

9150



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

**Case Reference** : CAM/22UQ/LSC/2013/0063

**Property** : Apartments 1 – 8 Jutland Avenue,  
Whitehart Way, Dunmow, Essex  
CM6 1WX

**Applicant(s)** : Mr J G P Jephcott and others  
(Mr Jephcott represented all  
applicants)

**Respondent** : Trinity (Estates) Property  
Management Limited  
(represented by Mr S Walker, Head of  
Legal Services)

**Date of Application** : 24<sup>th</sup> April 2013

**Type of Application** : Reasonableness and Payability of  
Service Charges

**Tribunal** : Mr Graham Wilson  
Mr Stephen E Moll FRICS  
Mr David W Cox

**Date of Hearing** : 19<sup>th</sup> July 2013

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**DETERMINATION**

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- (1) The Tribunal determined that the Management Fee for the service charge year 2012 should be reduced to £150 per apartment.
- (2) No other determinations were made affecting the service charges.

*Reasons*

1. This was an application made to determine the reasonableness and payability of service charges for the service charge years 2012 and 2013.

### *Inspection*

2. The Tribunal inspected the Property in the presence of the parties. The Property was a block of 8 apartments on the second and third floors of a building linked to others, having commercial premises on the ground floor. The development was part of a larger residential development in Great Dunmow town centre. The development was attractive and in a good state of repair and in good decorative order.

### *The Application*

3. By the Application dated 24<sup>th</sup> April 2013 the Applicants argued that the service charges for the service charge years 2012 and 2013 were too high and challenged certain items (see below).

### *The Law*

4. The law is to be found in the Landlord and Tenant Act 1985.
5. 

27A Liability to pay service charges: jurisdiction

(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.

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

(3) An application may also be made to a leasehold valuation 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 would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.

Service charges are to be “reasonable”. See section 19 of the same Act:

- 19 Limitation of service charges: reasonableness
- (1) Relevant costs shall be taken into account in determining the amount of 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 the carrying out of works, only if the services or works are of a reasonable standard;
- and the amount payable shall be limited accordingly.

### *Hearing*

6. Hearing bundles had been produced, but not as a cooperative exercise. Both parties produced their own bundles and the Tribunal had thus to consider 600 to 700 pages of material.
7. A summary of the issues raised by the Applicants was to be found at page A5 of the Applicants’ bundle. These items, 7 in total, were dealt with, at the Tribunal’s suggestion and with the parties’ agreement, in order, each party making its representations on each item in turn.

8. The Applicant's first challenge was the question why Jutland House appeared in the same accounts as the rest of the development. This was not a matter for the Tribunal hearing this Application. The Tribunal's jurisdiction is described above. The remaining challenges are described in the following paragraphs.

9. *Management Fees (1)*

(1) It was agreed between the parties that the Management Fees were between £228 and £231 for each service charge year. The Applicants said that the fees were too high and the Respondent argued that they were "reasonable". £230 was at the upper end of the range of what in the Tribunal's view was generally appropriate. The question of Management Fees is referred to again below, and was viewed in the light of the other evidence heard by the Tribunal.

(2) It is convenient to record at this point, however, that the Applicants challenged the Respondent's ability to manage the Property at a distance from its office in Hertfordshire. The Applicants alleged that any work needing to be done took too long to arrange. The Respondent submitted that the distance of the Respondent's property from the property being managed was not so great as to make proper management possible. The Respondent had appointed a manager with a limited number of properties under her control but there was no reason why such an arrangement should not work. While the Tribunal was persuaded that there may have been delays in carrying out work from time to time, the Tribunal was not persuaded that the location of the Respondent's office was so far from the Property as to make proper management impossible.

10. *Cleaning*

This was for the service charge years in question between £230 and £249 per year. The Applicant's case was that the cleaning could be done more cheaply. He alleged that the cleaning was not done weekly as was claimed. The Applicant said that the evidence for this was to be found in the "tick-sheets" maintained by the Respondents. Parts of various sheets had been left uncompleted. These sheets were forms posted on a notice board in the Property and which the cleaners were supposed to complete so as to show that the work had been done. The Applicants conceded that matters had recently improved, certainly so far as the interior was concerned. The Applicant said, however, that the exterior was "as filthy as ever". On the day of the inspection, the Tribunal found that this was not the case. It was, though, common ground that the Property had been cleaned on two occasions during the week of the inspection. This was exceptional.

It appeared to the Tribunal that the town centre location and the use of the commercial premises below the flats were likely to generate the litter the Applicants complained of and that even daily cleaning would not eliminate the nuisance.

As to the tick-sheets, the Tribunal were not persuaded, as the Respondent argued, that these had simply been overlooked. The Tribunal were instead persuaded that, as the Applicant claimed, the cleaners had not attended – or, at the very least, had not carried out their duties by completing the sheets. That said, the Tribunal were not prepared to reduce the cleaning charge and decided that the shortcomings noted would be better reflected when addressing the Management Fee.

11. *Insurance*

The Applicant said that the 2012 charge was “broadly acceptable” but questioned the proposed 2013 increase of between 7% and 8%. Insurance costs, so the Applicant argued, were falling. In the view of the Tribunal, in view of the sum insured, the premium appeared reasonable. If the budget sum claimed for 2013 were in fact increased without justification, there may be a basis to challenge it. In the case of 2012, however, the “sum insured” had been increased, leading to an increase in the premium.

12. *General Repairs and Maintenance*

The figures for this item for the Development as a whole were £6,125 and £4,200 for the years in question. The parties could not agree what the cost was per flat.

The Applicant maintained a general challenge to the item based on what he claimed was the poor performance of the company employed by the Respondent and known as The Active Group. He claimed that this company were “poor operators” and were not “value for money”. The Respondent claimed that The Active Group’s work was monitored. The evidence produced did not, in the view of the Tribunal, warrant the finding that the Applicant’s argument was justified.

13. *Lift Charges*

The lift maintenance charge for 2012 was £1,535 and £1,440 for 2013 (a budget figure). The charge was divided only among the Jutland House apartments. To the maintenance charge had to be added £252 for electricity, £288 for general repairs, £252 for the presence of telephone and £405 for engineering and inspection costs. All of these were subject to VAT. These charges were thus significant. As appeared to be conceded by the Respondent, some of the items claimed separately may have been work that fell to be covered under the maintenance agreement. In the view of the Tribunal, the fact that this concession had to be made was itself evidence of inadequate management. The Tribunal was not, however, disposed to disallow the lift maintenance items. It resolved instead to address the issue in connection with the Management Fees.

14. *"Credibility"*

The Applicant challenged what he described as the Respondent's "credibility". What he meant by this was summarised at paragraph 7 of page A5. The Respondent's response was to be found on page 10 of its Statement of Case. This was not a matter about which the Tribunal could adjudicate and it made no findings in this respect.

15. *Management Fees (2)*

In view of the Tribunal's findings at paragraphs 9 and 12 above the Tribunal determined that the Management Fees should be reduced to £150 in respect of each flat for the service charge year 2012.

Graham Wilson

Date: 19 July 2013.