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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BR/LSC/2016/0012**
Property	:	**Properties at Collingburn Avenue and Greenwood Terrace , Salford**
Applicant	:	**Messrs N Ferreira and G Mascia (as lead Applicants) and others**
Respondents	:	**RMG management Limited (Messrs Hitchen and Golds appearing)**
Type of Application	:	**Reasonableness of Service Charges**
Tribunal Members	:	**Mr J R Rimmer** **Mr K Kasambara**
Date of Decision	:	**3rd August 2016**

DECISION

Decision : **No service charges are payable by Applicants in respect of properties in Collingburn Avenue, but limited charges are payable by Applicants in Greenwood Terrace, as more particularly outlined in paragraph 28 herein.**

An order is made under Section 20C landlord and Tenant Act 1985, as outlined in paragraph 29 herein.

A. Application and background

1. The Applicants are the owner-occupiers of various properties, described by all parties as town houses, situated on a large development adjacent to Ordsall Park, Salford. A full schedule of the parties and their relevant properties is appended hereto. The Respondents (RMG) are the management company servicing the development on behalf of Hulton Square (Ordsall) Management Company Limited (HSO) following the acquisition of full management responsibilities from the developer. The Applicants hold their interests under the provisions of long leases for the respective houses. A copy of a number of leases have been provided to the Tribunal. The principal terms are that they are granted at a premium and an initial rent of £100.00 a year for 999 years, less the last 10 days thereof, from 1st June 2007. The rent is subject to review at the expiry of each 10 year period of the lease from 1st January 2018 onwards.

2 The Applicants seek to establish the reasonableness and payability of the service charges for their respective houses for the period stated in their application as being for the years 2014 onwards and to include future years . On the basis that the service charge is calculated to 30th June in each year and the issues only arise between the parties from the 2014-5 charges the Tribunal has taken the application to be for the years ending 30th June 2015 onwards.

3 The lease contains provisions relating to the service charges at several points in the leases:

- Clause 4.3 contains the covenant by the tenants to pay the service charge, which is identified by the Fifth Schedule to the lease as being the costs incurred in providing the services identified therein.
- The obligation to provide the services is that of the Respondent by virtue of its covenant under Clause 5 of the lease
- There was a previous regime for apportioning the service charges according to the floor areas of the different properties on the development, but by consent this has changed to all properties paying an equal proportion

- Clause 5 to the lease includes many of those services and obligations that may described as being "normal" in such a lease and for which a charge is payable, but it would appear not to include an obligation to insure the premises against fire or other usual risks. However:
- By common consent there are services that are more particularly relevant to other parts of the development, or other types of property and in respect of which the respondents do not seek to recover costs from the Applicant leaseholders.

4 The lead Applicants provided what was effectively their Statement of Case in the application. Their case essentially is that notwithstanding the limited nature of the services that the management company purport to provide and then seek reimbursement for they are not services from which the Applicants benefit. They advise that this was recognised by the previous management regime indicating that no service charge would be sought from the townhouses, notwithstanding the terms of the leases. The passing of management responsibility to the Respondent and its review of the charging regime has prompted the application.

5 Following the application a case management conference was held at the offices of the tribunal in Manchester and directions given as to the future conduct of the matter, in response to which the Respondent filed a statement of case responding to the Application. The lead Applicants then provided their further views.

6 The Respondents identified those services for which it sought to charge and giving reasons therefor. In summary, it based its views upon the premise of separating those services for which town house owners should pay from those for which flat owners should pay (there being some services common to both). This premise is itself based upon the Respondents interpretation of the relevant provisions of the lease, particularly:

- The service charge is identified within the "Operative Provisions" of the lease, containing certain definition, together with paragraph 1 of the Fourth Schedule as the estate proportion of the estate expenditure.
- That expenditure is the cost of the services and facilities "for the benefit of the property or the general amenity of the estate"
- This amount is then divided between the number of units "capable of enjoying the estate services or any of them".
- It is then possible to identify those services that the town house owners are capable of enjoying and they a considered below.

7 The Applicants in turn make 3 particular points which the tribunal paraphrases for the sake of clarity:

- There are no services which are enjoyed, or capable of being enjoyed by the town houses. This is evidenced by the developer agreeing not to recover service charges from town house owners. (it appeared to the Tribunal that this "agreement" was accepted by the Respondents, but they challenged the basis upon which it was made and its enforceability).
- A previous decision of the Tribunal (MAN/00BR/LSC/2015/0056) in relation to other properties had determined that the town houses were not capable of benefiting from those services for which the Respondent sought to charge and there was no good reason to depart from that view.
- In any event the cost of the services was unreasonable in relation to any benefit that might be attributable to town house owners (the Tribunal accepting that this point was being made entirely as an alternative should the Tribunal not agree with the previous point.)

