

9451



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

**Case Reference** : MAN/00CX/LSC/2013/0078

**Property** : The Premises comprising 10 Long Lane, 1  
Bradley Square and 1A Keighley Road,  
Harden, Bingley, West Yorkshire

**Applicants** : Graham Grainger  
Jacqueline MacFarlane  
Matthew Greenwood

**Respondent** : Countrywide Estate Management on behalf of  
Ground Rent (Regis) Ltd

**Type of  
Application** : Landlord & Tenant Act 1985, Sections 27A  
determination of service charges and s20C

**Tribunal  
Members** : K M Southby (Judge and Lawyer Chair)  
A Ramshaw (Expert Valuer Member)

**Date of  
Application** : 8 May 2013

**Date of Decision** : 25 October 2013

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**DECISION AND REASONS**

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## DECISION

1. The Service Charge budget for 2013 be amended as below:

Work type	Budget total	Allowed total	Allowed per flat
Maintenance	150	150	50
Reserve Fund	300	300	100
H&S/Fire	204	204	68
Management Fees	450	225	75
Accounting Fees	108	108	36
<b>TOTAL</b>	<b>£1212.00</b>	<b>£987</b>	<b>£329</b>

2. The costs in connection with these proceedings are not to be added to the service charge account.

## PRELIMINARY

3. The Tribunal has received an application from the first Applicant for the determination of the reasonableness of the service charges for the years 2013 to 2019. The Applicant also seeks an order under s20C Landlord and Tenant Act 1985 preventing the Respondent from seeking to recover the cost of proceeding before the Tribunal from the service charge.
4. The freeholder of the Property is Ground Rent (Regis) Ltd who instruct Pier Management Ltd on their behalf in respect of charges for insurance and ground rent. These charges are not in dispute. Ground Rent (Regis) Ltd also instruct Countrywide Estate Management on their behalf in respect of the Service Charge which is the subject of the application under s27A Landlord and Tenant Act 1985. Countrywide took over management of the property on 21 January 2013

## INSPECTION

5. The Tribunal inspected the Property on 25 October 2013. Mr Greenwood and Mrs McFarlane of the Applicants were in attendance, as were Ms Kemp and Mr Noble from the Respondent.
6. The Tribunal observed upon inspection that the subject property is a former corner shop now subdivided into three apartments. These apartments despite being within the same building bear the three different addresses above by reason of the corner location of the Property. Each of these three apartments has its own separate entrance. There are no common parts which are shared by the three leaseholders, although there is a small flagged area and two stone steps outside the entrance to 10 Long Lane which do not fall within the demise of that property but which are nevertheless part of the original freehold.
7. The Property consists of a three storey stone-built structure with a Yorkshire stone flagged roof and hardwood double glazed windows. It was observed upon inspection to be in generally good repair, although it was noted that there were significant gaps in the pointing between the stonework in some

places; particularly at the joint between the subject property and the adjoining premises.

## THE HEARING

8. The hearing was attended by all three Applicants and Mr Noble and Ms Kemp on behalf of the Respondent as represented by its Agent. The Tribunal also had the benefit of the written representations and documentation provided by the parties.
9. The Applicants take issue with the entirety of the Respondent's Service Charge budget. This can be itemised under the headings Maintenance and Repairs; Reserve Fund; Health and Safety/Fire/Asbestos Survey and Risk Assessment; Management Fees and Accountancy fees. These are dealt with in turn below.

## THE LEGISLATION

10. The relevant legislation is s27A of the Landlord and Tenant Act 1985. In particular s27A (3) enables the Tribunal to consider a budget for future Service Charge costs.

### ***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.*

11. The Tribunal considered the reasonableness of the Service Charge in accordance with section 19 of the Landlord and Tenant Act 1985. This provides as follows:

### ***19 Limitation of service charges: reasonableness***

*(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 provision of services or the carrying out of works, only if the services of works are of a reasonable standard;*

