



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

Case Reference : **MAN/00BN/LSC/2014/0125**

Property : **1 Capella Drive
Beswick
Manchester
M11 3LR**

Applicants : **Mr & Mrs S Khara**

Representative : **Ms A Khara**

Respondent : **Beswick Estate (City East)
Management Limited**

Representatives : **Mr McCarthy, Counsel
Base Estates Limited**

Type of Application : **Landlord and Tenant Act 1985 – s27A
and s20C**

Tribunal Members : **Judge J Holbrook
Mr J Faulkner FRICS**

**Date and venue of
Hearing** : **7 September 2015
Manchester**

Date of Decision : **27 November 2015**

DECISION

DECISION

- A. In respect of the period which commenced on 1 March 2012 and ended on 31 March 2013, the amount of the service charge payable by the Applicants to the Respondent in respect of the Property is £86.79.**
- B. In respect of the period which commenced on 1 April 2013 and ended on 31 March 2014, the amount payable is £76.00.**
- C. No service charges are payable by the Applicants in respect of any period preceding 1 March 2012.**
- D. The costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs (within the meaning of section 18(2) of the Landlord and Tenant Act 1985) to be taken into account in determining the amount of any service charge payable by the Applicants.**
- E. Within 14 days of the date of this decision the Respondent must reimburse the Applicants their tribunal fees in the sum of £280.00.**

REASONS

Background

1. On 10 November 2014, the Tribunal received an application for a determination as to the payability and/or reasonableness of service charges in respect of 1 Capella Drive, Beswick, Manchester M11 3LR (“the Property”). The application was made by Mr & Mrs S Khara who hold a long leasehold interest in the Property under a lease (“the Lease”) dated 29 November 2007 made between Gleeson Regeneration Limited (1) the Respondent (2) and the Applicants (3).
2. The application concerned service charges demanded in respect of the period from 2011 to 2014.
3. On 13 December 2014 the Tribunal received an additional application from the Applicants. This sought an order that the costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.
4. The respondent named in the applications was Gleeson Regeneration Limited, the developer of the estate on which the Property is situated and the original landlord under the Lease. However, by the time of the hearing, it was apparent that the right to demand and receive service charges rests not with the landlord, but with the estate management company named in the Lease: Beswick Estate (City East) Management

Limited. As such, it is the estate management company alone which is the appropriate respondent in these proceedings, and the Tribunal so orders.

5. It is also noted that the estate management company now acts through its managing agent, Base Estates Limited. Nevertheless, this does not detract from the fact that it is the estate management company which is the appropriate respondent.
6. A case management hearing was held before Judge Holbrook on 23 March 2015, following which directions were given for the conduct of the proceedings. In compliance with those directions the parties submitted statements of case with supporting documentary evidence and a final hearing was held in Manchester on 7 September 2015. Mr & Mrs Khara attended the hearing and were represented by their daughter, Ms A Khara. The Respondent was represented by Mr McCarthy of Counsel, and the hearing was also attended by employees of the managing agent, Base Estates Limited. The Tribunal had made an external inspection of the Property and of the estate on which it is situated prior to the hearing. Mr Khara and Ms Khara had been present during the site visit, as had Ms B Oliver, on behalf of the managing agent.
7. At the conclusion of the hearing, we formed the view that the evidence which had been presented was insufficient to enable the Tribunal to deal with the Applicants' principal objection to the service charge; which was, essentially, that insufficient information had been provided about service charge expenditure to enable a proper consideration of the question whether that expenditure had been properly and reasonably incurred in accordance with the Lease. We considered it appropriate to afford the parties an opportunity to present further supporting evidence and written representations before making a determination and further directions were given for this purpose on 8 September 2015. The parties were informed that, in the absence of notice that either party required the oral hearing to be reconvened following submission of supplementary written representations, the Tribunal intended to proceed to make its determination without arranging a further oral hearing. As no such notice was received, the Tribunal reconvened in the absence of the parties on the date of this decision. At this time we had the benefit of additional written representations and documentary evidence submitted by the parties in compliance with the further directions.

