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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BC/LSC/2024/0340**
Property	**:**	**City View, Centreway, Ilford, IG1 1NL**
Applicant	**:**	**Various leaseholders of City View**
Representative	**:**	**Mr Will Beetson, Counsel instructed by Jobson Solicitors**
Respondent	**:**	**Millpond Properties Limited**
Representative	**:**	**Mr Kristian Sullivan of Essex Properties Limited (managing agent)**
Type of Application	**:**	**Determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Dutton** **Mr K Ridgeway MRICS** **Judge Samuel**
Date and venue of Hearing	**:**	**10 Alfred Place, London on 20 February 2025**
Date of Decision	**:**	**11 March 2025**

DECISION

DECISION

1. The Tribunal makes the determination set out under the various headings in this decision.

2. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

APPLICATION

1. The Applicant seeks a determination pursuant to section 27A of the Act and also made an application under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002. The application is made on behalf of a number of leaseholders whose details appear with the application and concerns the estimated service charges for the year 1st April 2024 to 31st March 2025.

HEARING

2. The Applicants were represented by Mr Beetson of Counsel. Nobody from the Applicants attended the hearing. The Respondent was represented by Mr Sullivan from Essex Properties Limited, the managing agent, but again nobody from the Respondent attended the hearing. It should also be noted that Mr Sullivan was late in attending before us, not getting to the Tribunal premises until 11.00. We had started the hearing but recommenced upon his arrival.

BACKGROUND

3. Directions were issued on 26th September 2024, and the matter came before us for hearing on 20th February 2025.

4. Prior to the hearing, we were provided with a bundle of documents running in PDF format to 373 pages. Matters were somewhat confused however by the numbering of the bundle which in handwritten terms went to page 371 but included within those documents a bundle that the Respondent had prepared which had its own numbering. The bundle was not well presented. There was a good deal of duplication and the Applicants' bundle has different numbering form the PDF numbering.

5. The Property in question is a block we were told of some 167 flats. In the estate, there are two other blocks and give a total number of flats on the estate of 257. In a document prepared by the managing agents and entitled Building Safety Case Report, the block known as Block A City View is in fact described as a high rise residential block with 15 storeys consisting of 163 residential dwellings with a commercial unit and gym at ground floor level. It appears that the building was constructed circa 2004. The photographs annexed to this report were of some help to us in showing the Property and the layout of the estate.

6. It should be noted that on 19th April 2024 the Applicants, through a right to manage company, City View (Centreway) RTM Company Limited, acquired the right to manage this block.

7. This application relates to the estimated service charges from 1st April 2024 to 31st March 2025. The basis of the Applicant's claim is that 19 days into this year they acquired the right to manage yet there appears to have been no reduction in the estimated management charges that are claimed. In addition, the Applicants challenge the costs of grounds maintenance and the distribution of costs in relation to the underground car parking.

8. Although not included in the application, there was an issue raised in the statement of case relating to the cladding works that are being undertaken. We did not feel it appropriate to deal with this aspect because firstly it was not included within the original application and the issue seems to be who is the responsible person, which is a matter that should be dealt with under the Building Safety Act 2022. To be fair to Mr Beetson he did not press this matter.

9. We therefore confine our involvement to the three issues that we have highlighted above, namely the management fee, which included the audit fee, the costs of grounds maintenance and the underground car park.

Management

10. In the bundle before us that was a copy of the actual accounts to 31st March 2024, which we had the opportunity to consider. In the Applicant's statement of claim they indicate that their concerns in respect of the estate management charge is that although the managing agent's obligations are dramatically reduced as a result of the right to manage vesting in City View (Centreway) RTM Company Limited who had in turn appointed HAUS Block Management to assist them, there was no reduction in the budgeted management charge. In the spreadsheet of the estimated management charge was £78,589 together with the accountant's fee of £9,000.

