

9457



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

**Case Reference** : **MAN/00DA/LIS/2013/008-17**

**Property** : **Properties at Hall Mews, Clifford Road,  
Boston Spa, LS23 6DT**

**Applicant** : **Places for People Homes**

**Respondents** : **Mrs June Wade  
Mr and Mrs Woffendin  
Mrs Bhabra  
Ms Vetlesen  
Mr and Mrs Milner  
Mr Rodgers  
Mrs Thompson  
Mr Raper  
Mr and Mrs Elwen**

**Type of Application** : **Landlord & Tenant Act 1985 – S27A**

**Tribunal Members** : **K M Southby (Judge)  
A Ramshaw (Expert Valuer Member)  
J Howell (Lay Member)**

**Date of Decision** : **12 February 2014**

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**DECISION**

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## **DECISION**

1. The amount of service charge for the period 1 April 2010 to 31<sup>st</sup> March 2014 is to be reduced as follows:
  - a. Utilities costs in relation to the Secretary's House (number 7 Hall Mews) are to be reduced by two thirds.
  - b. Council Tax costs in relation to the Secretary's House are to be reduced by two thirds.
  - c. The sum of £2350 in relation to the replacement boiler in the Secretary's House is to be reduced to zero.
  - d. The sum payable by way of contribution to the maintenance reserve for the years 2010/11, 2011/12 and 2012/13 are to be reduced to zero.

## **PRELIMINARY**

2. This matter originated through nine applications to the County Court dated 7 September 2012 made by the Applicant against the Respondents for arrears of Service Charges. These matters related to the service charge years 2010/11, 2011/12, 2012/13 and 2013/14, and were transferred by the County Court to the Tribunal. Concurrently the Applicant also issued an application to the Tribunal in respect of 2012/13 and 2013/14. The Tribunal consolidates all of these matters together and deals with them all in this decision.

## **THE PROPERTY**

3. The Property is a complex of 24 (now 25) houses arranged in 4 terraces within a walled garden consisting of a substantial array of borders, hedges, lawned and paved areas. It was constructed in the mid 1980s in stone, and the rows of houses are roofed in either slate or tile. The complex is situated behind Boston Hall in the desirable residential location of Boston Spa, and is a well-maintained and attractive development of individual properties for residents aged over 55.

## **THE INSPECTION**

4. The Tribunal inspected the Property on 12 February 2014. In attendance at the inspection in addition to the Tribunal members were Ms Slingsby, the Site Secretary, Mrs Tritschler (representing resident Mrs Thompson) and resident Mrs Wade. Upon inspection the Tribunal observed that the properties themselves have their own independent front doors and do not benefit from communal areas, save for the external landscaped grounds and car park and also the Secretary's office. This was observed to be one ground floor room with en suite toilet, which had formerly comprised a part of the ground floor of the house number 7. The office, having been relatively recently subdivided from the house, and benefiting from its own separate entrance door is now numbered 7A and is separately metered.

*5.1.2 to maintain the structure of the adjoining dwellinghouse in such repair as will provide adequate support for the said dwellinghouse comprised in the demised premises*

*5.1.3 to insure...*

*5.1.4 to keep the gardens lawns roads footways hedges fences or any other part of the lessor's Estate (other than the demised premises) in good and tidy order*

*5.1.5 to keep the gutters sewers and drains serving the demised premises or any part thereof in good repair and working order*

*5.1.6 to employ a resident secretary for the general supervision of the Lessor's Estate*

*5.1.7 to answer emergency calls of the lessee...*

*...PROVIDED THAT the lessor at any time from time to time (but without obligation to do so) in their absolute discretion provide any other service or modify or vary the provision of any of the foregoing services where to do so would in the opinion of the lessor (which opinion shall be final and binding on the Lessee and such other person as aforesaid) be conducive to the better management of the Lessor's Estate*

#### *The Fourth Schedule*

*....*

*2. the said annual service charge shall be one twenty fourth of the Lessor's reasonable estimated costs and expenses of and in connection with providing the services specified in clause 5 of this Lease and of providing for any anticipated capital or extraordinary expenditure or provision by way of contingency as the lessor may in its absolute discretion think fit...*

