

12299



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

Case Reference : **MAN/OOCZ/LSC/2017/0001**

Property : **71 Hazel Grove, Cowlersley Lane,
Linthwaite, Huddersfield, HD7 5TQ**

Applicant : **Mr Anthony Denning and Mrs
Marie Denning**

Representative : **In person**

Respondent : **Linthwaite (Freehold) Management
Company Limited**

Representative : **Regent Property Management Ltd-
Mr Paul
Counsel – Mr Simpson**

Type of Application : **Sections 27A & 20c Landlord and
Tenant Act 1985**

Tribunal Members : **Judge J. Oliver
Mrs S. Kendall MRICS (Valuer)**

Date of Determination : **20th June 2017**

Date of Decision : **30th June 2017**

DECISION

Decision

1. The Tribunal makes no determination upon the insurance premiums and accountant's fees in 2015, these having previously been decided upon in proceedings between the parties numbered MAN/OOCX/LSC/2015/0013.
2. The management fees for 2015 are reasonable and payable in the sum of £360
3. The accountant's fees, insurance premium, management fees and bank charges in the sums of £240, £297.15, £1440 and £52.31 for 2016 are reasonable and payable.
4. An order is made pursuant to Section 20C of the Landlord and Tenant Act 1985 ("1985 Act").

Reasons

Introduction

5. This is an application by Anthony and Marie Denning ("the Applicants") for a determination of the reasonableness and payability of the service charges relating to the Property for the year 2015 and 2016, pursuant to S.27A of the 1985 Act.
6. The application is also for an order pursuant to S20C of the 1985 Act to prevent the Landlord's costs of the application being charged through the service charge.
7. The Respondent to the application is Linthwaite (Freehold) Management Company Limited ("the Respondent"). The company owns the freehold of the Property and eleven other properties forming the development, the Hazel Grove Estate ("the Development").
8. The Property is held under a Lease ("the Lease") dated 25th October 2007 and made between Linthwaite (E.S.) Housing Association Limited (1) ("the Association") and the Applicants (2) for a term of 999 years from 25th October 2007.
9. The Respondent acquired the freehold from the Association in 2007.
10. The lessees of the properties in the Development each have one share in the Respondent.
11. On 1st October 2015 the Respondent appointed Regent Management Ltd ("Regent") to manage the Development.
12. Directions relating to the application were issued on 25th January 2017, providing for the filing of statements and bundles and thereafter for the matter to be listed for a hearing.
13. The application was heard on 20th June 2017.

Inspection

14. The Tribunal inspected the Property in the presence of the Mr Denning. Mr Paul of Regent and Mr Simpson, Counsel, attended on behalf of the Respondent.

15. The Property is a two bedroomed terrace property, set within the upper row of two rows of terraced properties fronting Cowersley Lane Linthwaite, between which there are 15 car parking spaces which also extend in a L shape round the back of the lower terrace. These represent one space for each property and 3 for visitors. There is also a pathway to the rear of then upper terrace allowing access to the car park.
16. The Tribunal was advised the Development was built in 1979.
17. The common parts are confined to the rear car park and path. The Tribunal was advised there has been no maintenance carried out to the car park since 1979.
18. The Respondent, in addition to maintaining the common parts, also collects the ground rent and service charge.

Issues

19. The issues for determination by the Tribunal are the reasonableness of the service charges for the following years:

2015

Accountancy Fees	£650
Insurance	£250

2016

Accountancy Fees	£404
Bank Charges	£150
Managing Agents Fees	£1440

20. Within the application the Applicant has also sought an order pursuant to Section 20C of the Act to prevent the Respondent from including the costs of the proceedings within the service charge.

The Law

21. Section 27A(1) of the Act 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,*
 - (e) the manner in which it is payable.*
22. The Tribunal has jurisdiction to make a determination under section 27A of the Act whether or not any payment has been made.
23. The meaning of the expression "service charge" is set out in section 18(1) of the Act. It means:

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

(a) which is payable, directly or indirectly, for service, 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

24. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 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 they are reasonably incurred, and*

(b) *where they are incurred on the provision of services or the carrying out of works, only of the services or works are of a reasonable standard*

and the amount payable shall be limited accordingly.