Description of the Property and of the Estate

8. The Property is a three-storey house of modern construction situated on an estate comprising in excess of 200 other residential properties of similar age, including houses and apartment blocks. The estate extends across several "blocks" which are separated by access roads (with street lighting) and includes landscaped areas and a number of car parks and on-street parking areas.

9. The Property itself includes an off-street parking space and has its own garden area.
10. The estate appeared to be in a generally fair state of repair and in a clean and tidy condition. The weather at the time of our visit was warm and sunny and Ms Khara drew our attention to a malodorous smell emanating from the drains or sewers in the street.

Law

11. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

An application may be made to the appropriate 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.*

12. The Tribunal is “the appropriate tribunal” for this purpose, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
13. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It means:

... an amount payable by a tenant of a dwelling as part of or in addition to the rent-

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord’s costs of management, and*
- (b) the whole or part of which varies or may vary according to the relevant costs.*

14. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

- (a) only to the extent that they are reasonably incurred, and*
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*
- and the amount payable shall be limited accordingly.*

15. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:

the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

16. There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, he will need to specify the item complained of and the general nature of his case. However, the tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

Relevant provisions of the Lease

17. By virtue of paragraph 1 of Schedule 7 to the Lease (read in conjunction with clause 3.5 and Schedules 6), the Respondent covenants to carry out the following functions:

“Keeping the Estate Common Parts (including any Conduits and other infrastructure for which the Estate Management Company is responsible) and all play equipment, gates, hedges, fences, trees and other landscaping in good order and condition and clean and tidy including any necessary inspections, maintenance, repair, renewals, improvement, mowing, trimming, pruning, tree surgery, and complying with all proper requirements of any relevant authority”.

18. Additional functions which the Respondent is required to carry out include arranging appropriate insurance in relation to the Estate Common Parts; providing security measures and lighting for those common parts; and employing managing agents and accountants.

19. In return, the Applicants covenant (by virtue of paragraph 1.3 of Schedule 4, read in conjunction with clause 3.3(b)):

“To pay the Estate Charge Proportion of the Estate Charge as required or directed by the Landlord or the Estate Management Company”.

20. In order to understand these provisions fully, it is necessary to unpack a number of defined expressions in the Lease:

- The “Estate” is defined by reference to a plan attached to the Lease. It comprises the estate described at paragraph 8 above.
- The “Estate Common Parts” means (to the extent that the same are not included in individual demises and have not been publicly

adopted) and private roads, footpaths, amenity areas and conduits within the Estate.

- The “Estate Charge” means the expenditure incurred by or on behalf of the Respondent in carrying out the obligations relating to the Estate Common Parts contained in Schedule 6 to the Lease. Those obligations essentially comprise providing the services referred to in paragraphs 17 and 18 above.
 - The “Estate Charge Proportion” means 0.274% of the Estate Charge.
21. Schedule 8 to the Lease contains the provisions for payment of the service charge. Essentially, it requires the Applicants to make advance payments of account by reference to estimated service charge expenditure. However, at the end of each service charge year, the Respondent must certify the amount of the actual expenditure for that year, with an appropriate balancing credit or debit being made to ensure that the correct amount is paid by the Applicants.

The issues in relation to service charges

22. There is no dispute as to the provisions of the Lease or as to their effect. In particular, it is accepted that the Respondent has a duty to provide certain services to the Estate and that the Applicants have concomitant obligations to contribute towards the costs of those services.
23. The Respondent asserts that, for the period from 1 March 2012 to 31 March 2013 (a period of thirteen months), the Applicants’ contribution towards the cost of those services amounts to £323.39. For the year from 1 April 2013 to 31 March 2014, the contribution claimed is £351.65. No service charge contributions are claimed for any period prior to March 2012.
24. The Applicants’ primary objection to this claim is that the expenditure towards which they have been asked to contribute includes expenditure which is not recoverable under the terms of the Lease – because it has been incurred in respect of the apartment blocks and/or car parks on the Estate and not in respect of those parts of the Estate which are used by the Applicants in common with others. Whilst accepting in principle that the Applicants are not liable to contribute to the costs of upkeep of the apartment blocks or car parks, the Respondent says that the expenditure to which its claim against the Applicants relates is exclusive of any such expenditure.
25. The Applicants also object to the service charges claimed because they are dissatisfied with the standard of service provided by the Respondent. In particular, they complain about broken street lighting and car park gates; smelly drains/sewers in the street; littering and about problems with car parking (particular on match days at the nearby football stadium).

