10608

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

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| **Case Reference** | : | **MAN/00BL/LIS/2013/0022**<br>**MAN/00BL/LSC/2014/0052** |
| **Property** | : | **Apartments 15 and 35**<br>**The Parklands, Stoneclough,**<br>**Radcliffe, Manchester M26 1QB** |
| **Applicant** | : | **The Parklands Stoneclough**<br>**Management Company Limited** |
| **Representative** | : | **Portland Block Management** |
| **Respondents** | : | **Mr M Blakey (1)**<br>**Mr K Fox and Mrs N Fryer (2)** |
| **Representative** | : | **N/A** |
| **Type of Application** | : | **Landlord and Tenant Act 1985 – s27A and s20C** |
| **Tribunal Members** | : | **Judge J Holbrook**<br>**Mr J Faulkner FRICS**<br>**Mr L Bottomley JP** |
| **Date and venue of Hearing** | : | **10/09/2014 and 26/01/2015**<br>**Manchester** |
| **Date of Decision** | : | **26 January 2015** |

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**DECISION**

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## DECISION

**In respect of each of the service charge years identified in the first column of the following table, the Respondents named in the second and third columns respectively are liable to pay service charges to the Applicant in the amount specified thereunder.**

| Service charge year ending on | Amount payable by Mr Blakey | Amount payable by Mr Fox & Mrs Fryer |
|---|---|---|
| | | |
| 31 August 2012 | £1,055.62 | £1,253.93 |
| 31 August 2013 | £929.74 | £1,266.50 |
| 31 August 2014 | £1,160.68 | £1,251.28 |

**The costs incurred by the Applicant in connection with these proceedings are not to be regarded as relevant costs (within the meaning of section 18(2) of the Landlord and Tenant Act 1985) to be taken into account in determining the amount of any service charge payable by any of the leaseholders of The Parklands development.**

## REASONS

### Background

1. By order of District Judge Shaw sitting at Bolton County Court on 27 September 2013, the Tribunal is required to make a determination as to the amount of the service charges in respect of Apartment 35 The Parklands, Stoneclough, Radcliffe, Manchester M26 1QB that are payable by the first Respondent, Mr M Blakey.

2. By order of District Judge Evans sitting at Bolton County Court on 25 March 2014, the Tribunal is also required to make a determination as to the amount of the service charges in respect of Apartment 15 The Parklands that are payable by the second Respondents, Mr K Fox and Mrs N Fryer.

3. In each case the periods in respect of which a determination is required are the service charge years which ended on 31 August in 2012, 2013 and 2014.

4. The Applicant in these proceedings is The Parklands Stoneclough Management Company Limited, the freehold owner of The Parklands development. The first and second Respondents are the respective leasehold owners of two of the apartments within the development.

5. A hearing was held in Manchester on 10 September 2014. It was adjourned part-heard in order for the Applicant to produce financial information relating to the service charge in the form required to enable a proper determination to be made. The hearing resumed on 26

January 2015. On both occasions the Applicant was represented by Mr C Mollison and Miss D Ellis of Portland Block Management, the Applicant's managing agents. Mr Blakey and Mr Fox appeared in person. Mrs Fryer did not attend. Nor did she participate in these proceedings in any way.

6. The Tribunal inspected The Parklands development on the morning of the first day of the hearing in the presence of Mr Mollison, Miss Ellis and Mr Fox.

## Description of the development

7. The Parklands is a development of 24 residential units some 15 years old, comprising 15 purpose-built apartments and 9 houses some of which are in a converted large period house. The apartments are in two blocks: one (which includes apartment 15) comprising 3 apartments; and one (which includes apartment 35) comprising 12 apartments. Both are of two-storey traditional brick construction under pitched, tiled roofs.

8. The buildings within the development are set in grounds which include substantial communal lawned and planted areas (including several large trees); together with some garages, open car parking areas and a bin store. Set in a mainly residential area, the development has perimeter railings with electric double gates giving vehicular access. There are also two pedestrian gates, one adjacent to the electric gates, and one to the rear of the development giving access to and from a corner of the garden.

