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

**Case Reference** : **LON/00AD/LSC/2013/0434**

**Property** : **Drummond Close Estate,  
Drummond Park, Erith, Kent DA8  
3QS**

**Applicant** : **Ms C Barker (61 Drummond Close)  
Ms P Moger (255 Colyers Lane)  
Ms M Buckley (2 Doyle Close)  
and various other leaseholders**

**Representative** : **Ms C Barker**

**Respondent** : **Places for People Homes**

**Representative** : **Ms W Botterill**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal Members** : **Judge A Seifert  
Mr K M Cartwright FRICS  
Mrs R Turner JP**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR  
on 28<sup>th</sup> October 2013**

**Date of Decision** : **3<sup>rd</sup> December 2013**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

### **The application**

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of estimated service charges payable by the applicants in respect of the service charge year 2013 to 2014.
2. Directions were made by the tribunal joining Ms Buckley and Ms Moger as applicants in the proceedings on 6<sup>th</sup> September 2013 and 30<sup>th</sup> September 2013 respectively. A full list of leaseholders who are applicants in these proceedings is on the tribunal file.
3. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

4. Ms C Barker, leaseholder of 61 Drummond Close, DA8 3QAS represented herself and the other applicants at the hearing. She made submissions and gave oral evidence. Mr Houghton, freeholder of 42 Drummond Close, also gave oral evidence.
5. The respondents, Places for People Homes ("Places for People") were represented by Ms W Botterill, Housing Services Manager. Mr S Taylor, MRICS, attended the hearing and gave oral evidence.
6. In the course of the hearing the parties handed in further documents, including a letter dated 18<sup>th</sup> February 2013 from Places for People Homes to Ms C Barker in respect of service charges.
7. The tribunal were provided with photographs and a plan of the Drummond Close estate. In the circumstances the tribunal did not consider that an inspection was necessary or proportionate.

## **The background**

8. The properties which are the subject of this application are part of the Drummond Close estate, which comprises 98 houses, 10 on long leases and 88 freeholds. A plan of the Drummond Close estate was provided with the respondent's statement of case dated 1<sup>st</sup> October 2013.
9. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
10. The applicants hold long leases of properties on the Drummond Close estate, under which the landlord is required to provide services and the tenants to contribute towards the costs by way of a variable service charge.

## **The issues**

11. At the start of the hearing the parties identified the relevant issues for determination as follows:

The reasonableness and payability of the estimated service charges for 2013-2014. The elements of the estimated service charge for 2013-2014 challenged by the applicants were:

- (i) Homeowner Management Charge: £13.40 per month
  - (ii) Contribution to maintenance reserve: £50 per month
11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

## **The tribunal's decision**

12. The tribunal determines that the amount payable for the estimated service charge 2013-2014 for the following items is:
  - (i) Homeowner Management Charge: £13.40 per month
  - (ii) Contribution to maintenance reserve: £25 per month

## **Reasons for the tribunal's decision**

### **Introduction**

13. The background to the case was set out in the respondents' statement of case dated 1<sup>st</sup> October 2013. The Drummond Park estate includes communal areas. These are predominantly the car parking areas, access roads to the car parking areas, paths, amenity land, shrubs and trees. The tribunal was informed that the local authority has adopted the roads and the main paving areas in and off the Drummond Park estate.
14. The charges claimed under the lease of Ms Barker's property, 61 Drummond Close, was utilised in these proceedings as representative of the leasehold properties / leases on the Drummond Close estate.
15. A copy of the letter dated 18<sup>th</sup> February 2013 sent to Ms C Barker, was produced at the hearing. The figures referred to below related to Mrs Barker's property. The breakdown of estimated charges for 2013-2014 claimed payable from 1<sup>st</sup> April 2013 was as follows:

Description	Charge (per month)
Property Ground Rent	4.18
Responsive Repairs or Servicing Contracts	1.12
Buildings insurance	12.58
Grounds Maintenance / Landscaping	1.96
Homeowner Management Charge	13.40
Contribution to maintenance reserve	50.00
Salt Provision	0.26
	Total: 83.50

The tribunal was informed that the charge and breakdown was the same for each leasehold property on the Drummond Close estate, save that the sum for buildings insurance varied depending on the particular property.