Conclusions

26. It is clear that, in principle, the Applicants are liable to contribute to the costs incurred by the Respondent in providing services to the Estate. Those services are limited to the matters referred to in Schedule 7 to the Lease. Essentially, they comprise services to keep the Estate Common Parts in good order. The Respondent has confirmed that for this purpose the Estate Common Parts do not include any of the communal car parks upon the Estate or the common parts of any of the apartment buildings (the costs relating to those things being recovered by means of service charges payable by other occupiers of the Estate).
27. The Applicants are liable to contribute a fixed proportion (0.274%) of the reasonable costs incurred in providing the relevant services.
28. The Respondent's claim for the service charges referred to at paragraph 23 above is derived from a summary breakdown of the 2013 and 2014 estate service charge expenditure which appears in the 2014 accounts. This was produced in evidence at the hearing and, for ease of reference, is reproduced in Appendix 1 to this decision. Essentially, it is the Respondent's case that the total expenditure shown therein (£118,028 for the thirteen month period ending on 31 March 2013, and £128,339 for the 2013-14 service charge year) is the Estate Charge as defined in the Lease and that, for each of those periods, the Applicants are thus liable to contribute 0.274% of the total expenditure.
29. Ms Khara argues that this summary of expenditure fails to recognise the crucial distinction between the Estate Charge (payable by all leaseholders on the Estate) and the separate service charge (the "Block Charge") payable by leaseholders of flats (but not by the Applicants). She says that the summary of expenditure lumps the two charges together, and that this can be seen by reference to the Respondent's indicative Block and Estate Charge budget for the 2013-14 service charge year. That budget predicted total expenditure of £130,986 (remarkably close to the actual spend of £128,339 shown in the year-end accounts). However, only £30,630 of that amount was anticipated to be attributed to the Estate Charge: the remaining £100,356 was anticipated to be attributed to the Block Charge.
30. We believe that Ms Khara's analysis is correct. Not only does this seem very likely when regard is had to the budget, but it is also clear from the heads of expenditure in the summary itself: for example, it is obvious that expenditure on items such as window cleaning should not form any part of the Estate Charge.
31. The further directions issued on 10 September 2015 required the Respondent to provide a statement explaining the composition of each head of expenditure noted in the summary of expenditure referred to above. Unfortunately, the information provided in response to this direction by the Respondent's managing agents and solicitors was lacking in detail and was largely confined to addressing a number of

additional specific questions we had posed. Had the Respondent's advisers conducted the more thorough review which we had asked for, the fact that there appears to have been a fundamental error in the basis upon which the Applicants' service charges have been calculated would no doubt have become apparent to them.

32. Nevertheless, on the basis of the limited information which the Respondent has provided – and taking the 2013-14 Block and Estate Charge budget as an indicative guide to likely annual expenditure on services provided in respect of different aspects of the Estate – we make the following findings in respect of the 2013-14 Estate Charge:

- Landscaping – The summary of expenditure shows that landscaping costs were £6,417 for the year. Given the large size of the Estate, we consider these costs (which appear to include the cost of removing litter from the Estate) to be reasonable. We have taken account of the Applicants' complaints about the appearance of the Estate, but these complaints were not borne out by what we saw during the inspection visit. The Estate appeared to be generally well maintained and the Respondent has confirmed that the costs concerned cover grass cutting and strimming twice a month between March and October; maintenance of shrubs and bushes; weeding and moss and algae control.
- Communal cleaning – One would not expect the external common parts of the Estate to require significant external cleaning. It appears that the relevant costs referred to in the summary of expenditure relate to the cleaning of internal common parts of the apartment blocks. This appears to be confirmed by the copy ledger entries which have been provided by the Respondent (under the heading of "Internal Cleaning") and also by the budget information provided, which shows that communal cleaning costs should fall exclusively within the Block Charge. Such costs are not payable by the Applicants.
- Window cleaning – The Respondent comments that the Applicants do not contribute towards the cost of window cleaning. Whilst this certainly *should* be the position, this comment indicates that the Respondent has not understood the basic accounting error described in paragraph 29 above: The Applicants are wrongly being asked to contribute towards the £2,210 spent on window cleaning in 2013-14. This is because the cost of window cleaning has not been stripped out of the service charge costs before the Estate Charge is calculated.
- Gas and electricity – The Respondent has confirmed that gas is not supplied to the Estate: the cost of gas noted in the expenditure summary must obviously be removed. As far as electricity is concerned, the Respondent says that electricity is used in connection with car park lighting and in the apartment blocks.

These are not costs towards which the Applicants are liable to contribute, and they must therefore be disregarded for the purpose of calculating their service charges.

- General maintenance and repairs – The Respondent has provided very little information about the composition of this very significant head of expenditure which it seeks to attribute to the Estate Charge. It is therefore impossible for us to know exactly how much has been spent on repairs and maintenance which is legitimately recoverable by means of the Estate Charge. However, we consider it very likely that the expenditure being claimed includes significant expenditure which should have been attributed to the Block Charge. In reaching this view we have taken account of the 2013-14 budget which indicates that of the £22,000 anticipated expenditure on general maintenance items, only £5,060 was anticipated to be attributable to the Estate Charge. In the absence of any other reliable information, we consider it reasonable to adopt the figure in the budget as reflecting the reasonable likely cost of repairing and maintaining the Estate Common Parts (excluding the car park access systems).
- Statutory testing and inspections – The Respondent says that expenditure under this head in respect of a health and safety report for the Estate and other elements of statutory testing for the car parks and apartment blocks. The Respondent appears to agree that the Applicants are not liable to contribute towards such costs, which must therefore be disregarded when calculating their service charge contributions.
- Insurance – Insurance of the Property is the Applicants' responsibility (see paragraph 5.1 of Schedule 4 to the Lease). However, the Respondent is entitled to recover the cost of insuring the Estate Common Parts (see paragraph 2 of Schedule 7). The expenditure summary for 2013-14 suggests that the cost of doing this was £24,227. This seems remarkably expensive for insuring external common parts, and the copy insurance schedule provided by the Respondent indicates that the premium actually includes the cost of insuring apartment blocks and the car parks (which should not form part of the Applicants' service charge). The 2013-14 budget indicates that of the £22,350 anticipated expenditure on insurance, only £2,350 was anticipated to be attributable to the insurance of the Estate Common Parts. Again, in the absence of any other reliable information, we consider it reasonable to adopt the figure in the budget as reflecting the reasonable likely cost of insuring the Estate Common Parts.
- Management fees – The amount claimed for management fees in the summary of expenditure is the same as the amount provided for in the 2013-14 budget. It is therefore clear that, once again, the necessary apportionment of the cost between the Estate Charge and

the Block Charge has been overlooked. The budgeted figure for Estate Charge management fees was £7,988. As far as the Applicants are concerned, this would produce an annual contribution towards management fees of £21.89. Whilst we note the Applicants' complaints about the standard of management service they have received, we find that – once the necessary apportionment between Estate and Block Charge is taken into account – this management fee is not unreasonable in the circumstances.