25. "Relevant costs" are defined for these purposes by section 18(2) of the 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

26. Section 20C of the 1985 Act provides that a tenant may apply for an order that any costs incurred by a landlord in connection with proceedings before a First-tier tribunal are not to be regarded as relevant costs when determining the service charge. If such an order is made the Landlord cannot recover those costs within the service charge.

The Hearing

27. The Applicants attended the hearing in person. Mr Paul of Regent and Mr Simpson, Counsel, attended to represent the Respondent.

28. At the outset of the hearing Mr Simpson produced Case law upon which the Respondent intended to rely. There had also been further information filed by the parties that the Tribunal had not received prior to the hearing. The hearing was therefore adjourned for a short period to allow time for this further information to be read by both the parties and the Tribunal.

29. The further documentation filed on behalf of the Respondent was a copy of the service charge demand addressed to the Applicants for the y/e 31st December 2015 and 2016 and both dated 14th June 2017. The Applicants had also filed an additional statement dated 15th June 2017.

30. Mr Simpson advised the case law submitted to the Tribunal was in response to the findings of the earlier Tribunal that had determined that the service charges for 2014 and 2015 was not payable until such time as it had been demanded. Mr Simpson submitted the Tribunal had erred in this and relied upon the decisions made in *Elysian Fields Management Co Ltd v Nixon [2015 UKUT 427 (LC)]* *Stephen Clacy (1) Tracey Nunn(2) v Alexander Sanchez & ors [2015 UKUT 387 (LC)]*, *Pendra Loweth Management Ltd v Mr North (1) Mrs North (2) [2015 UKUT 91 (LC)]* and *Redrow Homes (Midlands) Ltd (1), Dickens Heath (Phase 5) Management Co Ltd (2) Gala Unity Ltd (3) v Davinder Hothi & ors [2011] UKUT 268 (LC)]*.

31. The Applicants confirmed the application had been made following their frustration in trying to obtain details from the management company regarding certain aspects of the service charge accounts. The First-tier tribunal had heard a previous application brought by the Applicants in 2015. This had determined disputed service charges payable for 2014 and 2015.
32. The Tribunal advised the Applicants that it could not revisit issues that had been the subject of the earlier decision. The earlier Tribunal had made determinations upon the insurance premiums and accountancy fees in 2015 in the sum of £250 and £650 respectively.
33. The Applicants confirmed that for 2015 only the management charges were in dispute.
34. Mr Paul confirmed that Regent had been appointed to manage the development on behalf of the Respondent on 1st October 2015. Prior to that Chadwick Lawrence had acted as managers and Haigh Hudson as the accountants and company secretary for the Respondent. However, Haigh Hudson and Robert Jason Haigh both resigned in January 2017. Consequently Regent had experienced difficulty in obtaining all the information required to prepare the service charge accounts.
35. Mr Paul confirmed that Haigh Hudson had prepared the statutory accounts for y/e 30th June 2015.
36. Mr Paul advised Regent had prepared the service charge accounts for 1st July 2015 to 31st December 2015 and then from 1st January 2016 to 31st December 2016.
37. The Tribunal noted the disputed items in 2015 were accountancy fees and insurance premiums. The actual amounts were less than allowed by the earlier Tribunal the actual amounts being £240 and £123.95 respectively.
38. Mr Paul explained that the insurance premiums charged in the accounts were only for the period 28th July to 31st December due to the renewal date. The actual charge for the year was £290. The Applicants confirmed they did not dispute this amount. The period for January to April 2015 had been charged through the statutory accounts.
39. The Applicants, in challenging the management charges for both 2015 and 2016 argued that, firstly the agreement between the Respondent and Regent was a long term qualifying agreement requiring consultation under section 20 of the 1985 Act. Secondly the amounts charged were excessive.
40. The Tribunal referred the Applicants to the original agreement dated 1st October 2015 with Regent and noted it was for a term of 364 days. The Respondent, following a quorate board meeting on 23rd September 2016, renewed the agreement with Regent on the same terms. A further agreement dated the 29th September 2016 was then signed.
41. The Applicants confirmed they had misread the terms of the agreement and accepted it was not a long term qualifying agreement that required consultation.
42. The Respondent confirmed the management fee agreed with Regent was £300 plus VAT per quarter. Mr Paul advised that when appointed there was additional work. This included collating information, corresponding with the Respondent's shareholders and setting up the necessary bank account to allow all payments to be collected by direct

