



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

Case Reference : **MAN/00CB/LSC/2019/0030**

Property : **Apartment 34, Mendell Court,
Mendell Close, Wirral CH62 7JP**

Applicant : **Mr & Mrs E Jones**

Respondent : **Housing and Care 21**

Type of Application : **Reasonableness and payability of service
charges Landlord and Tenant Act 1985
section 27A**

Tribunal Members : **Mr J R Rimmer
Mr J Faulkner**

Date of Determination : **24th October 2019**

Date of Decision : **31st October 2019**

DECISION

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Order: The service charges payable in relation to the reserve fund for the period 2011 to 2020 shall be an amount of £9,170.00.

Application and background

- 1 The Applicants are the long leaseholders of the flat numbered 34 at Mendell Court in Bromborough, Merseyside. The freeholder is Housing and Care 21 of 10th Floor, Tricorn House, 51-53, Hagley Road, Birmingham.
- 2 The Applicants have expressed general satisfaction with the cost and standard of the service charges within the development at Mendell Court, with the exception of what they regard as excessive contributions to a reserve fund established for the purpose of funding long-term expensive repairs and renewals to the premises. Having had what they regard as an unsatisfactory response to their concerns, the Applicants have brought the matter to this Tribunal.
- 3 It would appear that the Respondent has seen fit to ignore these proceedings and after failing to comply with directions of the Tribunal dated 3rd July 2019 an order was made on 3rd September 2019 barring the Respondent from further participation in the proceedings.
- 4 The Applicants have now produced a clear statement of their case for the consideration of the tribunal and this is set out fully below.

The law

- 5 The law relating to jurisdiction for 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 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 in the provision of services or the carrying out of works, only if the services are of a reasonable standard.
- 6 Further, Section 27A of the Act provides;
 - (1) An application may be made to a (First-tier Property 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 in 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.

The Lease

- 7 The Applicants hold their property under an assignment of a lease dated 15th June 2011 made between Housing 21 and Daisy Taylor. It is a shared ownership lease from 1st January 2011 for a period of 125 years. The initial gross rent (of which a leaseholder pays the appropriate percentage according to the proportion of the property they own) was £3,630.00 a year, subject to annual review on 1st April each year.
- 8 Under Clause 7.1 of the lease a leaseholder covenants to pay the service charge, as set out in the subsequent provisions of that clause. They include a provision at Clause 7.3.1 to pay an appropriate amount as a reserve towards matters referred to in Clause 7.4 that are likely to arise only once during the term of the lease, or periods of less than once a year during the period of the lease.
- 9 It is important to note that this is referred to as a reserve within the clause and it clearly relates to payment for such matters, that although occurring irregularly, are clearly services. There is separate provision elsewhere in the lease (Clause 3.19.5) for a sinking fund contribution on any disposition of the property. The terms “reserve fund” and “sinking fund” have been used interchangeably and incorrectly, during these proceedings. The sinking fund within Clause 3.19.5, or any contribution to it, is not a matter for this Tribunal.
- 10 It is not necessary to examine the service provision in detail as the Tribunal is only concerned with the reserve fund and the Respondent, in the course of its limited engagement with the Applicants, has provided a schedule of the type of expenditure to which it considers the fund to relate and the periods over which such expenditure are likely to re-occur.

Inspection

- 11 On the morning of 7th October 2019 the Tribunal inspected the property at Mendell Court and found it to be development of 49 flats and associated communal facilities constructed in, or about 2010/11 on a large plot adjacent to the main A41 Birkenhead-Chester road in Bromborough, Wirral. It is two and three-storeys in height, constructed of brick under a tiled roof. There are extensive grounds and a parking area, the former appearing to be shared with a

number of separate bungalows which, together with Mendell Court, provide modern sheltered living. It is understood that 12 of the 49 apartments are let on long leases, whilst 37 are let on the basis of assured tenancies.

- 12 There are extensive common areas commensurate with the nature of the accommodation provided, consisting, notably, of restaurant, laundry, manager and staff facilities, lounge and associated tea bar and extensive corridor/hallway areas. The development is less than a decade old and gives the appearance of being well maintained. There is no evidence of any extensive maintenance being required other than a roof leak that was receiving attention at the time of the inspection.