- Administrative costs – In addition to management fees, the Respondent seeks to recover £7,393 by way of “administrative costs”. It is entirely unclear what this expenditure relates to. In response to directions requesting clarification on this matter, the Respondent simply asserts that the Applicants cannot challenge this aspect of the service charge because they have not made an application under the provisions of the Commonhold and Leasehold Reform Act 2002 which concern the payability and reasonableness of “administration charges”. The Respondent and its advisers are entirely mistaken in this regard. The expenditure in question is claimed by them as part of the service charge. Therefore it may only be taken into account when determining the amount of the service charge if and to the extent that it satisfies the conditions in section 19(1) of the 1985 Act (see paragraph 14 above). Given that the Respondent has declined to offer any explanation of, or justification for, the expenditure, we find that it must be entirely disregarded when determining the amount of the Applicants' service charge liability.
 - Miscellaneous expenditure – Other miscellaneous items are noted in the summary of expenditure. We find that the nature of these items are such as might be expected to form part of the Estate Charge and/or are de minimis in amount.
 - VAT – From the limited information provided, it is not possible to make an accurate assessment of the amount of VAT which should properly be included within the Estate Charge. However, it is obvious that the appropriate amount should not exceed 20% of the sum of the other elements of the Estate Charge.
33. We consider it appropriate to take a similar approach to the determination of the amount of the Estate Charge for the preceding service charge period (making appropriate adjustments to reflect the fact that this was a period of thirteen months rather than a period of one year).
34. The effect of the above findings and conclusions on the amount of the Estate Charge for the two periods in question is shown in Appendix 2 to this decision. By applying the relevant Estate Charge Proportion to the

total Estate Charge for each of those periods, it can be seen that the amounts payable by the Applicants are as follows:

Period	Total Estate Charge	Estate Charge Proportion	Applicants' Contribution
2012 – 13	£31,674	0.274%	£86.79
2013 – 14	£27,738	0.274%	£76.00

Costs

35. By virtue of bringing these proceedings, the Applicants have achieved a substantial reduction in the amount of the service charge contributions which they are being asked to pay. We therefore have no hesitation in granting their application for an order under section 20C of the Landlord and Tenant Act 1985. During the final hearing, Mr McCarthy stated that his clients had previously been unaware of the section 20C application. However, the application was noted in the directions issued in March 2015. In any event, the case for making the order is a very strong one and we would have taken the same view even if the application had been made for the first time at the hearing.
36. In addition, we consider it appropriate to exercise our power under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to order the Respondent to reimburse the Applicants their tribunal application and hearing fees.
37. Finally, we note that Ms Khara has raised the question of certain “late payment fees” which have apparently been applied to the Applicants’ service charge account in connection with disputed service charges. The question of whether any such charges are payable and/or reasonable is not presently before the Tribunal. However, the Respondent may wish to reconsider whether such charges are appropriate in the light of this decision. In the event that a dispute remains in that regard, then it would be open to either party to apply to the Tribunal for a determination of the matter.

APPENDIX 1

Service Charge Expenditure Claimed by the Respondent

	1 March 2012 – 31 March 2013	1 April 2013 – 31 March 2014
	£	£
Landscaping	8,460	6,417
Communal cleaning	4,475	8,432
Window cleaning	3,445	2,210
Communal water	280	0
Communal electricity	8,275	4,978
Gas	0	3,939
General maintenance and repairs	33,498	27,787
Statutory testing and inspections	6,340	6,480
Insurance	15,101	24,227
Management fees	17,490	20,610
Professional fees	108	0
Accountancy	665	1,300
Administrative costs	120	7,393
Bank charges	200	0
VAT incurred	19,571	14,567
Total expenditure	118,028	128,339

APPENDIX 2

Service Charge Expenditure as Determined by the Tribunal

	1 March 2012 – 31 March 2013	1 April 2013 – 31 March 2014
	£	£
Landscaping	8,460	6,417
Communal cleaning	0	0
Window cleaning	0	0
Communal water	280	0
Communal electricity	0	0
Gas	0	0
General maintenance and repairs	5,482	5,060
Statutory testing and inspections	0	0
Insurance	2,546	2,350
Management fees	8,654	7,988
Professional fees	108	0
Accountancy	665	1,300
Administrative costs	0	0
Bank charges	200	0
VAT incurred	5,279	4,623
Total expenditure	31,674	27,738