- debit. This had required changing the bank account. The new account is fully automated to deal with both income and payments, thereby reducing errors and costs.. If Regent had stayed with the Respondent's existing bank then manual postings of all income and expenditure would have been necessary. This would have increased management costs.
43. The Applicants advised they had challenged this item due to a lack of information as to what work was involved. Mr Denning had, for many years, managed the development on behalf of the Respondent and was therefore familiar with what was involved. He submitted that the production of the ground rent demands was work for the Respondent and should not be included within the service charge.
 44. The Applicants confirmed they no longer disputed the management charges.
 45. In 2016 the Applicants stated they disputed the accountancy fee of £404 stated in the budget. It was accepted that at the hearing accounts were available to show the actual charge for this item was £240. New accountants, Joliffe Cork, had been appointed. Whilst there was no invoice yet available for this item, the amount had been agreed in advance.
 46. The Applicants confirmed this item of expenditure was no longer in dispute.
 47. Mr Paul confirmed that for the second disputed item, bank charges, the actual amount was £52.31, rather than the budgeted figure of £150. Mr Paul advised that Regent collect both the ground rent and the service charge in the same bank account, rather than in two separate accounts. Following the current application, it had been decided to divide the charges between the Respondent and the service charge.
 48. The Applicants advised that they no longer disputed this item, the actual amount being significantly less than the budgeted item, upon which they had been relying.
 49. Mr Paul explained that the insurance year ran from 1st July to 30th June and consequently the premium in the accounts represented 6 months at one rate and the remainder at the next year's rate. This item was not in dispute.
 50. The Applicants stated they were concerned that service charge payments for 2014 should have been credited to leaseholders for 2015. Mr Paul submitted that any overpayment made in 2014 was carried forward in accumulated funds. The service charge accounts are prepared on receivable and not paid monies. The Tribunal advised this was outside the scope of the current application.
 51. The Applicants confirmed they sought an order pursuant to Section 20C of the 1985 Act.
 52. Mr Simpson advised the Respondent had incurred significant expenditure in responding to the application and whilst not seeking an order for costs, a schedule had been prepared. This indicated the Respondent's costs, including those of the hearing, amounted to £10,000.
 53. Mr Simpson advised that the application was not just about the charges involved but there was a significant background of personal difficulties involving Mr Denning and other shareholders. The amount at issue

- amounted to some £229.44 and must therefore be considered trivial. Therefore an order pursuant to Section 20C was opposed.
54. The Applicants confirmed the application had been brought because of their difficulty in obtaining answers to their enquiries. Some had been ignored and nothing had been properly explained. The answers had only been provided as a result of the application.
 55. Mr Simpson submitted that Mr Paul had encountered difficulties in obtaining information from the previous managers of the development, thus making it difficult for Regent to respond.
 56. Mr Simpson advised the Respondent was an insolvent company in 2015 and were a Section 20C order to be made, the burden of the costs would fall upon Regent.
 57. Mrs Denning stated Mr Denning had managed the Development for 17 years and had never charged for his services.

Determination

58. The Tribunal noted that, at the time of the application, the Applicants' only information with regard to the service charge was based upon service charge estimates. The service charge accounts for the disputed periods were not prepared and available until shortly before the hearing, namely the 17th June. As a result of this, some of the Applicants' issues were resolved when it became clear the actual charges were less than the estimated amounts. Consequently, at the hearing, many of the disputed amounts were agreed by the Applicants.
59. The Tribunal further noted that within their application the Applicants sought to dispute both the insurance and accountancy charges in 2015.
60. The parties were advised at the hearing that these issues had already been determined in earlier proceedings. The Tribunal had then determined the amounts payable for those matters were £650 and £250 respectively. The Tribunal could not revisit those issues. However, at the hearing the Applicants confirmed their agreement to the actual amounts charged within the accounts.
61. The Tribunal noted that the estimated charges on 2016 for the disputed items, namely accountancy, insurance and management fees were estimated in the sums of £404, £150 and £1440 respectively.
62. The actual charge for accountancy in 2016 was £240. The Applicants agreed that sum was reasonable. In the light of this and agreeing the sum to be reasonable, the Tribunal confirmed the amount payable for accountancy in 2016 to be in the sum of £240.
63. The disputed bank charges totalled £52.31. Again, the Applicants accepted this sum. The Tribunal noted that, in charging this reduced amount, the Respondent had accepted the Applicants' comments and had apportioned the charges between the service charge accounts and the Respondent. The Tribunal considered the charges to be reasonable, given the amount and the apportionment and determined the sum payable for this charge in 2016 would be £52.31.
64. The Tribunal considered the management fees for both 2015 and 2016, this not being a matter considered and determined upon within the previous application.