*And the amount payable shall be limited accordingly.*

## **THE LEASE**

12. The Tribunal was provided with the leases for all three Tenants which are identical. The relevant terms of the lease are as follows:
13. Clause 4.3 requires the Landlord to observe and perform the obligations contained in the First Schedule.
14. The First Schedule sets out the Services including
  1. *To maintain and keep in good and substantial repair and condition and renew or replace when required the Main Structure the roof and any pipes used in common by the Tenant and other tenants of the Building...*
  2. *As and when the landlord shall deem necessary to decorate in a good and workmanlike manner the external parts of the building*
  3. *To pay and discharge rates, taxes, charges...*
  4. *To employ at the Landlords discretion a firm of managing agents to manage the Building and discharge all proper fees charges and expenses payable to such agents or such other persons who may be managing the Building including the cost of computing and collecting the Service Charge*
  5. *To do or cause to be done all works installations acts matters and things as in the absolute discretion of the Landlord may be considered necessary or desirable for the proper maintenance safety amenity and administration of the Building*
  6. *To keep proper books of account of the sums received from the Tenant and the other tenants in the Building in respect of the Annual Expenditure and of all costs charges and expenses incurred by the Landlord pursuant to his covenants in this Lease*
  7. *To set aside such sums as the Landlord reasonably requires to meet such future costs as the Landlord reasonably expects to incur in replacing maintaining and renewing those items that the Landlord has covenanted to replace maintain or renew.*

The Second Schedule at paragraphs 2 and 5 states:

2. *The Landlord shall as soon as convenient after the end of each Financial year prepare an account showing the Annual Expenditure for the Financial year and containing a fair summary of the expenditure referred to in it and upon such account being certified by the Agent it shall be conclusive evidence for the purposes of this Lease of all matters of fact referred to in the account.*
5. *If the Service Charge for any Financial Year exceeds the provisional sum for that Financial year the excess shall be due to the Landlord on demand and if the Service Charge for any Financial year is less than such*

*provisional sum the overpayment shall be credited to the Tenant against the next annual payment of the Rent and Service Charge*

## **MAINTENANCE AND REPAIRS**

15. The budget set for the 10 month period was £50 per flat. The Tribunal heard that a downpipe has already been removed for safety reasons at a cost of £50 plus VAT which represents £16.67 plus VAT per flat from the £50 budget. All three Tenants agreed that this was work that needed to be done and the cost was reasonable. The Tribunal also observed for themselves that there was repointing work to be done, and two quotes for this work were produced by the Respondent in the sum of £468 plus VAT and £432 plus VAT. Again the three tenants agreed that the work needed to be done and that the costs set out in the quotations were reasonable. The Respondent indicated that the repointing work would be done in the next Service Charge year.
16. Notwithstanding their agreement with the nature and extent of the repair work already identified as needing to be done the Applicants argued that the provision within the budget for repairs and maintenance was too high. Mr Grainger observed that the tenants had been effectively managing the property themselves for the last seven years and that the maintenance costs had been minimal. He argued that as no work had been done over the previous seven years when the tenants had effectively been managing the property themselves, the value of the maintenance currently proposed should be pro-rated and divided by this number of years to reach a budget figure.
17. The Tribunal does not accept this as an approach for setting the budget. The Tribunal observed the Landlord's obligations under the Lease to maintain the structure of the building, and also their right under the lease to appoint managing agents to do so. The fact that this has not previously been done does not negate their right to do so now. Given the nature and condition of the premises, the amount of work already carried out and the further work already identified to be completed next year, the Tribunal considers a figure of £50 per flat to be reasonable.
18. Concern was expressed by the tenants as to what would happen to their money if the full budget sum was not required in a particular Service Charge year. The Respondent confirmed, in accordance with paragraph 5 of the Second Schedule of the Lease, if the full sum budgeted for repairs and maintenance were not to be expended in any given service charge year the balance would be rolled over and set off against future charges.

## **RESERVE FUND**

19. The Applicants argued that this was effectively a further repairs and maintenance fund and was unnecessary. The Tribunal note that the Landlord is entitled under paragraph 7 of the First Schedule to the Lease to set aside money in a reserve fund, in order to make provision for future works.
20. The Tribunal considered the nature, age, condition and structure of the building and whilst noting that there are no major works scheduled at present, a reserve fund provision of £100 per flat is reasonable.