8 It being necessary for the Tribunal to have as clear a picture as possible of the layout of the whole development and particularly the buildings and grounds relating to those properties on Collingburn Avenue and Greenwood Terrace the Tribunal inspected the development on the morning of 3rd August 2016.

9 Collingburn Avenue, Greenwood Terrace and Hutton Street are three parallel roads, orientated approximately in an East/West direction. To the West is West Craven Street and to the East is Hollies Lane, the latter being a pedestrian way only. The area bounded by this oblong of land is part of a larger development under the control of HSO and managed by RMG. The Respondents are able to break down the relevant service charge provision into accounts for this smaller area.

10 Along the South side of Collingburn Avenue are a terrace of 9 three-storey town houses with integral garages giving access direct to the roadway. They back onto an identical row on the North side of Greenwood Terrace. There are gardens to the rear of each property in each row. On the South Side of Greenwood Terrace and North side of Hutton Street are 2 rows of three-storey duplex apartments.

11 4 blocks of three-storey apartments "bookend" the rows of town houses or duplexes, two at each end fronting on to West Craven Street and Hollies Lane.

12 All the roadways are understood to be adopted although the Respondent is responsible for 2 streetlights on Hollies Lane. Collingburn Avenue, Hutton Street and West Craven Street might be described as conventional urban streets, asphalted and with pavements. Greenwood Terrace is different in that it has continuous paved parking areas, where vehicles can park at right angles to the roadway, interspersed with small, shrubbed refuges at intervals: these are maintained by the Respondent.

13 Thereafter the tribunal reconvened at the Tribunal Centre, Piccadilly Plaza, Manchester for a hearing attended by the representatives of the Respondent and Mr Ferreira for the Applicants.

The hearing

14 The Respondent's case was put in accordance with its statement of case. Mr Hitchen argued forcibly that although he accepted that there were a number of services provided generally to the development in general and the more restricted area encompassing the subject properties there were nevertheless a number of services which the Applicants enjoyed, or were capable of enjoying, as set out in the statement. In page 7 of that statement they are listed and commented upon by the Respondent. It is not necessary to rehearse those views again but it should be noted that there are limited services of a direct nature, but which then require administrative back up by way of management costs, audit fees and similar indirect costs.

15 The particular benefits of the substantive services, concierge/caretaking and ground maintenance/general repairs, to the town house owners were emphasised. They related particularly to the appearance of the area and therefore the value of the properties. The former enhanced and supplemented the local authority duties in relation to the roadways and pathways (all those mentioned above being adopted) and the latter had a dual benefit. The grounds to which they related, chiefly the grassed/shrubbed areas in front of the flat blocks (but also the parking areas on Greenwood Terrace) were enjoyed by the town house owners which included a right to physically occupy the grassed areas for leisure purposes should they so desire it. Those areas required maintenance in order to remain enjoyable and not run to seed. Notwithstanding the post and rail fencing, the town house owners could access them.

16 If the tribunal accepted that the owners enjoyed those services it was a consequence of that enjoyment that the owners should contribute also to the ancillary management services.

17 The Respondent argued that the Tribunal should not be too concerned with the historical situation whereby the owners of the town houses had been absolved from paying the service charges by the developer, then operating the management company. It was argued that the terms of any agreement, together with the circumstances in which it may have been made were unclear and the Respondent had therefore returned to the terms of the lease to determine what its obligations were and what could be charged for. It was on this basis that it was deemed appropriate to commence charging town house owners.

18 On behalf of the Applicants Mr Ferreira continued to emphasise the following points:

- The views of those owners who remembered the agreement with the developer were clear that it was made to deliberately override a common form of lease the service charge element of which had no application to the town houses as they did not enjoy any services.
- That they did not enjoy those services was clear: there was no benefit enjoyed in respect of grounds and ground maintenance. There was no enjoyment to be had from the grassed areas which were solely of benefit to the flat owners in the 4 blocks, given the layout of those areas.
- Similarly there was no enjoyment of the concierge/caretaking service (which the Respondent agreed was more properly described as a concierge, rather than caretaking service). The service was directed at flat owners and any work on behalf of town house owners was negligible.

19 The previous determination by a tribunal in respect of other town houses was also explored by both Mr Ferreira and the Respondent. Mr Ferreira was keen to emphasise the finding that it was not possible to establish any enjoyment by the town houses of any services and in any event such costs as were incurred were not reasonable. The Respondent pointed out that the earlier tribunal had not had the benefit of any appearance by any of the parties to explore any issues, or queries and had apparently not had the benefit of any assistance on its inspection of the development.

20 At the conclusion of the hearing the Tribunal retired to consider what it had read in the submissions to it, heard at the hearing and seen on its inspection.