65. The Tribunal noted at the hearing the Applicants conceded the agreement between the Respondent and Regent was not a long term qualifying agreement that required consultation. The Applicants confirmed the agreement had not been read properly and their assertion was therefore misguided. The Tribunal did consider the point and determined the agreement, being less than 12 months, was not a long term qualifying agreement and did not require any consultation.
66. The Tribunal thereafter considered the amount of the management charge for both years. Again, it was noted that at the hearing the Applicants confirmed their agreement to the amounts charged in each year.
67. The Tribunal noted the management charges related to a relatively small Development, but nevertheless determined the amounts charged to be reasonable. The Tribunal accepted that initially there was significant work in setting up bank accounts and correspondence to enable the easy and smooth running of the service charge accounts. Had those not been put in place it is probable higher management costs would have been incurred.
68. The Tribunal thereafter considered the application for an order pursuant to Section 20C of the 1985 Act.
69. The Tribunal noted that at the hearing all the disputed amounts were accepted by the Applicants. In addition, the Applicants had conceded the point that the agreement between the Respondent and Regent was not a long term qualifying agreement.
70. However, it further noted that at the time the application was made, in January 2017, much of what had been available at the hearing had not been known. In particular, the final service charge accounts for both 2015 and 2016 had not been finalised until 17th June 2017, some three days prior to the hearing.
71. The Tribunal accepted that Regent had had difficulties in obtaining information from the previous managers of the Development to enable them to prepare the necessary accounts.
72. The Tribunal noted that the Applicants had succeeded in some of the matters raised before the Tribunal. Indeed, Mr Paul had accepted that he had changed the application of the bank charges directly as a result of the query raised by the Applicants. Of the disputed items, save the management charges, the amounts were less than those known to the Applicants at the time of the application. The actual amounts were only known immediately prior to the hearing.
73. The Tribunal considered it unfortunate that the Respondent's costs were of the amount claimed when considering the amount at issue. It took note of the submission that the Respondent was technically insolvent in 2015 and to allow an order pursuant to Section 20C would affect the Development in the future.
74. The Tribunal considered the terms of the Lease and whether the Respondent's costs are recoverable within the service charge. Neither party made any representations upon the construction of the Lease..
75. Clause 3 (9) imposes an obligation upon the Applicants, as lessees, to pay the service charge as provided for in the Fourth Schedule.
76. Clause 4 (b) provides:

- (i) *To employ at the Landlord's discretion a firm or Managing Agents to manage the Hazel Grove Estate and expenses payable to such agents or such other person who may be managing the said properties including the cost of computing and collecting the rents in respect of the said properties or any parts thereof*
- (ii) *To employ all such surveyors, builders, architects, engineers, tradesmen, accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Common Parts.*

77. The Fourth Schedule provides:

1. In this schedule the following expressions have the following means respectively:-

(i) "Total Expenditure" means the total expenditure incurred by the Landlord in any Accounting Period in carrying out its obligations under Clause 4(4) of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Hazel Grove Estate including without prejudice to the generality of the foregoing.

(a) the cost of employing Managing Agents and

(b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder..."

78. The Tribunal notes that within the terms of the Lease there is no clear reference to the recoverability of legal fees within the service charge. The terms are specific to the maintenance of the Development and to the collection of the rents.

79. The Tribunal considered *Sella House v Mears (1989) 21 H.L.R. 147* and *St Mary's Mansions Ltd v Limegate Investment Co Ltd & Sarruf [2003]05 EG 146*. Those cases determined that the ability to recover legal fees within the service charge must follow very clear wording in the Lease.

80. In this case the Tribunal does not consider the Lease clearly provides for the recovery of legal fees within the service charge and consequently makes an order pursuant to Section 20C of the 1985 Act.