#### **THE HEARING**

6. At the hearing Ms Goodacre (Finance Manager of Places for People) and Ms Chambers (Home Ownership Advisor, Places for People) appeared for the Applicants. Mrs Wade, Respondent and resident of number 25 Hall Mews appeared in person, together with Mrs Tritschler as representative of Mrs Thompson of number 5 Hall Mews. The Tribunal also had the benefit of the bundles of documents and written submissions provided by both parties. There were approximately thirty other attendees also present and observing.
7. Having clarified some initial concerns by the Respondent about the opening balances on the service charge account and recent balancing payments it was agreed by all parties that the issues between them were as follows:

## THE LEASE

5. The Tribunal was shown a copy of the Respondents leases, which are in all important respects identical. The relevant provisions of the Lease for the purposes of the tribunal are as follows:

*3. In the event of the relevant determination of the term hereby created the Lessor and the Lessee or his personal representatives shall each use their best endeavours to procure the grant of a new Lease of the demised premises in accordance with clause 2 above and within one month of such grant there shall be paid (subject to the deductions specified in clause 3.2 below) by the lessor to the lessee or his personal representatives such sum ('the relevant sum') as the Lessor shall receive upon or in connection with the said grant*

*3.2 the relevant sum shall be so paid subject to the following deductions that is to say:*

*.....*

*3.2.4 an amount being ten per centum of any increase between the original premium paid and the premium paid under the new Lease*

4. The Lessee **HEREBY COVENANTS** with the Lessor as follows:

*4.1 To pay the said yearly rent (if demanded) and the said annual service charge in accordance with the provisions of the Fourth Schedule hereto*

*4.2 To pay all general and water rates in respect of the demised premises either direct to the appropriate local or public authorities where the demised premises are separately assessed or by way of reimbursement to the lessor of an appropriate proportion (to be determined at the discretion of the Lessor) attributable to the demised premises of such rates levied or chargeable in respect of the...Lessor's Estate.*

5. The Lessor hereby covenants with the Lessee as follows:

*5.1 Subject to the payment by the Lessee of the annual service charge in accordance with clause 1 above and the Fourth Schedule hereto to use their reasonable endeavours to do the following acts and provide the following services:*

*5.1.1 to maintain the structure of the dwellinghouse comprised in the demised premises in good repair and condition including where necessary the exterior painting*

- a. Secretary's House
    - i. Proceeds of sale
    - ii. Heating and Utilities
    - iii. Council tax
  - b. Sinking Fund & Maintenance Reserve
8. The Tribunal heard that property number 7 had always been set aside as the accommodation and office for the residential secretary provided in accordance with clause 5.1.6 of the lease. The house was occupied by the secretary until 2006, following which the Applicant states that it no longer proved possible to fill the role including a residential element. From 2006 therefore there has been no residential secretary. The Tribunal heard that in 2007 a meeting with residents took place at which this issue was noted and various possible solutions were raised including splitting and selling number 7. From 2007 onwards it appears that the Applicant had concluded that it would not be able to refill the residential secretarial role. The Respondents were told in 2012 that number 7 was being converted into a separate house and office, and this conversion was completed in October 2012 with sale of the house agreed in December 2012 and completed in May 2013. The Applicant informed the Tribunal that the five years which elapsed between the issue being identified and the house being split and sold was simply a reflection of how long the process took within the Applicant organisation.
9. The Tribunal was asked by the Respondents to consider the reasonableness of the Applicant in not applying 10% of the sale price of the property to the sinking fund, which the Respondents argued was as per clause 3.2.4 of the lease. The Applicant informed the Tribunal that as number 7 was part of the Lessor's Estate it had never had a lease associated with it which contained this provision and therefore there was no obligation for them to do so. The Tribunal accepts this and therefore finds that clause 3.2.4 did not at that time apply to number 7.

