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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/26UK/LSC/2015/0048**
Property	:	**Howard Agne Close, Bovingdon, Hemel Hempstead, Hertfordshire HP3 0HB**
Applicant	:	**Alexa Lamond (Flat 86)** **Kenneth Hunt (Flat 78)** **Jonathan Smith (Flat 80)** **Javier Fernandez (Flat 112)**
Representative	:	**Mr N Lamond**
Respondent	:	**High Town Housing Association Limited**
Representative	:	**Mrs L Middleton** **Mr M Howells**
Type of Application	:	**Application to determine the reasonableness and payability of service charges**
Tribunal Members	:	**Tribunal Judge Dutton** **Miss M Krisko BSc Est Man FRICS** **Mr O N Miller BSc**
Date and venue of Hearing	:	**Watermill Hotel, Bourne End, Hemel Hempstead, Hertfordshire on 8th October 2015**
Date of Decision	:	**26th October 2015**

DECISION

DECISION

The Tribunal makes the following determinations the reasons for which are set out at the foot of this matter:-

1. **The Tribunal finds the sum of £175 + VAT per annum per unit for the management charges in the year 2013/14 and as the budgeted figure for the year 2015/16 is a reasonable charge.**
2. **The Tribunal determines that the appropriate estimated charge for insurance for the year 2015/16 should be £103 per flat.**
3. **The contributions required to be paid to the trust fund for the years in dispute are reasonable and payable.**
4. **The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985 (the Act) considering it just and equitable to do so.**
5. **The Tribunal orders the Respondent to reimburse the Applicant with 50% of the fees payable to the Tribunal which were £125 for the application and £190 for the hearing, making a total refund of £157.50. Such refund to be made within 28 days and should be made payable to Miss Lamond and it will be for her to reimburse her fellow Applicants as appropriate.**

BACKGROUND

1. There were applications made by the four Applicants named on the first page of this Decision. In all cases they sought to challenge certain elements of the accounts for 2013/14 and the budgeted account in respect of certain matters in respect of the year 2015/16.

2. In the bundle of papers provided for the Hearing we had statement of case on behalf of both parties with responses thereto, a copy of a specimen lease and various appendices, which both parties considered were relevant to the matters before us.

3. In the Applicants' initial submission, prepared by Mr Lamond the father of Alexa Lamond, four issues were set out and they are as follows:
   a. Methods used when drawing up the forward budget and historic accounts for the service charges and whether these have led to appropriate requests for contributions in future years following under or over recovery of the service charge
   b. Management fees level and rate of increase
   c. Premium for insurance and whether re-tendering consultation should have occurred
   d. The level of contributions to the trust fund and whether its use by the Respondent has been appropriate.

4. In the statement of case for the Respondent these matters are addressed. This resulted in a reply dated 19th August 2015, which in turn resulted in a further letter from the Respondent of 26th August 2015. We have had the opportunity of reading these and would not propose to repeat the contents in this Decision.

INSPECTION

5. Prior to the Hearing we inspected Howard Agne Close and The Bourne in the company of a number of the Applicants and Mrs Middleton and Miss Dawkins from the Respondent. The properties at Howard Agne Close comprise two/three storey blocks of flats numbering, with those in The Bourne, 45 in total. There were grassed areas both open to the general public and to the residents only, car parking, street lighting and external lights to the property. We inspected a specimen common parts area, the door to same was not locked or controlled by any door entry system. There was basic carpeting to ground floor and the stairs above and there was also lighting on a timer switch. The block appeared to be in good decorative order and indeed there is no particular complaint made as to the standard of services or the condition of the properties.

HEARING

6. Mr Lamond represented the Applicants and told us that there were two primary documents, the accounts for the year ending March 2014 and the budget for the year 2015/16. This was he said largely an accounting exercise. He told us that there were four points he wanted to bring to our attention. They are:-

- The level of management fees against the level of services received
- Accounting practices and particular how deficits were dealt with from previous years
- Whether there should have been consultation in respect of the insurance premium
- Payments into and the use of the trust fund.