9. We noted the development to be in a generally good state of repair and condition. No significant disrepair was noted in respect of the exterior of the buildings. The communal gardens appeared to be well maintained and the external areas were clean, tidy and free from rubbish, although it was noted that the block paved parking areas showed some marking and the delineation of the parking spaces was unclear in places. There were also minor deficiencies in external lighting and in the rainwater goods on one garage. We inspected one of the two communal cores in the larger purpose-built apartment block, and noted this to be in a reasonable condition in terms of decoration and cleanliness.

## Law

10. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

> *An application may be made to the appropriate 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.*

11. The Tribunal is "the appropriate tribunal" for this purpose, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

12. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

13. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

> *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 or works are of a reasonable standard;*
> *and the amount payable shall be limited accordingly.*

14. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

> *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.*

15. There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, he will need to specify the item complained of and the general nature of his case. However, the tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

## The claim for service charges

16. Mr Blakey and Mr Fox/Mrs Fryer hold their respective apartments on long leases which are in materially similar terms. Each lease was

granted for a 999 year term at an annual ground rent of £100. There is no dispute as to the provisions of the lease or as to their effect. In particular, it is accepted that the Applicant has a duty to provide certain services to the development and that the Respondents have concomitant obligations to contribute towards the costs of those services.

17. The leases require the Applicant to distinguish between the cost of providing services to the development generally and the cost of providing services specifically to each building. All 24 leaseholders must contribute equally to the development-wide ("A Service Charge") costs but, in terms of buildings-related ("B Service Charge") costs, only have to contribute to the costs incurred in respect of the building in which their apartment is situated. In respect of each building, the relevant leaseholders must contribute equally to the costs concerned. Consequently, the First Respondent must contribute one twelfth of the relevant buildings-related costs, whereas the Second Respondents must contribute one third of (different) relevant costs.

18. As originally presented, the application failed to distinguish between the A Service Charge costs and the B Service Charge costs being claimed in respect of either of the apartments concerned. Nor, in fact, did it reveal what the total service charge costs were alleged to be for any of the years in question. Instead, the application was presented simply as a claim for estimated payments on account due under the leases. Nevertheless, following discussion of the point on the first day of the hearing, the Applicant was able to prepare and serve financial information to show the actual service charge contributions it claimed to be payable by the Respondents. These were as follows:

| Year ending 31 August 2012 | | | |
|---|---|---|---|
| | A Service Charge | B Service Charge | Total |
| Mr Blakey (Apartment 35) | £802.98 | £252.65 | £1,055.62 |
| Mr Fox/Mrs Fryer (Apartment 15) | £802.98 | £450.95 | £1,253.93 |

| Year ending 31 August 2013 | | | |
|---|---|---|---|
| | A Service Charge | B Service Charge | Total |
| Mr Blakey (Apartment 35) | £508.24 | £421.50 | £929.74 |
| Mr Fox/Mrs Fryer (Apartment 15) | £508.24 | £758.26 | £1,266.50 |

| Year ending 31 August 2014 | | | |
|---|---|---|---|
| | A Service Charge | B Service Charge | Total |
| Mr Blakey (Apartment 35) | £791.99 | £368.69 | £1,160.68 |
| Mr Fox/Mrs Fryer (Apartment 15) | £791.99 | £459.29 | £1,251.28 |

## Mr Blakey's objections

19. The nature of Mr Blakey's objection to the claim against him for unpaid service charges is somewhat unusual. He alleges that the value of any such claim is outweighed by a counterclaim he has against the Applicant in respect of funds which were lost by it in consequence of fraud, allegedly perpetrated by one of the Second Respondents, Mr Fox. It is understood that the alleged fraud predates the periods in respect of which the Tribunal is now required to make a determination.

20. As was discussed during the hearing, the issues which appear to be at the heart of Mr Blakey's dispute with the Applicant are not issues which are within the Tribunal's jurisdiction – they are issues which it will ultimately be for a court to determine. The Tribunal's remit is limited to determining whether the amounts being claimed relate to expenditure which is properly chargeable to the leaseholders in accordance with the service charge provisions of the leases and, if so, whether it satisfies the requirements of section 19 of the 1985 Act. Given that the alleged fraud predates the periods to which the present application relates, it is not relevant to the Tribunal's task in any event.

