



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

Case Reference : **BIR/31UC/LIS/2015/0018**

Property : **20 Palmer Square Leicester LE4 3LN**

Applicant : **Jean Tweedale**

Respondent : **Jeffrey Matthey**

Representative : **Warwick Lite**

Type of Application : **An Application for the determination of liability to pay and reasonableness of service charges pursuant to section 27A of the Landlord and Tenant Act 1985**

Tribunal Members : **V Ward FRICS (Chairman)
Judge M Gandham**

Date of Decision : **2 September 2015**

DECISION

Introduction

1. This is an application made by the Lessee, Jean Tweedale (“the Applicant”) on 26 February 2015, for a determination of the liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985 (“the Act”), relating to 20 Palmer Square Leicester LE4 3LN (“the Property”) in respect of the following periods:

1/11/2014	to	31/12/2014
1/01/2015	to	31/12/2015
1/01/2016	to	31/12/2016
1/01/2017	to	31/12/2017
1/01/2018	to	31/12/2018
1/01/2019	to	31/12/2019
1/01/2020	to	31/12/2020

2. The Applicant holds the Property for the residue of a 125 year term from 1 January 2009 granted by a lease (“the Lease”) dated 9th October 2009 originally made between Jelson Limited as Lessor and Ashley Steven Hollis and Lynne Marie Hollis as Lessees. The ground rent is currently £250 per annum. The Respondent, Jeffrey Mattey, is the freeholder of the Building in which the Property is situated, who was represented by Warwick Lite, the estate managers.
3. Following directions issued by a Procedural Chairman on 27 March 2015, the Tribunal directed that the application be dealt with on the basis of written representations unless an oral hearing was requested by either of the parties. Neither party requested an oral hearing and so the Tribunal determined the application on the basis of the written representations which were received from both parties.
4. The Tribunal received a similar application made on 15 February 2015, in respect of the adjoining property, 18 Palmer Square Leicester (Ref: BIR/31UC/LSC/2015/0002), the applicant in that matter was the lessee of that property and there has been collaboration in terms of the evidence provided in both applications (as both properties jointly comprise the ‘Building’ as defined in the Lease).

Inspection

5. The Tribunal carried out an inspection of the Property on 21 July 2015, accompanied by Mrs Tweedale. The Respondent was not represented at the inspection.

The Property comprises a ground floor maisonette (commonly known as a coach house) with a similar dwelling above (the subject property of application BIR/31UC/LSC/2015/0002). External areas relating to the Property include a garden area, a parking space in a communal car park (defined legally but not on site) and an area of the external roadway (again defined legally but not on site).

The areas inspected appeared in good order.

The Submissions of the Parties

The Applicant

6. In her Application, the Applicant stated that the dwelling was built in 2009 and that no service charge should be payable as no maintenance was required. Continuing, she said that any repairs would be covered by the ten year NHBC guarantee. In her opinion, she was currently paying a service charge but receiving no service and no maintenance as her property did not have any shared communal areas.

The Applicant provided external photographs of the Property to prove that it was self-contained and that it had its own path, courtyard and front door.

In response to the annual service charge budget for the period 1 November 2014 to 31 December 2014, the Applicant produced a Scott Schedule with comments against the cost headings on the budget sheet. These are reproduced as follows:

Item	Cost	Tenant's Comments
Accountancy Fees	£40.00	We do not agree to pay for their accounts. When you have your car serviced you don't pay for their accounts to be done.
Accounts Certification Fee	£48.00	Do not believe we should pay this, for the same reason as above.
General Minor repairs	£60.00	These are new properties so should not require repairs and they are covered by the NHBC guarantee.
Insurance Claims	£50.00	We have already paid our Buildings insurance to the Landlord.
Management Fee	£41.67	There is nothing for them to manage.

Management Fee VAT	£8.33	As above.
Reserve fund	£60.00	We do not think we should pay into a reserve fund as the Building are new and are unlikely to require repairs in the near future
Totals	£308-00	

This was the budget for both 18 and 20 Palmer Square.