7. His assessment was that the management charges by the Respondent were some 41% of the sums spent in servicing the estate. This charge he said had no reference to the quality of the services. In respect of the insurance, this had increased by 88% and it was inappropriate that the insurance for Howard Agne Close should be affected by insurance claims in respect of other properties in Hemel Hempstead. He also queried whether or not there had been proper tendering and consultation in respect of this contract.

8. He told us that there had been mistakes in the 2013/14 accounts and that an explanation was required in connection with the general repair costs.

9. Moving on to the specifics he told us that the management fees were now £345.97 per annum per flat. He thought this was inappropriate given the mistakes made in the accounts and the percentage ratio with the costs actually incurred in providing services to the estate. There had been challenges to this in the past which had resulted in reductions. However, those mistakes were continuing and for the budget year 2015/16 there appeared to be a 25% increase from the previous actual charges in 2013/14. No reference was made to any explanation as to why there should be this increase notwithstanding letters written by the Applicants.

10. He told us that as a result of complaints he had had a meeting with the Respondent in March of this year when certain errors had been accepted and he

highlighted that there were continuing errors by reference to Mr Howells' statement, an error made by Mr Ashworth in a letter concerning electricity costs and an error in the statement of case by the Respondent when the wrong figure was quoted. He said that insofar as the managements fees he thought these should be reduced to £175 per property per annum bearing in mind that his understanding was the average management charge was around 15% of the costs incurred in servicing the property.

11. In respect of the insurance, he confirmed he thought there had been an 88% increase. There had apparently been a tendering exercise which should have come to a conclusion in 2014. However, the contract at that time was not re-tendered and instead it appears that the Respondent had entered into a two year extension without consultation and that therefore this breached the provisions of Section 20 of the Act. He thought the premium should be limited to £100 per annum per flat. He told us that he accepted there had been additional problems as a result of a sinkhole in Hemel Hempstead. However, that estate had no bearing on the subject premises and he considered that any claim was the failing of the Respondent or their contractors when the estate was built, he believed in 2007.

12. He referred us to a document in the bundle at page 68 which was a redacted copy of insurance showing a premium payable, he believed in respect of the leasehold properties, of £144,124.35. He had been told by Mr Ashworth that the policy covered some 1,400 home ownership properties and by the simple expedient of dividing the £144,124 by 1,400 gave rise to a suggested premium of £102.95. This was without prejudice to the potential for a further reduction as this document referred to a 10% discount.

13. In respect of the trust fund, that is to say the sinking or reserve fund, he initially indicated that he thought this could be used in a better way to even out the annual service charge contributions. However, he did not really pursue that element. What was of concern to him, however, was that one flat had now been acquired by a lessee under the Right to Buy legislation and that that person would therefore be contributing towards the reserve fund. He wished assurances that the reserve fund which the Applicants had been contributing to for a number of years would be ring-fenced but no evidence had been given to him to confirm that would be the case.

14. He also raised concerns about accounting variances where there had been an apparent underpayment by the residents of Howard Agne Close as compared to those at The Bourne. This caused further confusion with the Applicants and was further evidence of the Respondent's poor management. He also raised the possibility of there being some form of reimbursement to Mr Smith, one of the Applicants, who had only moved into his property in April of this year. Mr Smith told us that £200 had been held back when he purchased against service charge adjustments, as a retention, but he did not know if this had been released.

15. Another matter raised related to the item of general repairs for the year ending March 2014. Documentation had been produced that appeared to indicate that there had been certain repairs carried out which rested solely with the leaseholders. This, however, was explained by the Respondent as being part of the accounting arrangements where not all items were shown on the accounts. We

will return to this. However, documentation was produced in the form of a spreadsheet showing that there appeared to be a similar sum of £4,000 plus spent in respect of the rented accommodation and this seemed to satisfy Mr Lamond that at least there had been equality even if the accounts were still faulty.