21. Mr Blakey confirmed that he understood the limits of the Tribunal's jurisdiction. Having examined the new financial information produced by the Applicant during the interval between the first and second days of the hearing (and having clarified certain aspects of that information with Miss Ellis on the second day), Mr Blakey also confirmed that he made no challenge to its contents.

22. The costs and expenses which form the basis of the service charges which the Applicant now claims from Mr Blakey are within the range which our knowledge and experience would lead us to conclude are reasonable. Given that this is the case, and taking account of the confirmation given by Mr Blakey, we determine those charges to be reasonable and to be payable in full.

## Mr Fox's objections

23. Mr Fox challenged the reasonableness of a number of the costs to which he has been asked to contribute. He also raised a general complaint about the quality of services provided to the development and about the standard of management. The principal issues raised by

Mr Fox, the Applicant's response to those issues, and the Tribunal's conclusions thereon can be summarised under the following headings:

Electric gates

24. Mr Fox was dissatisfied about the performance of the electric gates at the main entrance to the development. The gates had been inoperative for substantial periods during the last two years. The gates had been left open when they were not working and this had enabled local children and others to gain access to the development which had caused a nuisance.

25. Miss Ellis conceded that there had been problems with the gates and that they had only worked intermittently. There had been ongoing problems with the electric motors and with drainage, stemming from inherent defects in the design of the gates. The gates had also been damaged on occasion by misuse. The Applicant had spent £1,036 on repair of the gate motors in the 2011-12 service charge year. £348 was spent in the 2012-13 service charge year re-setting the gates and an additional £1,098 was spent during the 2013-14 service charge year on further repairs to the motors.

26. All of the expenditure referred to above was correctly attributed to the A Service Charge and all 24 leaseholders are therefore required to contribute to it equally. We find that the expenditure was reasonably incurred and was reasonable in amount. The Applicant cannot be blamed for the fact that the gates have malfunctioned on a number of occasions. Nor should it be blamed for not having repaired the gates more quickly. In a situation where a residents' management company has limited available resources, it has to prioritise the way those resources are applied, even if that means that certain services are not provided, or not provided as quickly as they might be.

Gardening

27. The financial information produced by the Applicant reveals that the cost of gardening is a major component in the development's service charge. In 2011-12, £6,989 for gardening costs was applied to the A Service Charge. In 2012-13, the cost was £4,220, and in 2013-14 it was £4,255. However, Mr Fox asserted that with one exception, minimal gardening work had been carried out for a period of years. The exception was that, in the days immediately prior to the Tribunal's inspection visit, a team of workmen had been sent in to make the development presentable. Even so, bins full of leaves had been left at the development.

28. Miss Ellis denied that this was the case. Following a tendering exercise, the Applicant had engaged a firm of contract gardeners to attend to the development's gardening requirements. The contractor visited the development once a fortnight throughout the year to cut the grass and

maintain the hedges, beds and trees. Leaf bins had been deliberately left on site to make compost.

29. There was thus a stark conflict in the evidence given by Mr Fox and Miss Ellis. However, we prefer the evidence of Miss Ellis over that of Mr Fox and we accept that gardening services have been provided in the manner she described. Not only did we find Miss Ellis' evidence more plausible, but it was also clear to us on inspection that the gardens were reasonably well maintained and were in a condition which could not have been achieved in just a few days if the gardens had previously been neglected over a prolonged period. Nor were Mr Fox's assertions supported by the photographic evidence he produced to show the condition of the development at various dates in the past. The gardens are sizeable and we find that the costs incurred on gardening services are reasonable.

Upkeep of other external areas

30. Mr Fox is also dissatisfied with the standard to which other external areas of the development are maintained. He alleged that the bin store is often left in an unclean condition, with bins overflowing; that the pedestrian gates lacked spring closers and were frequently left open; that the path from the rear pedestrian gate was in a poor and muddy condition and was not adequately lighted; that the block paved and tarmac areas had not been cleaned; that some external lighting did not work; and that signage around the development was missing, damaged or tarnished.

