FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CZ/LSC/2021/0056**
Property	**:**	**71, Hazel Grove, Cowlersley Lane, Linthwaite, Huddersfield HD7 5TQ**
Applicants	**:**	**Mr & Mrs A Denning**
Respondents	**:**	**Linthwaite (Freehold) Management Company Limited**
Type of Application	**:**	**Reasonableness and payability of service charges** **Section 27A and 20C Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Mr J R Rimmer** **Mr J Faulkner**
Date of decision	**:**	**6th November 2023**
Order	**:**	**1 The charge of £504.61 in the 2019 service charge accounts is not properly incurred and the relevant proportion is not recoverable from the Applicants** **2 The Tribunal is unable to find in favour of the Applicants in relation to the other matters raised in the application for the reasons set out herein.**

A. Background

1 The Tribunal provided an interim decision in this matter dated 19th May 2023 within which it sought further information from the Respondent in respect of certain entries within the accounts relating to the service charges brought before the Tribunal.

2 The Respondent provided such further information as was available within an email to the Tribunal office dated 13th June 2023. Within the directions provided on 19th May was an opportunity for the Applicant, if he so wished, to respond to the further submissions. Notwithstanding communication from the Applicant requesting permission, which was granted, to respond in writing rather than by electronic means, no such response had been forthcoming.

3 The Tribunal has sought to determine the application on the information that is now before it.

4 <u>The amount of £1800.00 not showing in the 2015 accounts as contributions to service charge funds.</u>
The Tribunal understands the position to be as follows:
The accounts were re-started during 2015 when (new) accountants took over responsibility for accounting in respect of the service charge. At that time they relied upon a statement that all charges had been paid up to that point. This should have amounted to £1,800.00, being amounts of £150.00 in respect of each of the twelve flats within the development.
It appears that there is no dispute that these funds were received, save and except that the Applicants did not pay their service charges in respect of their two flats. The Tribunal is in no doubt at all from the information that it has received that a better account of the charges could have been provided if there had been a continuation across the change in 2015. A failure to provide a satisfactory account is not necessarily helpful to Applicants who have failed to pay their contribution. They establish a point, but not any entitlement to return of funds.
As to whether such amount as was collected should have been accounted for as a surplus carried forward, the Tribunal is not prepared, on the information available, to say that such funds have been misappropriated, misapplied, or otherwise incorrectly accounted for in the period since 2015.

5 The amount of £2084.26 appearing as service charge income in the 2016 Accounts

An explanation was sought in respect of these monies within the directions issued on 19th May. Such explanation that has been forthcoming on behalf of the Respondent has frankly shed little light upon the situation, other than to suggest that a greater separation between the service charge accounts and the management company accounts might have been advisable.

The Tribunal does understand the point that the Applicants wish to make. Have the monies shown been taken from the reserve fund (which the Tribunal believes should be its correct nomenclature, rather than sinking fund)? Furthermore, was the Respondent entitled to take that step? The Tribunal, on the information available, is unable to answer the first of those questions satisfactorily in the Applicant's favour.

6 £504.61 taken from the reserve fund for the cost of accounting certificates

The copy lease provided to the Tribunal contains within it the following provisions:

(1) Clause 3(9) – a covenant by the tenant to pay the service charges in accordance with Schedule 4.
(2) Schedule 4 – provides the mechanism for assessing the total service charge expenditure and, in particular, provides a brief definition of what that expenditure includes. Paragraph 1(b) of the Schedule includes the costs of employing an accountant to determine those charges and the amounts payable.
(3) Clause 4(f) of the lease, however, limits what can be paid for from the reserve fund to payments to meet future costs of installing, repairing, maintaining and renewing those items that the landlord is obligated to repair etc. It does not entitle the fund to be used for paying for accountants and their certificates.
(4) Paragraph 4(3) of Schedule 4 provides that if there is an excess of contributions in any year the credit accrued by the tenants should be held over to the next year to meet the costs in that next year,

7 It is important to note the distinction between 2 separate accumulations that may be possible. One can come into existence under Clause 4(f): a properly constituted reserve fund, which can be used to defray limited types of future expenditure. The other under Schedule 4, paragraph 4(3) is an incidental accumulation from excess contributions to be carried forward to the following year.

8 The certificates do not appear within the income and expenditure account for the year 2019. If they are service charge expenditure the Tribunal would expect them to be shown as an item of expenditure. If they are not shown there, they must be assumed to have come from an accumulated fund. In the absence of any clear explanation of how that fund has been accumulated and there being no apparent indication in the documents

before the Tribunal that there is anything other than a reserve fund, the certificates are not within the expenditure envisaged with Clause 4(f) and has not been properly incurred.

9 Further, or alternatively, the Applicant does enquire whether Section 20B landlord and Tenant Act 1985 also assists.
Section 20B Landlord and Tenant Act 1985 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 a 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 be subsequently required under the terms of his lease to contribute to them by the payment of a service charge

10 The charge of £504.61 appears in the 2019 accounts. It is expressed to be in relation to the 2016-17 accounts. There is no evidence to suggest it arises other than in respect of that year. That is more than 18 months after the charge was incurred and there is no evidence of any notification within that period that the charge might subsequently be made. The charge is not therefore able to form part of the recoverable service charges for 2019.

J R RIMMER (CHAIRMAN)