11. When looking at the 2024 accounts, it seems that the actual management fees then charged were £72,100 and audit and accountancy fees of £8,574. The point the Applicants seek to make is that the amount that is being sought as an estimated charge for the year in question varies little; in fact, it has increased slightly, from the actual charges for the year before. This they argue cannot be right as the management of the block is no longer in the hands of Essex Properties Limited and that accordingly the management fees should reduce. It is also said that the service charge demands are confusing in that on the budgeted figures are split into eight schedules whereas there are only five in the lease. It is also suggested that the estate charges are not divided in a proper proportion to the proportion of the estate occupied by City View.

12. In respect of the management charges, it is suggested that HAUS are charging £38,000 to manage some £400,000 worth of expenses, a sum that is put forward by the Applicants. In contrast the Respondent is requesting an administration charge of £44,000 to manage it is said only some £40,000 worth of expenses.

The argument, therefore, is that the sum sought by the Respondents for the administration of the estate should be reduced to reflect their lack of involvement in relation to the block and the percentage that the block pays to the totality of the estate charges.

13. In response Mr Sullivan said that the management duties had only slightly reduced as a result of the RTM company, accepting that there is reduced involvement in instructing repairs, maintenance and statutory compliance requirements for the internal areas. However, this did not release the Respondent from the duty of care to ensure the safety of the building under the Building Safety Act 2022. It is said that following the acquisition of the right to manage, the Respondents identified failures in the RTM company meeting its compliance regulations, which are set out in the Respondent's statement of case. The question as to who the principal accountable person for Building Safety Act issues was also raised but as we have indicated above, this is not a matter that appears in the application and is in any event it seems to us an issue that should be dealt with under that Act, which has specific sections to consider this matter.

14. To meet the allegations that the service charges were not clearly detailed and were in some way lacking in transparency, Mr Sullivan confirmed that the development schedules reflect the various leases, head leases, commercial agreements and parking bay leases throughout the estate. Leases of the block list five expenditure groups.

15. Mr Sullivan also told us at the hearing that the question of the insurance for the development had been left with the Respondent as the right to manage company had found it difficult to obtain cover in the period available to them. This therefore meant that the Respondents had to ensure that the block/estate met the insurer's requirements, which required them to undertake more involvement with the block to ensure that the cover was not in any way breached. This, coupled with the need for the Respondent to continue with the external cladding works, meant that there was still a significant amount of time and expense in relation to the management of the block.

16. He told us that at the year end the accountants would review the time spent by the management company and would then confirm the final and actual costs of management. He confirmed that this is something that would be done and the costs would be reviewed but reminded us that it was only a budgeted figure before us.

Decision

17. In regard to the question of the management charges, we find that the Respondents could perhaps have reviewed the management and accountancy charges before the budget was fixed. However, we were told that the budget was fixed before the Applicants indicated a wish to acquire the right to manage, which wish was not objected to by the landlord. Accordingly, the budget went out without the knowledge on the part of the Respondents that a right to manage situation would arise.

18. It does seem to us that the Applicants have some merit in their argument that the costs of management should not be as great as they were when the managing agents were having to deal with the whole of the block containing whether it be 163 or 167 flats. We would therefore expect to see in the final accounts an alteration to the actual charges, which would give some comfort to the Applicants. However, it does seem to us, and it is our finding, that this application was perhaps somewhat premature bearing in mind that the sums we are talking about are only estimated charges and on what Mr Sullivan said were put in place before the RTM arrangements were made.

19. In those circumstances, therefore, we do not propose to make any alterations to the management or accountancy charges at this time, but it will be for the Applicants to review the position when the final actual accounts are made available, which will be in the not too distant future. Hopefully, however, the figures that the Respondents seek to recover as actual costs will be acceptable to the Applicants and will not require further proceedings.

Grounds Maintenance

20. The next matter that we needed to consider was the grounds maintenance. We were told by the Applicants that there was little in the way of grounds to maintain. It is mostly hard standing as well as some raised flowerbeds.

