of the 7th Schedule). This is derived by:

Schedule, and

i.

ii.

Costs already incurred;

Accounting for inflation;

4

c.

d.

iii. Considering potential future expenditure, as well as

previous expenditure;

If the budget were lowered, then it is likely that there would be a

shortfall which would carry through to the following year;

The increase in costs resulted from rising prices of a number of

goods

and

services

including

energy,

insurance,

labour

and

materials.

Most

of

the

services

are

provided

by

external

providers.

Although

inflation

/

the

Consumer

Price

Index

e.

forecast has reduced, the budget was set at an earlier time when

the CPI was higher;

The cost of building repairs has increased as has the cost of

insurance due to a revaluation and claims made.

10.

The Respondent has also submitted a statement from Mr Whitfield, who

is a Home Ownership Compliance and Support Lead, dated 16th October

2024. He deals with a number of issues, including:

a.

b.

An objection to having to justify every item in the service charge

in the absence of specific challenges by the Applicant;

It would not be possible to cap the service charge in line with

inflation.

That would be unworkable and would not conform

c.

with the requirements of the lease;

The Respondent uses Zurich Insurance Company Limited which

it believes provides ‘competitive but appropriate insurance’;

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d. The Respondent is not obliged to use the reserve fund in the manner suggested by the Applicant and it may be

counterproductive to deplete the reserve fund as it would only

have to recover the same amounts again;

e.

The Respondent is entitled under the terms of paragraph 3 of

the Fourth Schedule to provide meals on terms it considers

reasonable.

In order to make the service viable, there cannot be

f.

an opt out provision for leaseholders;

Whatever the estate agent may have said, the lease governs the

parties’ relationships with regard to service charges.

**The Hearing**

11. At the hearing the Applicant was assisted by Mr Archer, another

leaseholder in the building.

She clearly set out the overarching issue,

which was the large rise in the annual service charge.

A rise that the

Respondent did not dispute.

She also suggested a number of ways in

which that increase in costs could be softened for the leaseholders, at a time when they were finding their resources being depleted, including by reason of the loss of a winter fuel allowance. The first of these was to use the additional money that had been transferred into the reserve fund from commission on sales, to smooth the annual service charge. The second was to provide a choice for residents to either pay for meals or

not.

At present, all leaseholders had to pay a standing charge whether

they used the service or not.

was taken.

There was an additional charge if a meal

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12. The Applicant also sought to raise an additional query about the cost of SAFE, a company providing mechanical services to the building. However, this was raised very late, and it not only seemed to the Tribunal that part of the costs was not within the service charge years in question, but the Respondent had not been given sufficient warning that

these points would be raised.

submissions on this point.

Accordingly, the Tribunal declined to hear

13.

Whilst the Tribunal has considerable sympathy with the difficulties faced

by the Applicants in light of the significant rise in the service charges, in

the absence of any specific challenge, the Tribunal is not able to make

any relevant determination.

The lease terms do not tie service charge

increases to any form of indices (whether inflation or otherwise), but instead focus on a defined category of works, the cost of which is recoverable. The Tribunal is then only able to engage with those costs if it is shown that either the budget is unreasonable (s.19(2) of the Landlord and Tenant Act 1985) or costs incurred are either unreasonably

incurred, or they are not to a reasonable standard (s.19(1)).

In this case,

the Applicants have demonstrated neither.

There were no substantiated

14.

specific challenges to any cost headings and the Respondent’s evidence

as to how it arrived at its budget was a sensible and common approach;

i.e. a reflection on previous years actual costs, with an adjustment for

inflation, and then adding in known new works and taking out known

irrelevant costs.

It may be that had the Applicants scrutinised particular cost headings

more closely they may have been able to determine the reason for the

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increase in service charge and challenged those costs, but they did not. The Tribunal considered the budgets and accounts, and it seemed that a significant uplift related to energy, which was reflective of a national

increase.

That also had an impact on increased building costs, which

15.

additionally accounted for some of the uplift.

Accordingly, the Tribunal determines that the demands for the years

ending 2024 and 2025 are payable.

16. Notwithstanding that, the Tribunal will make an order under s.20C restricting the Respondent from recovering the cost of these proceedings from the service charge. Firstly, the Tribunal considers that the significant increase in service charges warranted an enquiry. Secondly, the Respondent confirmed that it had no intention of seeking to recover its costs in that way.

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**Appeals**

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 .

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, 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.

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.

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