### **The Lease**

16. A copy of the lease of 61 Drummond Close ("the lease) was provided. The tribunal was informed that the leases of the other properties are in similar form.
17. The Fourth Schedule:

This contains the services to be provided to the Drummond Close estate by the landlord

Paragraph 1(a) *whenever it considers necessary maintain repair paint renew and keep in clean and proper order and condition the surfaces of all car parking areas driveways as are not adopted by the Local Authority and all paths and brick access ways as are not proposed to be included in any long lease on the estate.*

Paragraph 1(d) and (e) provide an obligation on the landlord to maintain and keep in good repair the various communal facilities on the Drummond Close estate.

Paragraph 1(b) and (c) provide that the landlord pay any costs directly associated with those services and on-going services to the Drummond Close estate.

Paragraph 1(f) provides for the landlord to

*...do or cause to be done all such works installations acts matters and things as may be in the lessors absolute discretion be necessary or advisable for the proper maintenance safety amenity and administration of the premises and the estate.*

18. The Sixth Schedule:

This contains obligations on the landlord.

Paragraph 2 obligation on the landlord to provide insurance cover.

19. The Seventh Schedule:

This contains the service charge provisions.

Under paragraph 2 includes provision of an estimated service charge.

*For the purposes hereof the costs expenses and outgoings incurred by the lessor as aforesaid during the relevant accounting year shall be deemed to include not only the costs expenses and outgoings which have been actually disbursed incurred or made by the lessor during the relevant year in respect of the above-mentioned expenditure but also such sum or sums on account of any other costs expenses and outgoings (not being of an annually recurring nature) which the lessor shall have incurred at any time prior to the commencement of the relevant year or shall anticipate incurring at any time after the end of the relevant year in respect of the said expenditure as the lessor's accountants may in their absolute discretion consider it reasonable to include (whether by way of amortisation of costs expenses and outgoings already incurred or by way of provision for anticipated future costs expenses and outgoings) is the amount of the estimate for the relevant year.*

Under paragraph 7

*The lessor shall pay all sums paid in accordance with this schedule into a Maintenance Account and shall pay there out all moneys properly payable as aforesaid and shall hold the balance (if any) in the Maintenance Account upon trust to apply the same for the purposes aforesaid if and insofar as any moneys received*

*by the lessor from the lessees during any financial year in accordance with this Schedule are not actually expended by the lessor during the relevant year on any of the heads of expenditure particulars whereof are set out in the said Fourth Schedule or elsewhere in this lease and are not otherwise dealt with so as to be an allowable expense in calculating the lessors income for tax purposes for that year the lessor shall hold those moneys upon trust to expend them in subsequent years on such heads of expenditure and subject thereto upon trust for the lessees absolutely.*

**The Homeowner Management Charge (“the management fee”)**

20. The services provided by Places for People were described in the statement of case as including: Grounds maintenance, predominantly to the hard surface areas; day to day repairs to the communal areas; a management service; insurance for long leaseholders.
21. Contributions to the maintenance reserve fund were recovered through the service charge. The estimated service charge for 2013-2014 was demanded in the letter addressed to each of the leaseholders dated 18<sup>th</sup> February 2013 referred to above. At the hearing Ms Botterill said that the charge for 2012-2013 was the same figure as the estimated charge for 2013-2014 for this item.
22. The charging mechanism was monthly as the service charge systems do not accommodate quarterly payment. Payment has been charged on this basis for about 11 years.
23. In the respondent's statement of case it was stated that prior to the introduction of the banding approach about 5 years previously, there was a 15% management charge. The change in approach was phased in. Initially there was a discount in the first year. The charge was increased in according with RPI.
24. The justification for adopting a banding approach was explained by Ms Botterill with reference to the nature of the property portfolio of Places for People. That organisation is as a Registered Provider, with a portfolio of leasehold stock of around 6,800 properties. These are located in diverse locations across England and Wales. They also have a social rented stock of around 40,000 homes.
25. In view of this, Places for People's approach to setting a management fee is to have a tier of four management charge bands. These management charge bands vary according to the number and complexity of services provided to residents. The bands range from Band A (basic management service), to Band D (full service and maintenance service). The charges under each band for 2013-2014 across Places for People properties were as follows:

Service level	Charge (per year) (£)
A	98.55
B	160.83
C	222.07
D	245.86
E	Local decision

26. The management charge for Drummond Close estate included the following costs:

Collecting rents, service charges and arrears; paying contractors and settling accounts; accounting for service charges; the cost of management staff; dealing with routine and initial enquiries; keeping records of tenant's details; assessing replacement costs for insurance purpose; processing insurance claims; general property management, such as dealing with general enquiries associated with the lease and management of the estate with face-to-face interviews and home visits; statutory consultation (section 20 consultation); buying and managing direct services (grounds maintenance, landscaping, cleaning etc.); site inspections, management of long-term maintenance plans; providing and managing a repairs service, including non-property related things such as shared paving and car parking areas; overheads such as IT, Human Resources; Payroll; and a central team of two Home Ownership specialists to provide technical advice on leasehold matters; provision of information for leaseholders on the Group's website.

27. The respondents contended that the leaseholders on the Drummond Close estate benefit from a dedicated specialist Home Ownership Officer (Scheme Manager), who manages their scheme during office hours. Places for People also provide a Customer Service Centre (a call centre for reporting repairs and contacting the organisation) available 24 hours a day. This includes undertaking scheme inspections of which leaseholders are informed. In the last year there have been four recorded scheme inspections with another scheduled with the new Scheme Manager in December 2013.
28. It was also stated that Places for People had undertaken extensive consultations with residents about the maintenance of the Drummond Close estate. The consultation included freehold owners. Places for People stated that this was in excess of their statutory consultation obligations but was in their view essential for good management.
29. The management fee includes initial responses to the removal of untaxed vehicles from the Drummond Close estate. Upon scheme inspection or report from a resident of an abandoned or untaxed vehicle, a DVLA check is the management team's standard practice to identify the registered owner, to require that the vehicle be taxed or removed. Where bulk refuse has been reported as being dumped in communal areas, removal is undertaken by the external contractor at an additional cost. Residents had been informed that by contacting the

Local Authority they can access a removal service for bulk items which is usually cheaper than the commercial costs. The management charge includes the time of in-house technical staff managing day to day repairs. The employment and use of surveyors, internal or external in managing the Estate, drawing up asset management plans, organising and supervising works is a separate charge.

30. Ms Barker on behalf of the applicants said that she considered that Places for People should involve the residents more in the management process. If a banding approach is adopted for assessment of the management fee, she considered that the Drummond Close estate should be charged on Band A, not Band B.
31. Ms Barker submitted that there was not much work was done by Places for People in return for the management charge. Her reasons included the following:
  - The leaseholders are responsible for their own repairs to their properties and Places for People only deal with car parks and path ways.
  - The website was there for everyone and not just the residents of the Drummond Close estate.
  - The two Home Ownership specialists are never available and calls are not returned.
  - It was not necessary for the Drummond Close estate to have a dedicated Home Ownership Officer or Customer Service Centre as the residents deal with their own problems and the only time that they are contacted out of hours is in respect of insurance claims and residents could deal directly with the insurance company.
  - The services were not needed as the Drummond Close estate comprised a large proportion of houses. The services were more appropriate to estates comprising flats.
  - There was too much expenditure on services that were not necessary. For example, the residents received a lot of mail that is not relevant to the Estate. However this stopped about three months previously.
32. Ms Barker questioned why the service charges for the Estate are higher than on another nearby estate. She referred to a document from the Co-Operative Development Society Limited for 2012-2013 showing charges of occupiers of the Colyers estate of £7.97 per month for houses.
33. Ms Botterill responded that Places for People had tried to keep the management fee reasonable. In respect of the banding approach, the highest Band (E) relates to schemes for the elderly, with a substantial amount of services provided, whereas Band A, the lowest band, applies where there are no direct services, for instance a property where there is a management scheme.
34. Each band has specific services. In determining the appropriate band, the lease terms and services provided were considered. In her capacity as Housing Service Manager, she has taken calls and dealt with