To further endorse the fact that managing agents were not required, both the Applicant and also her neighbour (the applicant in respect of BIR/31UC/LSC/2015/0002), agreed that any repairs required to the building would be paid for themselves jointly on a 50/50 basis. The Applicant also provided a copy of the sales particulars, which she stated was the basis upon which she purchased the Property, where no mention was made of a service charge and the only recoverable item indicated was the buildings insurance premium.

7. In her concluding comments, the Applicant stated that whilst the freehold interest was owned by Jelson, the developer, there was no service charge paid. It was only after the Respondent acquired the freehold interest that the charge was levied.

The Respondent

8. In response, Warwick Lite advised that they had taken over as managing agents in respect of the Building with effect from 1 November 2014. They provided copy correspondence of letters to the Applicant which basically set out the amount of service charge that would be levied, an explanation for the same and also background information on their services. An extract from their letter to the Applicant of 5 November 2014 is as follows:

Category	Comment
Accountancy Fees	This fee is for preparing the yearly financial accounts for the site
Accounts Certification Fee	The external certification fee is an item that has been included as RICS (Royal Institution of Chartered Surveyors) guidelines state that any accounts completed internally need to be certified by an independent external company. This is also included in your lease.
General Minor Repairs	We have included a small amount of money for this period for any repairs that may be required.

Management Fee	This fee is for the service of Lite Property Management managing the site.
Insurance Claims	We have included a small amount for insurance claims, if a claim was caused by a communal issue, such as the roof, the service charge would cover the excess for this claim.
Reserve Fund	A reserve fund will be included in each budget, to build up funds for any planned routine major works that may be required or unforeseen expenditure.

9. Warwick Lite also provided copies of email correspondence between themselves and the Applicant where they had attempted to further explain the background and justification for the service charge as they saw it. They also commented that the agreement made between the Applicant and her neighbour, referred to in paragraph 6 above, was not legally binding. They confirmed that they, on behalf of the Respondent, were responsible for maintaining the property as per the terms of the Lease. They also advised the Applicant to take legal advice in respect of her obligations under the Lease.
10. Following the Applicant's queries regarding the service charge, Warwick Lite credited elements of the amount allocated for insurance claims (£25.00) and reserve fund (£30.00) included in the original budget.
11. Warwick Lite provided a copy of the certified service charge accounts for the initial period of management i.e. for the period 1 November to 31 December 2014. The Income and Expenditure account recorded that the following costs had been incurred in respect of 18 and 20 Palmer Square:

Accountancy Fees	£60
Accounts Certification	£30
Management Fee	£50
Total	£140

12. Of the original budget for this period of £308, there was therefore a credit of £168 to be carried forward to the next service charge year.
13. The budget for the service charge year ending on 31 December 2015 (in respect of both 18 and 20 Palmer Square) was detailed as follows:

	Total
Accountancy Fees	240.00

Accounts Certification Fee	30.00
Block Buildings Insurance	0.00
Buildings Insurance Valuation	0.00
Company Secretary Fee	0.00
Directors & Officers Insurance	0.00
Electrical Testing	0.00
General Minor Repairs	200.00
Health & Safety	180.00
Insurance Claims	0.00
Management Fee	250.00
Management Fee VAT	50.00
Professional Fees	0.00
Sundries	0.00
Totals:	950.00

The Law

14. The Act provides:

Section 19 Limitation of service charges: reasonableness

- (1) *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 provisions 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.*
- (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise.*

Section 27A Liability to pay service charges: jurisdiction

- 1) *An application may be made to a leasehold valuation tribunal [now the First-tier Tribunal Property Chamber (Residential Property)] 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.*

2) Subsection (1) applies whether or not any payment has been made.