16. He was asked what prejudice might have been caused to him if there had been a failure to consult under Section 20 in respect of the insurance arrangements. He told us that the main problem was that the Respondent had prevented the Applicants seeking alternative quotes. No information had been provided to the Applicants to enable them to research comparable evidence, although he was aware that a two bedroomed flat in Buckinghamshire could be insured for around £90 per annum.

17. We then heard from the Respondent, in particular Mrs Middleton, who is the Property and Commercial Director. Starting firstly with the management fees, she sought to explain that this was the cost across the whole association and apportioned to the home ownership element. There were apparently seven or eight members of staff working in the home ownership directorate, this including a portion of her time, which was split between home ownership and communications. The costings for the home ownership included shared ownership, general leasehold and retirement properties. A spreadsheet had been included in the bundle at page 96 which had a number of headings and percentages indicating that on the Respondent's calculation the home ownership area took up some 21.56% of the apportioned costs. Mrs Middleton was asked whether the Respondent had compared the management charges to other housing associations but this had not been done. It appeared that the assessment of the contribution payable by the home ownership staff had been carried out on a random time costing basis. Mrs Middleton, however, was not able to help us with the figures and the person who had reviewed the spreadsheet had left the Respondent's employment last month.

18. On the question of insurance, she told us that it had been the intention of the Respondent to re-tender after three years. However, the sinkhole claim in Hemel Hempstead at another site the Respondent owned came arose in that period and they were advised by their independent consultant that re-tendering would result in a higher premium for the block policy. They opted, therefore, to take the two year extension, with a yearly right to review, which was included in the original contract on the basis that they were informed it would be difficult to get insurance just for the affected property in Hemel Hempstead. She was of the view that over the years the leaseholders had benefitted from the block policy that the Respondent's had in place. When asked whether there was any other insurance cover which might assist in connection with problems caused by the sinkhole it appears that there was no certainty as to the position but it was hopeful that there could be an NHBC cover, which was being investigated, or claims against the developers and/or the professionals who had apparently carried out site surveys. Mr Howells could not, however, say whether there would be a recovery of the extra premium incurred by the Applicants. It was hoped, however, that the premium would reduce in the future years. It was also confirmed that the Respondent received no commission.

19. Insofar as the consultation was concerned, the Respondent's view was that this was an annual renew and it could have indeed proceeded with another insurance company had it chosen to do so. However, the advice of their consultant was not to do so. Some 1,025 properties are covered by the policy. The distribution of the policy between properties was on a somewhat complicated basis. It seems that each area was assessed for a rebuild value. Those costs were then applied to the premium and then sub-divided by the number of properties in that particular area. No figure was available to us to show how this had been apportioned to the Applicants. It was also pointed out to us that in respect of the general needs accommodation, that is to say the rented housing, there was a £1,000 policy excess whereas in respect of the leasehold properties that excess was only £100.

20. In respect of the deficit matters, explanations were put forward to explain how these had been dealt with, which we will return to in the findings section of this document. Insofar as the trust fund was concerned we were told this was held in a separate account and that in relation to the new leaseholder who had acquired under the RTB legislation arrangements would be made to set up, in effect, two accounts, one containing the trust funds now available and which had been contributed to by the Applicants and a new one showing the period after the Right to Buy transaction had taken place, which would include the additional lessee(s). The Respondent undertook to make sure this was done. They were not, however, able to tell us whether the RTB purchaser would be exempt from any major works as part of his or her purchase of the flat. We were also told that bad debts were not included in the accounts.

21. There followed some cross examination by Mr Lamond, particularly with regard to the accounting issues. There was a general complaint that the accounts were not clear and transparent and he also queried whether in fact the Section 20 consultation had been followed when the qualifying long term agreement was set up in 2011, although there was no evidence raised on this point. He did tell us that all flats in the blocks were two bed but he had no evidence as to what the insurance premium might be for a flat of this nature.