#### **HEATING AND UTILITIES**

10. The Tribunal notes the requirement under the Lease for the Applicant to use reasonable endeavours to provide a residential secretary. The Applicant relies upon 5.1.7 arguing that this entitles them to modify the services as they choose to no longer include provision of a residential secretary.
11. It is accepted by the Tribunal that the residential post was difficult to fill and that those reasonable endeavours were made in 2006 and 2007, however the Tribunal heard no evidence of continuing efforts in this respect. The Applicant filled the position with a non-resident secretary and the Tribunal accepts that it was entitled to modify the provision of its services in this regard. It is the Applicant's contention that as number 7 formed part of the Lessor's Estate it fell to the Respondents to pay for all the costs associated with it, even though the services with which it was originally associated had altered.

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11. It is accepted by the Tribunal that the residential post was difficult to fill and that those reasonable endeavours were made in 2006 and 2007, however the Tribunal heard no evidence of continuing efforts in this respect. The Applicant filled the position with a non-resident secretary and the Tribunal accepts that it was entitled to modify the provision of its services in this regard. It is the Applicant's contention that as number 7 formed part of the Lessor's Estate it fell to the Respondents to pay for all the costs associated with it, even though the services with which it was originally associated had altered.

12. The Tribunal does not agree with this assertion, noting that the Respondents' obligation is to pay charges and expenses in relation to services provided, and that those charges must be reasonable and reasonably incurred. The service provided to the Respondents altered in 2006 from that of residential secretary, with associated costs of residency to a non-resident secretary who was in attendance 15 hours a week. No issue is taken by the Respondents in respect of the service provided or the salary paid to the individuals concerned, the issue is with the charges for heating and lighting a house of which only one room was used by the secretary for 15 hours a week.
13. The Tribunal finds that it is unreasonable for the Applicant to charge the Respondents for heating and lighting the entirety of the property when only one room was in use for their benefit. The Tribunal is asked to consider the period from 2010/11 to 2013/14, but notes that the same observations would apply for preceding years from the point in 2006 when the last residential secretary ceased occupation. The Tribunal has therefore reduced the charges in respect of heating number 7 by two thirds. This reflects the Tribunal's observation upon inspection that the office occupied approximately one quarter of the house, but that there are certain fixed costs associated with utilities which would be the same irrespective of the size of the premises making an estimate of two thirds reduction reasonable in the view of the Tribunal.

### **COUNCIL TAX**

14. The Respondents' query in respect of Council Tax was similar to that above, in that it concerned charges for number 7 following the departure of the resident secretary. These charges were previously paid by the occupier personally. The documentation provided to the Tribunal shows a zero charge in respect of council tax in the year 2009/10 following which the charges were £1178 in 2010/11, £1370.88 in 2011/12 and £1226.88 in 2012/13. The Applicant relies upon clause of the lease for recovery of these charges and again argues that they are charges that pertain to the Lessor's Estate.
15. The Applicant informed the Tribunal that following that splitting of the premises at number 7 business rates arising from 7A Hall Mews will be charged to the service charge account rather than Council tax. The Applicant also informed the Tribunal that it has since the instigation of these proceedings made a reimbursing payment to the Respondents for those charges for utilities and Council tax applied to the service charge account following the date of conversion in September 2012. The Applicant however asserts that it is entitled under Clause 4.2 to recover in full those charges up to the date of conversion.
16. The Tribunal accepts that clause 4.2 permits the recovery of rates in respect of the Lessor's Estate, but does not accept the reasonableness of applying the Council Tax for an unoccupied building used only for business purposes to the Respondents' service charge account. In particular the Tribunal does not consider it to be reasonable to apply those charges from 2010 onwards, when the decision



that the premises would no longer be used for a residential secretary was taken as far back as 2007.