correspondence. Insurance claims and negotiations must be made through the landlords. The central services provided are based nationally, and leaseholders benefit from services which are not available to private developments. In determining the management fee, the services provided by other providers were considered.

35. Having considered the evidence as a whole, the tribunal reached the following conclusions.
36. Places for People were described as one of the largest housing associations, with very substantial amounts of properties in respect of which services are provided. In respect of the Drummond Close estate, until about 5 years ago this element of the service charge was charged at 15% of the quite low expenditure on this estate. However, the mechanism for providing and charging for the service charge was then brought into line with the supply of services to other properties in the landlord's portfolio. A banding approach to the services was introduced and consequently the cost to the leaseholders increased. This was brought in in phases with a discount in the first year and then increases according to RPI. However, it was noted that Ms Botterill also said that the estimated charge for the current year is the same as the charge for this item in 2012-2013.
37. There was no evidence that the introduction of the banding approach was objected to by the leaseholders at the time. Nor is there a challenge to the reasonableness charges in previous years. Ms Botterill said that there was full consultation before the change from 15% to Band B was introduced. Some local feedback was received during the consultation, but this was in the nature of questions or because of a lack of understanding. She did not recall any objections being received from the Drummond Close estate residents.
38. The main objection of the applicants appears to be that the services provided are not necessary on this particular estate which comprises largely of houses. If the banding approach is used, the applicants contend that the appropriate band is Band A.
39. The tribunal accepts the evidence of Ms Botterill that the services she described are available. These are services which the landlord can provide under the terms of the lease. Her evidence was that Band A would apply to a scheme comprising freehold houses with shared ownership and where typically the landlords would not be undertaking section 20 landlord and Tenant Act 1985 (as amended), consultation. By contrast, Band B was appropriate, for example, where there was a requirement for consultation under section 20, monitoring of external contracts, checking the condition of the estate's external areas including bin stores, car parks and lighting, and managing the service charge contributions.

40. In respect of the insurance services, the tribunal accepts the explanation of Ms Botterill that it is a matter for the landlords to deal with claims and negotiations. In respect of the appropriate band, the tribunal does not consider that it has been shown that Band A is appropriate. This applies where there are no direct services, which is not the case in respect of the terms of the subject leases. The tribunal accepts the justification put forward by Ms Botterill in respect of Band B being the appropriate band.
41. In respect of the schedule for the nearby properties produced by Ms Barker, this showed a lower charge for services. However, it was noted that these figures related to shared ownership properties and different considerations therefore applied.
42. **Accordingly, the tribunal conclude that the estimated Homeowner Management Charge of £13.40 per month for the service charge year 2013-2014 was reasonable and payable by each of the leaseholders to People for Places.**