The Law

21 The law relating to jurisdiction in relation to service charges falling within Section 18 Landlord and Tenant Act 1985 is found in Section 19 of the Act which provides:
(1) relevant costs shall be taken into account in determining the amountof a service charge payable for a period-
(a) only to the extent that they are reasonably incurred, and
(b) where the are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard

21 Further section 27A landlord and Tenant Act 1985 provides:
(1) An application may be made to a leasehold valuation 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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

Tribunal's conclusions and reasons

21 The Tribunal is very quickly drawn to the conclusion that it can derive no meaningful assistance from the determination of the earlier tribunal. The circumstances in which it made its determination are not the same as those for this Tribunal, given the greater assistance it has received from the parties. In any event its decision is not binding upon this Tribunal.

22 Similarly, the historical circumstances in which the agreement was entered into whereby no service charges were invoiced to town house owners prior to 2014-5, even if it could be established what the terms of the agreement were, provide no assistance. The jurisdiction of this Tribunal are limited by the provisions of the Landlord and Tenant Act 1985. This does not include the power to investigate the terms of any contract between the parties other than the terms of the lease under which the service charges arise.

23 The crucial matter, so far as this Tribunal is concerned, is to establish what services are enjoyed by the town house owners, or are capable of being enjoyed by them. It is these services for which the owners must pay and if there are none then there should be no charge.

24 The Tribunal is satisfied that the interpretation of the words "capable of enjoying the Estate Services or any of them" by the Respondent in assessing what they consider the owners should pay for is of a disjunctive "or", rather than a conjunctive one, is appropriate and the tribunal does not seek to disturb that situation.

25 What then are the services that the Applicants enjoy, or are capable of enjoying?

- Concierge/caretaking
  The Tribunal considers that upon the basis of what it heard from those at the hearing, on behalf of the Respondent as to what was involved and from Mr Ferreira as to what he felt actually happens, this service is illusory so far as the town houses are concerned and related to what was done for the flat owners rather than the town house owners. The Tribunal is satisfied that for them nothing further of any quantifiable value is done in respect of the street scene than is done by the local authority under its duties.
- Repairs and ground maintenance.
  The maintenance of the grassed and fenced areas in front of the blocks of apartments is the principal issue. From the size and extent of those areas, their respective positions in relation to the flats, as opposed to the town houses and the fencing provided to them (notwithstanding the unlocked gates) satisifies the Tribunal that no worthwhile enjoyment of them can take place for those owners. Furthermore any detrimental effect from neglect will be felt by the apartment owners rather than the Applicants.
  There are repairs that might be required to the immediate surroundings in relation to the two lights on or near Hollies Lane. Again the Tribunal feels there is no enjoyment of them by the Applicants: rather the benefit again is to the apartments in the easterly two blocks, particularly given that significant access to the town houses is likely to be towards Trafford Road, Salford Quays and the Metrolink tramway.
- An exception would appear to be the paring/refuge areas in Greenwood Terrace. The town houses there have their own garages but the duplexes opposite do not. Benefit and enjoyment is gained by the provision of sufficient parking for all users of the road and the landscaping of the area.

26 There is then the question of what is a reasonable charge for this service? The Tribunal must be careful not to cast aside a reasonable provision at reasonable cost merely because it considers it has determined something else to be more reasonable. Nevertheless, looking at the charge made for all ground maintenance in the 2014-5 accounts for both the grassed areas and the parking landscaping (£1630.00), and there being no apportionment between the different elements the Tribunal is of the view that the car parking landscaping should not cost more than £500 p.a. (10 visits at £50 per visit).

27 the Tribunal accepts that whatever limited service charges are therefore allowed there will be a management element to be added together with such items as audit and accountancy charges and other professional fees, together with limited postal and office expenses. There will also be some very limited input involved for the purposes of the estate-wide health and safety reviews, but which are far more relevant to multi-occupancy buildings with common areas. For the town houses on Greenwood Terrace the Tribunal is of the view that £15.00 p.a. is the most that would be reasonable, particularly as it should be proportionate to the basic cost.

28 **The Tribunal accordingly determines that there are no reasonable service charges payable in respect of the town houses on Collingburn Avenue. Those town houses on Greenwood Terrace should pay an appropriate proportion of the amount of £500 p.a. in relation to maintenance of the parking landscaping, together with a contribution of £15.00 for the management of that service.**

29 The Applicants have also made an application under Section 20C landlord and Tenant Act 1985 that any professional or other costs incurred in respect of these tribunal proceedings should not form part of any future service charges. The Respondent indicated to the Tribunal that there would be no such charges and it would be appropriate to record that it would therefore be unjust for such an order not to be made.

Appendix 1

2 Collingburn Avenue - Mr & Mrs Piotrowska
4 Collingburn Avenue – Mr W. Lord
6 Collingburn Avenue – Mr R. Ghose
10 Collingburn Avenue – Ms Ferreira and Mr Mascia
1 Greenwood Terrace – Mr S. Corlett
3 Greenwood Terrace – Ms Lai
9 Greenwood Terrace – Mr S. Neal
17 Greenwood Terrace – Mr M. Humphrey