31. Miss Ellis did not accept that the condition of the areas in question was as poor as Mr Fox asserted – and nor had this been borne out by our inspection. As far as the bin store is concerned (which was in a clean and tidy state at the time of inspection), Miss Ellis said that its upkeep was included within the contract for gardening services. Although there had been some problems caused by the council's refusal to collect items inappropriately placed in recycling bins, these problems had been addressed by maintenance staff employed by the managing agents. Miss Ellis was not aware that communal lighting was defective to the extent alleged. When bulb failures are reported by residents or cleaning staff the issue is usually attended to within 48 hours. Miss Ellis said that the car parking areas had been jet-washed, but she agreed that the appearance of certain parts of the development could have been improved had more money been available for the purpose. Given the lack of financial resources, however, these issues had not been prioritised. Nevertheless, it was stressed that the leaseholders have not been charged for any services which have not been provided. We accept that this is true and consider that the position taken by the Applicant is entirely reasonable.

Cleaning and decoration of internal common parts

32. Mr Fox asserted that the internal common parts of the apartment buildings were not kept clean and that they had not been re-decorated for an unreasonably long period.

33. The cost of cleaning the internal common parts is a B Service Charge item, and so Mr Fox is only required to contribute to cleaning costs in respect of the building which includes his apartment. This building does not have extensive internal common parts (indeed Mr Fox has direct outside access to his apartment. The Applicant's revised financial information showed that £331 had been spent on cleaning this building in 2011-12; £270 in 2012-13; and £350 in 2013-14.

34. Although we did not inspect the common parts of the building concerned (and Mr Fox had not suggested that we should do so during our inspection visit), we did inspect the common parts of the larger purpose-built block. We noted those common parts to be in a reasonable condition in terms of decoration and cleanliness. We have no reason to believe that the other common parts are in a materially different condition. What we saw was consistent with Miss Ellis' evidence that the internal common parts are cleaned on a fortnightly basis. The costs of this service are reasonable.

35. As far as decorating is concerned, the financial information shows that £360 was spent on repainting the common parts of Mr Fox's building in the 2012-13 service charge year. We accept Miss Ellis' assurances that the work was carried out (by contractors called Reed Decorating) and we find that the associated cost was reasonable.

Management fees

36. The recurrent theme of Mr Fox's objections to the service charges he has been asked to pay is that the development is not satisfactorily managed and, in particular, that inadequate services are provided to maintain the development to an acceptable standard. He therefore objected to the inclusion in each year's A Service Charge of management fees payable to the managing agents, Portland Block Management. In each of 2011-12 and 2012-13 the management fees charged were £3,600. In 2013-14 they increased to £3,960.

37. For all the reasons set out above, we reject the assertion that the development has been poorly managed. It appears to us that it has been managed responsibly and that appropriate services have been delivered. The managing agents have had to procure the delivery of services against the background of limited financial resources, prioritising the most important areas (such as insurance) above other desirable expenditure. The fact that they have been successful in achieving this appears to be borne out by the fact that – in spite of his assertions to the contrary – Mr Fox seems to be the only leaseholder who has challenged the standard of service provided.

38. Management fees are properly included in the A Service Charge, and the amount of those fees (ranging from £150 to £165 per annum for each apartment) is reasonable.

**Costs**

39. Although the Tribunal makes no order for the payment of costs by any party to these proceedings to any other party, the Respondents have applied for an order under section 20C of the 1985 Act that none of the costs incurred, or to be incurred, by the Applicant in connection with the proceedings before the Tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the leaseholders of The Parklands. The Tribunal may make such order as it considers just and equitable in this regard.

40. Although the Applicant has been successful in obtaining a determination to the effect that all the service charges it claims to be payable by the Respondents are indeed payable, we nevertheless consider it just and equitable to grant the application for a section 20C order. This is because, at the outset of the proceedings, it was impossible for any of the Respondents to know what their service charge liabilities were. This only became clear once the Applicant had produced – at the Tribunal's direction during the course of the proceedings – financial information about the service charge in the format required by the leases.