#### **Contributions to the Maintenance Reserve**

44. The respondent's case was that People for Places deliver their obligations under the leases by utilising the mechanism of a maintenance reserve fund. The reserve is set to cover the costs of all cyclical and major repairs for which Places for People are responsible under the leases.
45. The total value of the reserves is represented by a cash balance held in a separate trust bank account with the Co-operative bank.
46. It was stated by the respondents that the contribution to the maintenance reserve comes entirely via the monthly service charge and this is calculated by the use of a 50 year Asset Management Plan of all items which Places for People are responsible under the leases, their expected lifespan and their estimated replacement cost.
47. In the respondent's statement of case, details were provided of the method by which Places for People calculate the Maintenance Contribution of the leaseholders. As the service charges are set half way through the current service charge year, all reserve balances brought forward on the Asset Management Plan have to be estimated. Activity since the last accounts and audit and projected for the remainder of the financial year is taken into account.
48. The respondent's statement of case continued by stating that the Asset Maintenance Plan is 'reviewed by full survey every 5 years'. This process uses a spreadsheet that records the expected lifecycle of the relevant building elements and calculates the total expenditure expected in the next 50 years in Drummond Close estate's life and

allows for calculation of the income needed to fund this. It was submitted that the Asset Maintenance Plan takes into account the expenditure that will be required in the next 50 years, the current balance and reserve and the estimated interest to be received on the reserve after payment of tax. Interest is applied to the reserve based on what the balance would be if the receipts were received evenly as per the plan. A calculation is made of how much provision / income will be required each year to fund the reserve. The 'annual amount to cover' figure that the Asset Management Plan calculates will be the amount to be collected.

- \* 49. It was stated that the Asset Management Plan for Drummond Close estate was reviewed in 2009 following an independent survey carried out by Ridge Property and Construction Consultants ("Ridge"), a firm of external chartered surveyors. An Asset Management Plan over a 50 year period was devised. The Asset Management plans for earlier periods are no longer available. A copy of the 2009 plan was included in the hearing bundle. It was noted that this showed, amongst other things, an anticipated expenditure in 2013 of £23,018 and in 2016 of £182,167 under the item 'vehicle access and parking'.
50. The tribunal were informed that this 2009 Asset Management Plan is under review as part of a national verification program across the respondent's Homeownership portfolio.
51. Places for People hold a maintenance reserve fund for any future works and collect contributions to this in accordance with the seventh schedule, paragraph 7 of the leases. The landlord's repairing obligations are contained in the Fourth Schedule. The tribunal was told that day to day repairs for the Drummond Close estate are undertaken on a responsive basis. These are usually reported by staff, after site inspections, or by residents. These are charged to the service charge in the year they arise and are separate from the reserve fund contributions.
52. It was stated in the respondent's statement of case that in 2008 notices had been served in respect of proposed communal works. New notices of intention were served in April 2010. The works proposed included repair and resurfacing of defective car park surfaces and areas of paving, remarking or parking bays and the painting of iron bollards. In September 2010 the residents were told that the tenders received were significantly higher than anticipated. The lowest tender was £43,047. The letter proposed two options: proceed with the works and invoice directly to residents for the expected shortfall (as the reserve fund held inadequate funds), or delay works until 2013 and increase the maintenance contributions via the service charge to increase the reserve fund.