21. In the budget that we were provided with at the hearing, because the one in the bundle was illegible, it appears that there are expenses set out under eight schedules which include the vehicle entrance gates, the costs attributed to the three blocks, both internal and estate-wise and to the underground car park. The gardening and grounds maintenance fees, which include the underground car park and probably should not, total £11,138.20 of which City View has a cost of £4,000. There is no alternative quote put forward by the Applicants other than an estimate that £2,000 would be considered adequate for the ground's maintenance. That would appear to be half the amount which City View is required to pay when one takes out the question of the underground car park. There will also be an obligation in connection with the vehicular entranceway, which falls under the schedules in the leases.

Decision

22. In the absence of any evidence before us to show that the estimated charge of £4,000 for City View in respect of the gardening and grounds maintenance was unreasonable, we do not feel that we can make any change to the estimated figure, the more so as according to the 2024 accounts, the actual costs in respect of landscape maintenance were £4,499.

Underground carparking

23. The last matter that we were asked to consider is the underground car park. There appears to be some misunderstanding on the part of the Applicants. Each lease indicates whether or not car parking is included. These form part of the percentages, which are set out in the particulars of each lease. We were provided with a number of leases, mostly incomplete, but in respect of No 83, which is on

the sixth floor of the block, it can be seen that this did have a car parking space. You can see that the lessee's proportions are set out showing the amount that would be payable in respect of the use of the car park. We were told by Mr Sullivan that it is this percentage which governs the amount that is charged to the individual leaseholder, and it is only those leaseholders who have a car parking space that pay towards the costs of the underground car park. Accordingly, any suggestion that other leaseholder in the block is somehow contributing towards the underground car park would seem to be fallacious.

Decision

24. There seems to be nothing in this particular element. There is instead a misunderstanding of the terms of the lease, which may in part be as a result of the budget containing eight schedules instead of the five schedules that appear in the leases that we have seen. The provision relating to the underground car park is contained at part V with group V expenditure and you can determine from the particulars that in relation to the complete flat lease that we had there is a contribution of .7246% in relation to the group V expenditure and the parking space is specifically referred to in the lease we have being numbered 14 on plan 3. It is clear to us, therefore, that if you do not have a parking space you do not contribute towards the costs of the underground car park.

25. This dealt with the three matters that we were asked to consider. We were also asked to make orders in respect of section 20C and paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002. The Applicants have had some success, although not an overwhelming victory. Nonetheless we think it reasonable to make an order under section 20C in the circumstances of the case that the charges that may have been incurred by the Respondent are not recoverable as a service charge and also that it is not open to the Respondents to seek to recover any costs as an administration charge. We should say, that we can see no provision in the lease that allowed the Respondent to recover these costs in any event. There is a provision for them to recover costs if they are required to bring proceedings against a tenant, but nothing appears in the lease to show the costs may be recovered in defending an action. We make no order for the refund of any tribunal fees it being reasonable for the Applicants to carry this burden.

26. Mr Sullivan indicated that he was wishing to make a claim under Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules of 2013 (the Rules). We indicated that we would give directions which are set out below, but we urge Mr Sullivan to carefully consider the Willow Court case which is referred to in the directions and decide whether there is a realistic prospect of satisfying us that the Applicants have acted unreasonably to the extent that they were liable to pay the Respondent's costs.

27. We would like to thank Mr Beetson and Mr Sullivan for their assistance in this case.

DIRECTIONS FOR RULE 13 APPLICATION

1. The tribunal considers that this application may be determined by summary assessment, pursuant to rule 13(7)(a).

2. The application is to be determined without a hearing and on the basis of the written submissions from the parties. However, any party may make a request to the tribunal that a hearing should be held or the tribunal may decide that a hearing is necessary for a fair determination of the application. Any such **request for a hearing should be made by 24 March 2024** giving an indication of any dates to avoid. The tribunal will then notify the parties of the hearing date. The hearing will have a time estimate of two hours.