22. Finally, in respect of the application under Section 20C the Respondents left it to us to decide whether such an order should be made and Mr Lamond asked for reimbursement of the fees that had been paid to commence the application and for the Hearing. He told us that he had attempted to resolve this matter without coming to the Tribunal. He had had a meeting with the Respondents in March which had not clarified issues and that under those circumstances he felt there was no alternative but to bring this matter before us.

THE LAW

23. The law applicable to this application is set out in the annex hereto.

DECISION

24. Before we make any findings in connection with the issues raised by Mr Lamond we would like to give him credit for the manner in which he conducted the case and for the thoroughness in which he has investigated the matter on his daughter's behalf. His task has not been helped by the manner in which the Respondent

produced the accounts. In the papers we had copies of the service charge accounts for the year ending March 2014. These are confusing. They contain some five columns and we were told not every item of expenditure under the column headed General Rented Housing is included. It is impossible, therefore, for a leaseholder to know the total costs that had been incurred in connection with the development and whether in respect of the rented accommodation or the leasehold accommodation. A glaring example of this was the general repairs where in fact over £9,000 had been spent in this year but in the column under the general rented property a figure of zero is shown. This obviously caused the Applicants some concern. It is not helped also by a further column including 2012/13 actuals with various surpluses and deficits which are then brought forward and allowances made giving final figures to be carried forward. There is no doubt in our mind that the Respondent could make the accounting exercise far more transparent and easier to understand. We are, however, satisfied from our investigations and from the evidence given to us by Mrs Middleton that there are no errors in the accounts.

25. In the year ending March 2014 the deficit carried forward is indeed £6,411 partly made up of an under recovery from the leaseholders of Howard Agne Close. Mr Lamond had sought in his original application to question whether or not these costs could be recovered by virtue of Section 20B of the Act. It seems to us, however, that the estimated accounts have been produced each year and the final accounts appear to be produced within four or five months of the year end. In the case of the year ending March 2014 the estimated costs exceed the actual costs and in those circumstances even if Section 20B were to be involved, it seems to us that the Respondent has not sought to recover by way of service charge more than has actually been included within the budget.

26. A letter of 9th April 2015 to Miss Lamond sought to explain some of these errors. It seems that although the budget for 2013/14 had costs at £24.80 per month for the Howard Agne leaseholders they were not in fact charged that amount. There was also an error in connection with contributions to the trust fund. These are unfortunate and need to be ironed out but it does seem to us that it can be said that notice has not been given by way of estimated charges to the leaseholders to enable them to prepare for their expenditure in the forthcoming years. If the Respondents actually recovered less than the amount that they had notified in the budget, then that is unfortunate but does not give rise to a claim under Section 20B. We are satisfied, therefore, that for this year, that is to say the year ending March 2014, there is no provision which would enable us to make findings that Section 20B applied to any of the payments.

27. Insofar as the trust fund is concerned, given the undertaking by the Respondent that it will ensure that the present trust fund (reserve/sinking fund) is ring-fenced we cannot see that there is any difficulty in this regard. Mr Lamond's wish for the trust fund to be used to meet day to day annual expenses is not appropriate. That is not what the lease says. Furthermore, the reserve fund is intended to be used to ameliorate the costs that may arise when there are major works. The Respondent has a 30 year maintenance plan and we have no criticism of that or the manner in which they are accruing and using the trust fund.

28. Whilst we have not found any particular errors that would result in any reductions in service charges in respect of the accounting issues, we do, however, find this not the case in respect of the management and insurance costs.