53. In November 2010, Places for People wrote to the residents. They had met with Ridge, the external surveyor to discuss deferral of the works. Not all of the proposed works could be deferred, including paving repairs and work to one car parking area. These works were prioritised. The existing reserve fund would be reduced to a nil balance. Therefore the service charge estimate for 2011/2012 would include an increase of approximately £4-6 per month to fund extensive works between 2013-2017.
54. As a matter of background, due to the limited amount of works required on a regular basis on the Drummond Close estate because of the type of construction (communal areas are mainly hard standings with little estate furniture), historically the maintenance reserve contribution had been kept at a lower level. The Asset Maintenance Plan survey in 2009, was not reflected until April 2011, when charges for contributions to the reserve fund increase from £2.64 to £7.00 per month per property. There was a further increase in April 2012 to £15.00 per month. At that stage the level of contributions was not yet a cause for great concern as they later became.
55. In October 2011, Places for People wrote to the residents stating that despite reducing the specification of works, the contractor who previously provided the lowest tender had indicated that the works would still be in excess of the amount held in the reserve. The works would be re-tendered.
56. A meeting with the residents was held on 5<sup>th</sup> March 2012. A 'resident pack' was supplied to residents and the revised specification / plan of works (resurfacing of Selkirk Drive) was displayed. The approach outlined was that Places for People were keen to undertake the works required as outlined in the 2009 Asset Maintenance Plan, but a shortfall in the reserve fund for the works was anticipated. In April 2012 the residents pack, and notes of answers to queries raised at the meeting were sent to residents who had not attended.
57. At the meeting in March 2012, the residents indicated strongly that they were unhappy with Places for People's approach and some residents indicated that they would not be able to pay / would not pay if presented with an invoice following completion of the work (estimated at about £182,000) in 2015.
58. Places for People proposed two alternatives; to charge when the works were undertaken, or to increase the contribution to the reserve fund from £15 per month to £45 per month. Following this meeting Places for People received correspondence from residents expressing their dissatisfaction and concerns and this was not implemented at that time.
59. The tribunal were informed that up until the above meeting in March 2012, Places for People had adopted a consultative approach with

residents. Ms Botterill said that there had been no residents' meetings about the works subsequently. However, she continued to write to residents and was in contact with individual residents regarding the matter.

60. However, in December 2012 Places for People wrote to the residents informing them that a decision had been taken to increase the reserve contribution to £50 per month per property from April 2013, and defer the main works until 2016. This is the current position. This estimated contribution is challenged by the leaseholders.
61. The above letter contained a Notice of Proposal in respect of the paving works and resurfacing works to Selkirk Drive, which had not been postponed. These works were carried out in March/April 2013. There were problems. At the time of the hearing in October 2013, these works had not been signed off and some sections had to be removed and re-laid. Complaints were received that the colour did not match had been resolved by weathering. It was stated in the respondent's statement of case that until the respondent's surveyor is satisfied with these works, final stage payment will not be made. Discussions with the contractor were ongoing.
62. The reserve fund held at 31<sup>st</sup> March 2013 was £393 in deficit. This balance takes into account an accrual of £43,477.80 for the works undertaken in 2013 (not invoiced at the date of the respondent's statement of case), and the expected associated surveyor's costs.
63. On the basis of a contribution to the reserve fund of £50 per month from the residents, the anticipated balance of the reserve fund on 31<sup>st</sup> March 2016 would be £174,000. It was anticipated that the contribution to the reserve fund might reduce following completion and payment of works in 2016. All of these figures were on the basis of 'no unexpected costs being drawn from the reserve'.
64. In the respondent's statement of case it was stated that places for people accepted that not all the car parking areas on the Drummond Close estate are in the same condition, although all are the same age and are coming to the end of their expected lifetime as outlined in the 2009 Asset Maintenance Plan. It was submitted that by 2016, further deterioration would occur to the communal areas and therefore in regard to the car parking areas, full scale surface renewal would be both economically efficient and represent better value for money. No specific evidence was produced to support this contention.
65. The 2009 Asset Management Plan is now somewhat historic. At the hearing Ms Botterill stated that recognising this, Places for People were re-looking at the data. The 2009 Asset Management Plan is under review as part of a national verification program across the respondent's Homeownership portfolio. The review would be

undertaken in-house this time. Depending on the outcome of this review, she said that Places for People would re-visit question of the extent and nature of the works required.