3) An application may also be made to a leasehold valuation tribunal [First-tier Tribunal] for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs, and if it would, 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.*

4) No Applications under subsection (1) or (3) may be made in respect of a matter which –

- a) has been agreed or admitted by the tenant;*
- b) has been, or is to be referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party;*
- c) has been the subject of determination by a court, or*
- d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.*

5) But the tenant is not to be taken as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to the Application under this provision.

The Lease

15. The Tribunal notes that the Lessee covenants to pay a service charge under clause 6.9.1 of the Lease which is as follows:

“to pay the Service Charge ascertained in accordance with the provisions of Clause 7.9 (and all sub parts of that clause)”

Clause 7.9.1 states how the service charge is to be paid, whilst the service charge is defined within the Lease as half of the ‘Service Charge Costs’. Service Charge costs are defined as the costs to the Landlord of providing the Services (see below) in any financial year.

The Fifth Schedule of the Lease sets out the parameters of the service charge called “the Services” which includes, amongst others, the following items:

- a) Inspection, repairing, maintaining, replacing rebuilding, renewing the property.
- b) Calculating and setting aside annually such sums as the Landlord shall consider desirable to set aside, i.e. for a service charge.
- c) Any expenses incurred by the Landlord with regard to the maintenance and proper convenient management in the running of the building.
- d) Employing staff such as managing agents, keeping proper books and accounts.

The Tribunal’s determination

16. The Tribunal finds that under the provisions in the Lease the Applicant is liable to pay a proportion of the costs of providing “the services” to the Building and further the items charged fall within the scope of the Fifth Schedule.
17. Having determined that the charges are payable, the next matter for the Tribunal to consider is whether the amounts charged are reasonable.
18. Initially considering the charges for the part year, 1 November 2014–31 December 2014, the Tribunal would comment as follows. Only two properties form this management scheme and professional firms would, out of necessity, have minimum charges to enable them to be properly remunerated for the responsibility of administering the development. The charges levied for this first period are considered by the Tribunal to be reasonable on this basis and are in fact lower than would be anticipated.
19. As will be noted from the opening paragraph above, the Tribunal has also been asked to comment on future years. The Tribunal can make comment for the service charge year ending on 31 December 2015 on the basis of the budget provided and give an indication whether or not the charges appear reasonable; however, as this service charge year has not ended and accordingly certified

accounts not yet produced, a formal determination cannot be given. In respect of these proposed charges, the Tribunal would make the following observations (charges are for 18 and 20 Palmer Square):

Accountancy Fees £240

An amount such as this would not be considered unreasonable as a minimum charge for an accountancy firm to undertake such work.

Accountants Certification £30

Again this would not be considered unreasonable.

Minor Repairs £200

The managing agents have to make provision for the possibility of repairs being required to the development. Whilst the property still benefits from the residue of the NHBC, this will not cover all repairs and the scope of cover diminishes over time. The Tribunal would expect that if repairs are not carried out, then this amount would be carried forward as a positive balance to the next service charge year.

Management Fees £250 plus VAT

Normally managing agents will have a minimum charge for each development as indicated above. The amount quoted appears to the Tribunal not to be unreasonable.

The Tribunal considers the managing agents have set the budget as low as could be reasonably expected on the basis of the Respondent's obligations contained within the Lease they having, presumably, already taken in to account the comparatively minimal level of maintenance required.

20. It is the Tribunal's determination that service charges payable by the Applicant for the period 1 November 2014–31 December 2014 in the sum of £70 (being half the costs of £140 incurred for both 18 and 20 Palmer square) are payable and reasonable.
21. The Tribunal would further comment that the budget proposed of £475 (£950 for both 18 and 20 Palmer Square) appears reasonable; however, this would not prevent the Applicant making a future application against costs actually incurred

during this period. The Tribunal cannot make any comment about charges likely in future years.

22. The Tribunal has sympathy with the Applicant as she resides in a relatively modern property for which she has to pay a service charge with no perceived benefit. However, the Respondent is required to maintain the Building and development as per the terms of the Lease and this necessitates a service charge which the Applicant is obligated to pay.

Appeal

23. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Vernon Ward
(Chairman)