The issue

- 13 The Applicants state their concerns very clearly in their case submitted to the Tribunal. It may be summed up thus:
- 14 (1) The 12 leaseholders each make a contribution to the reserve fund of amounts slightly in excess of £100 per month.
- (2) They have been doing so since the inception of their respective leases and as of the accounts drawn up to 31st March 2018 in respect of service charges the accumulated fund was £109,507.00
- (3) This would appear to be a figure made up solely by the contributions from the leaseholders without any corresponding historical contributions from the respondent for those 37 flats let on assured tenancies.
- (4) That historical situation may have changed in the last two years, whereby a sum of £6,852 is shown in the overall account for the rented apartments for the year to 31st March 2019 and a budgeted amount of £7,027.00 for the current year to 31st March 2020.
- (5) The budgeted amounts for the 12 leasehold flats are £14,556.00 for the year to 31st March 2019 and £14,949.00 for the current year. This would make a total in the fund as at 31st March 2020 of £139,012 contributed by the leaseholders.
- (6) The Applicants consider the amount to be unreasonable on the basis of a lack of similar contributions from, or on behalf of, the rented occupiers and an excessive proportion being paid for 12/49ths of a total fund.
- 15 In the absence of any meaningful participation in the tribunal process by the Respondent it is not clear upon what basis the contributions are assessed and how the Respondent intends to fund works in future for its 37/49ths of any total cost. The Applicants have provided some historical correspondence with the Respondent, but which does not address the concerns they have raised, nor does it provide an explanation as to that future funding.

Consideration and Determination

- 16 The powers of the Tribunal are those conferred upon it by Sections 19 and 27A referred to above. Essentially, are the charges that are levied by the Respondent reasonable and should they be payable by the lessees of the long-leasehold flats?
- 17 The contributions that they have made are far in excess of any made by the Respondent in respect of the flats for which it is responsible, even in the last two years. That does not necessarily make the amount paid by the leaseholders unreasonable. It may merely be that the contributions made by the Respondent are unreasonable.
- 18 Indeed the Tribunal considers that to be the case in that a sum of some £13,879.00 contributed over a period of 8 years would not appear to provide a sufficient basis for a reserve fund to provide for those items requiring long term consideration in respect of 37 of the 49 flats for which the Respondent has responsibility.
- 19 The Tribunal does not even feel able to use the amounts contributed by the respondent as any sort of starting point against which to consider the reasonableness, or otherwise, of the leaseholders' contributions, so low does it consider it to be.
- 20 In order to assess reasonableness the Tribunal has therefore adopted the following approach:
- (1) The leaseholders' contributions over 9 years, or thereabouts, to 31st March 2020 will amount to some £139,000.00. This would be likely to be increased to about £154-155,000.00 at the end of a 10-year period, the time at which the first items on the Respondent's schedule reach their theoretical life expiry.
 - (2) It is proper to assume that, notwithstanding actual contributions made, the equivalent proportionate contribution by the Respondent to such expenditure would be in respect of the remaining 37/49ths of any cost.
 - (3) The contribution by the leaseholders of the amount of £154-155,000.00 in respect of 12 apartments would equate to an amount of approximately £630,000.00 over a 10-year period if similar contributions were made in respect of all the apartments.
 - (4) Are the amounts contributed by the leaseholders a reasonable amount in respect of reasonably likely costs over the various renewal periods suggested in the Respondent's schedule. The Tribunal needs to find this so if it is to make any adjustment in the Applicants' favour. It is not sufficient for the Tribunal merely to consider replacing what is a reasonable figure with one that it considers more reasonable.

- (5) It is, however, an expert Tribunal. It has not been assisted by any explanation at all from the Respondent as to how the contributions have been assessed. It may nevertheless take a view as to what it considers a notional fund should reasonably hold over a ten-year period of accumulation. For the development as a whole this would be £500,000.00, which is a figure that its experience suggests to be somewhat larger than many being accumulated over a similar period for other developments of this nature.
- (6) For 12 apartments this would be a contribution of about £122,500.00; rather less than the amounts already paid to date.
- (7) For 9 years up to 31st March 2020 pro rata contributions to a fund of £450,000.00 would be slightly over £110,000.00. The leaseholders will collectively have paid over 25% more.
- (8) **The Tribunal considers this to be unreasonable and makes an order that any amount paid to the reserve fund in respect of Flat 34 since March 2011 exceeding £9,170.00 for the period to 31st March 2020 should be returned to the Applicants.**

J R Rimmer
Tribunal Judge
31st October 2019