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

Case References : BIR/00CW/LIS/2012/0068
BIR/00CW/LSC/2012/0038

Properties : 64 Ellards Drive, Wednesfield, Wolverhampton, WV11 3ST
65 Ellards Drive, Wednesfield, Wolverhampton, WV11 3ST

Applicants : No.64 Mr Mandip Singh Dhillon
No.65 Mr Jasvir Dhillon

Representative : Mr M. Dhillon

Respondent : Hamilton Court (Wednesfield) Management Company Ltd.

Representative : Messrs Nock Deighton, Managing Agents

Type of Application : Applications to determine liability to pay and reasonableness
of service charges under s.27A of the Landlord & Tenant Act
1985

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
D.R. Salter LLB

**Date and Venue of
Hearing** : The parties requested a paper determination without Hearing

Date of Decision : 23rd July 2013

DECISION

Introduction

- 1 The Applicants bought the subject flats in October 2003 but following a change in management in January 2011 the service charge increased from £211.58 that had been charged in 2010, to £879.10 charged by the new managing agents Messrs Nock Deighton. They considered this excessive and applied to the Tribunal for the amount to be determined under section 27A of the Landlord & Tenant Act 1985.
- 2 The Tribunal issued Directions following which it considered the parties' submissions, inspected the site and finds as follows.

Items in Dispute

- 3 The application forms were in similar form and requested determinations for the 2011 and 2012 service charge years. Specifically, they complained about the cost of gardening and insurance and in written submissions added 'the disproportionate rise in the annual management fee' which the Tribunal takes to mean the fee paid to Messrs Nock Deighton as managing agents.
- 4 The disputed items are therefore the costs of:
 - 1 gardening
 - 2 insurance
 - 3 management fees.

Facts Found

- 5 The Tribunal inspected the properties on 12 April 2013. They are both self-contained flats in a modern housing development of 67 units of which 49 are houses, 12 flats with shared entrances and 6 flats with their own entrances including the subject properties.
- 6 There is a car park to the side of the block, accessed via automatic security gates with shrub borders to the side. There is also a common area of open space in the middle of the development known as 'Bluebell Wood' comprising a lawn, paving and around 12 ornamental trees surrounded by steel railings to the pavement that the residents can access. It is amenity land.

Relevant Law

- 7 The Tribunal's powers derive from statute.
- 8 Section 27A(1) of the Landlord & Tenant Act 1985 provides that an application may be made to the First-tier Tribunal (Property Chamber) for determination of whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.
- 9 Section 18 of the Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 10 Section 19 of the Act provides that relevant costs shall be taken into account in determining the service charge payable for a period (a) only to the extent that they are

reasonably incurred and (b) where they are incurred on the provision of services or carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.

Leases

- 11 The Leases are in similar form.
- 12 64 Ellards Way, originally known as Plot 34 Hamilton Court Estate, is held by lease dated 17th October 2003 for a term of 99 years from 31st March 2002 granted to Mr M.S.Dhillon. The property is subject to a ground rent and service charge with a defined 'relevant proportion' of 1/18th of the service charge described in clause 1.14 as:
- 'The Service Charge shall mean the Lessee's contribution (by way of additional rent) towards the Company's or Lessor's costs throughout the Term for the services described in the Fifth Schedule such contribution to be the Lessee's proportion of the Company's or Lessor's costs described in Clause 2 of the Sixth Schedule hereto.'
- 13 Schedule 5 sets out the Company's management duties including the usual items of repair and maintenance of common parts, maintaining lighting to common parts, paying for electricity and servicing the common parts, insurance, external decoration, tv and entryphone systems together with a right to employ managing agents and insure the property.
- 14 Schedule 6 clause 2(a) requires the Lessee to 'pay to the Company without deduction the Service Charge being the relevant Proportion of the costs and expenses of the Company in performing its obligations as are defined in the Fifth Schedule'.
- 15 65 Ellard Way (originally Plot 35 Hamilton Court Estate) is in similar terms save that the lease is dated 20th October 2003 and granted to Mr J.Dhillon. The relevant proportion is again defined as 1/18th.

Submissions

- 16 For the Applicants
The Applicants complained at the rate of increase when Nock Deighton took over compared to the rate charged by the previous agents Castle Estates. They provided copies of service charge demands to support their case.
- 17 They offered no alternative quotes for the cost of gardening or managing agent's fees but included an insurance quote for £281.01 premium from 'Simple Landlords Insurance' issued 19th April 2012.
- 18 Their main point was that it was unreasonable to expect them to pay service charges for which they were receiving no benefit as for example they were being asked to contribute to the cost of maintaining hallways when their own flats had separate entrances.
- 19 For the Respondents
Nock Deighton's submission recited the service charge provisions in the leases and included copy invoices for services at the development from various contractors and suppliers.

- 20 They also referred to another Tribunal application for service charge determinations in the development which related to Nos.6 & 40 Smallshire Close Ref. No. BIR/00CW/LIS/2012/0031 and has since been determined by the Tribunal.

Decision

- 21 The Tribunal is only able to determine items specifically raised by the parties. It is unable to investigate points of its own and has to rely both on the evidence of the parties and its own expertise.
- 22 In this case, the Tribunal finds on the three points as follows:

Gardening Costs

In the absence of quotes from alternative contractors, the Tribunal finds the amount levied by Nock Deighton to be reasonable.

Insurance

The one quote provided by the Applicants is higher than the amount charged by Nock Deighton's Insurers. Accordingly, the Tribunal finds the insurance element fair as levied.

Management Fees

Nock Deighton charged £120 for the 2011 service charge year but in their submission they referred to the other service charge case in this development where they volunteered to reduce the charge for self-contained flats with their own entrances (i.e. not accessed through common hallways) to £50 plus VAT. Accordingly, the Tribunal reduces the charge in the subject cases to £50 plus VAT (£60.00) to bring them in line. We should also point out that the Tribunal in the other case comprised the same Members of the Panel and the fee ought to be consistent.

- 23 The Applicants had asked the Tribunal to determine charges for 2011 and 2012 but as the 2012 accounts had not been finalised by the date of submissions the Tribunal declines to make a determination for that year and confines its Decision to the period 1.4.11 to 31.3.12.
- 24 Moreover and of greater significance, the lease refers to a relevant proportion of 1/18th of the cost of service charges that the Tribunal is unable to alter in this application. The lease is a contract between the parties and while the Tribunal has the power to alter terms by means of a variation of lease order, it will only do so as a result of a specific application in which all affected parties are able to make their views known. There is insufficient information in the current application to enable a variation to be made and none of the other lessees in the development have been consulted. The Tribunal is therefore unable to change the 1/18th share agreed by the parties when the leases were signed.
- 25 This is a point acknowledged by Nock Deighton for the Respondent at section 1 of their Submission, 'However, it was also understood that this charging structure may not be *morally* correct ...' but equally they point out that the amount is fixed by the lease.
- 26 In summary, having read the submissions and inspected the site the Tribunal reduces the service charge for each flat for the period 1.4.11 to 31.3.12 to £819.10 to reflect the reduced management charge, but it makes no determination for 1.4.12 to 31.3.13 leaving the parties at liberty to make applications at a later date should they wish.

I.D. Humphries B.Sc.(Est.Man.) FRICS

Date: 23/07/2013