29. It is unfortunate that nobody from the Respondent could explain to us what the spreadsheet at page 96 of the bundle was actually meant to show. It contains various references to percentages and sums, showing that over £5.3m are spent in connection with the running of the Respondent Association. That may well be the case but it was not explained to us how this has been apportioned to the Applicants. In any event it seems to us that even if they could explain how it had been apportioned, the cost of over £300 per unit per annum for what is in effect a fairly straightforward development requiring little in the way of services is in our findings excessive. The best we can do in respect of this matter is to consider the provisions of Section 19 of the Act and determine whether or not charges are reasonable. We find that the costs claimed in 2013/14 and as sought in 2015/16 are not reasonable. We agree with Mr Lamond that a percentage may be appropriate and certainly 15% has been upheld by Tribunals, both at our level and in the Upper Tribunal, as a reasonable management charge. Mr Lamond indicated that a figure of £175 would be reasonable and we agree with him. We, therefore, find that for the year 2014/15 and in respect of the budget year for 2015/16 a sum of £175 plus VAT in respect of the management charge is reasonable and payable. This is not to say that the management charge must remain at this level. However we consider that the Respondent must have regard to the management provided and the services which benefit the development in the future.

30. We finally then turn to the question of the insurance. There has been a substantial increase. In the last set of accounts for 2013/14 the charge per unit was around £59. It seems that it increased in the following year but has now doubled. The initial period for which the qualifying long term agreement was entered into was three years with a potential two year addition. We do not consider that s20 applies. There is no evidence that the consultation did not take place in 2011. The extension was provided for in the original agreement and is capable for being terminated after a year.

31. A block policy can bring benefits but this highlights the potential downfall. The claim in respect of the sinkhole in another part of Hemel Hempstead has caused problems. If, however, the insurance was to remain on a block policy we do not consider it is appropriate that the leaseholders at Howard Agne Close should be penalised because of the difficulties associated with one development some miles away. It is quite open to the Respondent to reconfigure the apportionment to create a more equitable division whilst the sink hole issue is resolved. It may well be that the Respondent will be able to recover monies either from the developers or the professionals who advised that the estate should be built, we believe in 2007. However, no assurance could be given by Mr Howells that if damages were recovered they would be repaid to the Applicants to ameliorate the excessive increase in insurance for this year. In those circumstances doing the best we can and following to an extent Mr Lamond's calculation, we have come to the conclusion that a reasonable insurance premium for the flats would indeed be £103 per unit. It is not clear what number of properties is actually covered by the policy. The document itself is so heavily redacted that it is not possible to see what number if any may be the subject of the policy schedule. In Mr Lamond's letter to

the Respondents of 19th August at paragraph 9 he lists the various numbers of properties that have been put forward by the Applicants. They include home ownership team managed properties numbered at 1,338, general leasehold properties of 340 and leasehold and shared ownership of 1,025. He had told us that a Mr Ashworth had told him that there were 1,400 properties covered by the insurance, which could well be the home ownership team managed stock. It is impossible to tell. What we do think, however, is that the substantial increase is unreasonable hence our finding that the sum of £103 is a reasonable amount for the Applicants to pay in respect of insurance for the year 2015/16.

32. There has been some mixed success. However, we do think that the Respondents have to a certain extent brought this application on themselves. Their accounting procedures are difficult to follow and Mrs Middleton and Mr Howells both conceded that they could be presented in a format that was easier to understand. The Applicants have had some success in connection with the management and insurance costs. The others issues would not have arisen if the accounts had been more transparent and easily understandable. In those circumstances we conclude that it is just and equitable to make an order under Section 20C preventing the Respondent from recovering the costs of these proceedings as a service charge. We also think that as there has been some success on the part of the Applicants, there should be a reimbursement by the Respondent of half the fees that they have incurred. The total cost for the application is £125 and for the hearing £190. Half that sum is, therefore, repayable and we would suggest to Miss Lamond who can then distribute it amongst her co-applicants as is necessary.

Judge: *Andrew Dutton*

A A Dutton

Date: 26th October 2015

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 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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;
- (aa) 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.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.