66. Mr S Taylor MRICS said that he was involved in the original scheme for the Drummond Close estate. It was decided that a large part of the precast concrete paving needed replacing. There had been movement to the external areas. He had inspected the Selkirk Drive car parking area. The precast concrete paving had moved and was a trip hazard. Works were carried out. However these were not done properly. The issue had been taken up with the contractor. When asked about the condition of other car parking areas on the Drummond Close estate, Mr Taylor referred to the Doyle Close car park, and said this was rarely used and was in a reasonable condition.
67. In respect of the 2009 survey carried out by Ridge, Mr Taylor said that it had been noted that there were large areas of settlement. In those circumstances he considered that Ridge would have built-in a contingency in the works / costs. Only the works to the Selkirk Drive car park had been undertaken. The rest of the contract involves the making good of precast concrete paving, and does not need to be done for some time. That leaves work to various areas of areas to car parks. In his view, experience with Selkirk Drive car park indicates that the problems on the Drummond Park estate are not as serious to what was originally expected. Therefore it was more akin to 'a re-surfacing job'. Mr Taylor said that he would be surprised if the new validation survey increased the anticipated cost of the works. Overall, he said that the figures looked 'a little high', but Ridge may have included a contingency.
68. Ms Barker said that the leaseholders could not afford the proposed increase. She submitted that the works should be undertaken to one car park at a time. Some car parks only needed minor repairs. She considered that the works to the Selkirk Drive car park were done to a very poor standard. Two car parks needed no work at all and did not need to be dug out. She suggested that a reasonable monthly reserve fund contribution would be £10 per month.
69. Having considered the evidence, the tribunal finds that the charge of £50 per month as the estimated charge for the contribution to the maintenance fund is not reasonable. The tribunal considers that in all the circumstances that the estimated charge for 2013-2014 be reduced to £25 per month.
70. The background to this matter is set out in the evidence recorded earlier in this decision. In summary, due to the nature of the estate the contributions to the reserve fund were historically low. The Asset Maintenance Plan survey was in 2009. Charges for contributions to the reserve fund were increased from £2.64 to £7.00 per month per

property for 2011. There was a further increase in April 2012 to £15.00 per month. It was then proposed, for reasons referred to in the evidence, to increase the contributions to the reserve fund in order to build up reserves for major works 'anticipated' to take place in or after 2016. The contributions to the reserve fund were increased to £50 per month for 2013-2014.

71. We found the evidence of Mr Taylor helpful. He referred to the survey which had been carried out by the external surveyors, Ridge. Following this, some works had been prioritised and works were undertaken in March / April 2013 to the Selkirk Drive car park. Problems with the works were encountered and the work has not been signed off.
72. Mr Taylor made two helpful observations, firstly that the problems at the Drummond Close estate are not as serious as originally expected, and secondly that Ridge may well have included a contingency in their costing of the major works. He considered figures 'a little high'. The tribunal was told by Ms Botterill and Mr Taylor that the current position is that the 2009 Asset Plan is under review as part of a national verification program. Accordingly it is not unreasonable to expect that the question of the nature, extent and cost of the major works to the Drummond Close estate will be revisited, and possibly revised.
73. In all circumstances, the tribunal does not consider the proposed estimated contributions to the maintenance reserve of £50 per month for 2013-2014 to be reasonable. In view of the uncertainties relating works already undertaken to the Selkirk Drive car park, the uncertainties arising from the proposed review of the Asset Management Plan, and the observations of Mr Taylor in his evidence noted above, the tribunal considers that the proposed charge should be reduced to £25 per month.
74. This decision relates only to the estimated maintenance reserve contributions payable under the leases for the service charge year 2013-2014, which is the subject matter of this application.
75. **Accordingly, the tribunal concluded that the estimated Maintenance Reserve fund contribution payable by each of the leaseholders to People for Places for the service charge year 2013-2014 is £25 per month.**

#### **Application under s.20C**

76. In the application form and at the hearing, the applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal considers that it was reasonable for the applicants to make this application to the tribunal. The tribunal

finds that in all the circumstances it is just and equitable for an order to be made under section 20C of the 1985 Act, so that the respondents may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Judge Seifert

**Date:** 3<sup>rd</sup> December 2013



## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (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 or subsequent charges or otherwise.

#### **Section 27A**

- (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.
- (4) No application 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 to have agreed or admitted any matter by reason only of having made any payment.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (a) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.