## **HEALTH AND SAFETY/FIRE/ASBESTOS SURVEY**

21. The Applicants argued that carrying out an assessment and preparing a report was unnecessary. In particular it was argued that a Fire Risk Assessment did not need to be conducted because there were no common parts used by more than one of the properties. The Tribunal examined the premises upon inspection and noted that there were no communal areas, the only area of any ambiguity being a small area of the Landlord's property which the Respondent stated does not fall within a tenant's title. This comprises a small stone landing area and two stone steps immediately outside the front door to number 10 Long Lane.
22. The Tribunal were provided with a copy of the report which had been produced in respect of the property. It was noted that the vast majority of the report was in relation to Health and Safety risk assessment of the structure, which it was accepted by all parties falls within the Landlord's obligations under clause 4 and the First Schedule of the lease. The report concluded that there were no asbestos risks and that the fire risks associated with egress from the property across the stone entrance way and steps were minimal.
23. The Applicants accepted that there was a legal obligation upon the Landlord to assess Health and Safety risks, but argued that the report could have been done more cheaply by local professionals rather than a company located close to the Landlord's premises in Essex. The Tribunal concluded that the cost of the report was not materially affected by the Fire Risk Assessment and therefore it was not necessary to examine in detail whether or not the stone step entrance way was covered by the Regulatory Reform (Fire Safety) Order. The Tribunal also concluded that whilst local Health and Safety consultants might have incurred less in the way of travel costs, there may well have been an equivalent saving to the Landlord by bulk contracting the process across its portfolio of properties. The Tribunal were not provided with any other quotations and concluded that the budget figure was reasonable.
24. It was noted that this element of the budget was for the full survey undertaken at the start of the new Agents involvement. In subsequent years a new survey will not be required but instead Mr Noble of the Respondents Agents confirmed that a desktop exercise costing £25 would be undertaken instead, informed by the Agents inspections of the property.

## **MANAGEMENT FEES**

25. The Applicants queried why Management Fees for this property were so high given the minimal nature of management involved. It was noted that the property does not have any communal areas which require cleaning or upkeep, there is no lift, there are no external areas which require gardening or other maintenance, and the burglar alarms are individual to each flat not centrally managed by the agents. It was confirmed that the Respondent's Agents do not arrange Insurance for the building although they would be the point of contact in the event of a claim.

26. The Tribunal heard from Mr Noble that the Agents inspect the property every two months, and evidence of these inspections was provided to the Tribunal. Mr Noble stated that the fee of £150 per unit was based upon the location and the extent of what is required for the building. Mr Noble informed the Tribunal that £150-180 was an average management fee charge per unit in Yorkshire with charges of £200-£300 in London. He also confirmed that they managed a 70-unit property in Bradford at £110/unit. He confirmed that within these figures they would normally be dealing with arranging insurance for the building.
27. It was the Tribunal's view that the level of management required for this property was extremely small, given the lack of communal areas or shared facilities, and the fact that insurance was not being arranged by the agents. Accordingly it was the Tribunal's view that a figure of £150 per unit in management fees was excessive and that a figure of £75 per unit was reasonable in reflecting the level of management involved.

### **ACCOUNTANCY FEES**

28. The Applicants argued that the accounting fees were too high but did not provide any comparative quotes. The Tribunal heard from Mr Noble that preparation of accounts was not part of the management agreement and therefore not included as part of management fees. Mr Noble informed the Tribunal that the accounts were prepared by an in house department of the Managing Agents rather than sent to external accountants, in order to keep costs down, suggesting that the cost of sending the account externally would be £50-60 per unit rather than £30 per unit plus Vat in this case.
29. The Tribunal accepted that there was an obligation under the lease for these accounts to be prepared although it was not a requirement for them to be certified by an accountant. Paragraph 2 of the second schedule of the lease instead requiring that they be certified by the Agent.
30. Considering all the evidence and its own knowledge and experience the Tribunal concluded that these budgeted accounting charges were reasonable.

### **PERIOD OF TIME**

31. The Application covered the Service Charge years 2013 to 2019. No Service Charge budgets have been produced by the Respondent save for the 2013 budget which covers the 10 months of 2013 following the Respondent taking over management of the premises in March. For this reason the Tribunal is at this stage unable to decide whether or not the Respondent's proposed Service Charge budgets are reasonable.

### **COSTS**

32. The Tribunal received an application under section 20C of the Landlord and Tenant Act 1985 that costs should not be added to the service charge account. The Respondent indicated that there would be no costs to be recharged to the account. In any event the Tribunal considered that the Applicants were justified in bringing proceeding to query the level of management fees and so

make an order which gives formal effect to the Respondent's assertion. The Tribunal therefore orders that the s20C application succeeds and that the costs incurred by the landlord in connection with these proceedings are not to be added to the service charge account.