17. Had the property been occupied by the residential secretary the Applicant accepts that the Respondents would not have had to pay the Council Tax charge, which would have been borne by the secretary directly. Had the property been converted sooner during the five year period, the Respondents would also not have had to bear the Council tax cost as instead 7A would have been subject to business rates. The Tribunal were not provided with any estimates or invoices provided to them in respect of business rates on the Hall Mews office and so uses its discretion and expertise to estimate a reasonable apportionment of the Council Tax charges. By reason of the extent of house number 7 which was being used for the provision of services for the benefit of the Residents the Tribunal concludes that a reduction by two thirds of the Council Tax charge would be reasonable.

#### **BOILER**

18. The Tribunal heard evidence from the Respondents that the cost of a new boiler in number 7 had been added to the service charge account only shortly before the property was sold. The Respondents expressed particular concern about this item as they had been in their view contributing to the upkeep of an empty house which upon sale by the Applicant did not yield the 10% of sale value into the Sinking Fund which had been anticipated.
19. The Tribunal was provided with evidence from the Applicant that the boiler replacement had been ordered in March 2011. The Applicant argued that the boiler required replacement in order for the non-resident secretary to have heat in the house prior to the separation into an office, and that the timing was an unfortunate coincidence. The Tribunal accepts that the secretary required a properly heated place of work, but considers that it would have been appropriate for the residents to contribute towards the provision of a heater in the room of the house which was functioning as the secretary's office, rather than paying to replace a central heating system at a time when the decision had already been taken several years previously not to reappoint a resident secretary. The Tribunal therefore concludes that the Applicant should reimburse to the service charge account the cost of the replacement boiler and the associated boiler servicing costs.

#### **SINKING FUND AND MAINTENANCE RESERVE**

20. The Applicant drew the Tribunal's attention to the provision at paragraph 2 of the Fourth Schedule which it relies on as authority for the provision of a sinking fund and the maintenance reserve respectively. The Tribunal were informed that the current balance in the sinking fund, comprising of 10% of sale proceeds is £116,197 and the balance in the maintenance reserve made up of direct contributions as part of the service charge is £11,934. This is in addition to day to day repairs and maintenance which also fall to be paid through the service charge.

21. The Tribunal finds the lease to be unhelpfully opaque on the workings of the 'contingency' and also on the way in which the 10% sale proceeds are to be applied, but finds their historic application into a sinking fund to be reasonable. The Tribunal accepts therefore that the sinking fund is not a fund where the Applicant can have direct control over the sums deposited within it, and therefore they cannot simply call for larger contributions to deal with planned works. This as the Tribunal understands it, is the Applicant's rationale for having two separately administered funds – the maintenance reserve being under the Applicant's direct control and therefore larger contributions can be demanded if the need arises.
22. It follows however that it is also open to the Applicant to demand smaller sums if circumstances suggest this would be reasonable.
23. The Respondents pointed out that the items allocated to the maintenance reserve could in their view be allocated instead to the sinking fund (cyclical painting) or to day to day maintenance (annual servicing of electrical installations), but that in any event the maintenance reserve runs on a five year cycle and the sum demanded from them over any given five year period was significantly in excess of the budgeted amount.
24. The Tribunal heard evidence from the Applicant who stated that they set the contribution to the maintenance fund 'as low as possible', but was unable to explain why the sum demanded was (when calculated on a five year cycle) £1500 above the budgeted sum, and also how they then proposed to justify the intended increase in contribution to the maintenance fund. The Applicant responded when pressed that they could not set the maintenance reserve fund at zero as 'it would be impossible to reinstate a zero charge'.
25. The Tribunal considered the representations from both parties, the budgets and maintenance plans (both previous versions and the more recent 2013 draft maintenance plan) and considered that the sums demanded from the Respondent were excessive. The Tribunal agrees that it would be entirely possible to reallocate the items currently allocated to the maintenance fund to other funds, but that in any event the sums demanded from the Respondents over the past three years were unreasonable given the balance in the maintenance reserve and sinking fund, the state of repair of the premises and the proposed schedule of works. The Tribunal therefore determines that the Applicant should refund to the Respondents their contributions to the maintenance reserve for 2010/11, 2011/12 and 2012/13, thereby reducing the value in the fund to a more reasonable figure, more in line with the proposed budget.