The respondent's case

3. By **7 April 2025** the respondent shall send to the applicant a statement of case setting out:

   (a) The reasons why it is said that the applicant has acted unreasonably in bringing, defending or conducting proceedings and why this behaviour is sufficient to invoke the rule, dealing with the issues identified in the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC), with particular reference to the three stages that the tribunal will need to go through, before making an order under rule 13;

   (b) Any further legal submissions;

   (c) Full details of the costs being sought, including:

   - A schedule of the work undertaken;
   - The time spent;
   - The grade of fee earner and his/her hourly rate;
   - A copy of the terms of engagement with respondent;
   - Supporting invoices for solicitor's fees and disbursements;
   - Counsel's fee notes with counsel's year of call, details of the work undertaken and time spent by counsel, with his/her hourly rate; and
   - Expert witness's invoices, the grade of fee earner, details of the work undertaken and the time spent, with his/her hourly rate.

The applicant's case

4. By **5 May 2025** the applicant shall send to the respondent a statement in response setting out:

   (a) The reasons for opposing the application, with any legal submissions;

   (b) Any challenge to the amount of the costs being claimed, with full reasons for such challenge and any alternative costs;

(c) Details of any relevant documentation relied on with copies attached.

The respondent's reply

5. By **2 June 2025** the respondent may send to the applicant a statement in reply to the points raised by the applicant.

Evidence from abroad: any party or witness

6. If you or your witness intends to give oral evidence at the hearing from somewhere outside of the United Kingdom, you must request from your case officer the *Guidance Note for Parties: Evidence from Abroad* **as soon as possible**. The processes laid out in that Guidance Note are those that you must follow. The Tribunal cannot offer any other assistance with the process, which is the responsibility of the person wishing to give evidence from abroad to follow. Failure to follow the process outlined in the Guidance is likely to result in you or your witness being unable to give oral evidence from abroad.

Documents for the hearing/determination

7. The **respondent** must seek to agree the contents of a hearing bundle with the other parties, and must then prepare a digital, indexed and paginated hearing bundle, in Adobe PDF format, which must be emailed to all other parties, and to the tribunal, at London.Rap@justice.gov.uk by **16 June 2025** The subject line of the email must read: "BUNDLE FOR HEARING" followed by the case reference and the address of the Property.

8. The bundle must be a single PDF document. If the bundle is too large to email, use can be made of a secure file sharing website. Only documents previously exchanged by the parties should be included in the hearing bundle. If there is a dispute between the parties regarding the contents of the hearing bundle, a prompt application must be made to the tribunal, by the party wishing to rely upon those documents, seeking the tribunal's permission to do so. Any such application must be made using form Order 1 and must be accompanied by copies of the documents in question

9. Only those documents sent in bundles are likely to be before the tribunal at the full hearing and parties should not send documents "piecemeal" to the case officer.

10. The bundle shall contain copies of:

- The tribunal's determination in the substantive case to which this application relates;
- These directions and any subsequent directions;
- The respondent's statements with all supporting documents;
- The applicant's statement with all supporting documents.

11. It is essential that the parties include any relevant correspondence to the tribunal within their digital bundle.

Determination/hearing arrangements

12. The tribunal will determine the matter on the basis of the written representations received in accordance with these directions in the week commencing **30 June 2025**.

13. If a hearing is requested, the Tribunal will notify the parties the details of the hearing.

14. Any letters or emails sent to the tribunal must be copied to the other party and the letter or email must be endorsed accordingly. Failure to comply with this direction may cause a delay in the determination of this case, as the letter may be returned without any action being taken.

Applications

15. Applications for further directions, interim orders, variations of existing directions, or a postponement of the final hearing/determination must be made using form Order 1[1].

Non-Compliance with Directions

16. If the **applicant** fails to comply with these directions the tribunal may **strike out** all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

17. If the **respondent** fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.

Judge: Andrew Dutton

A A Dutton

Date: 11 March 2025

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with

[1] Form Order 1 is available at https://www.gov.uk/government/publications/ask-the-first-tier-tribunal-property-chamber-for-case-management-or-other-interim-orders

the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.