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

Case Reference : **CAM/22UC/LSC/2015/0102**

Property : **5 Camulus Close, Braintree CM7
3JG**

Applicant : **Ms Stephanie Jones**

Representative : **Ms Stephanie Jones In Person**

Respondent : **Maltings Management Company
(Braintree) No.1 Limited**

Representative : **Ms Lousie Vidgeon
Ms Denise Hirst-Marsden
Both with Countrywide Estate
Management**

Type of Application : **Section 27A Landlord and Tenant
Act 1985 – determination of service
charges payable**

Tribunal Members : **Judge John Hewitt
Mr Roland Thomas MRICS
Mr John Francis QPM**

**Date and venue of
Hearing** : **17 March 2016
The White Hotel, Braintree**

Date of Decision : **7 April 2016**

DECISION

Decisions of the tribunal

1. The tribunal determines that:

Service charges are payable by the applicant to the respondent as follows:

Year	Schedule 1	Schedule 6	Total
2012/13	£365.88	£300.44	£666.32
2013/14	£383.14	£151.54	£534.68
2014/15	£372.97	£159.71	£532.68

Subject only to adjustment as set out in paragraph 32 below.

2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. On 1 December 2015 the tribunal received an application pursuant to section 27A Landlord and Tenant Act 1985 (the Act) [A1]. In essence the applicant challenged the amounts incurred on grounds maintenance costs in each of the service charge years 2012/13, 2013/14 and 2014/15.
4. Directions were given on 9 December 2015 [10].
5. On the morning of 17 March 2016 the tribunal had the invaluable benefit of a site visit in the company of the applicant and representatives of the managing agent employed by the respondent.

The development is curious in design, shape layout and content. It is broadly an island site triangular in shape being bounded by Manor Street, New Road and Railway Street as shown on the plan at [R40].

The development lies in the centre of Braintree close to the railway station.

The site was developed by Redrow Homes in or about 2001 but evidently it was not able to acquire the whole of the island site and some properties, particularly along the Manor Street frontage comprise a small terrace of late Victorian/early Edwardian cottages and these properties fall outside of the service charge regime.

The new build development comprises a mix of houses, flats, garages and car ports. Some of the houses are accessed directly off the public highway and have no rear access so do not have any rights over the estate roads and grounds. However, some houses have garages in the

rear garden which are accessed over estate roads and thus are required to pay an estate charge. Some (but not all) of the garages and car ports appear to be let separately from flats, maisonettes or houses and service charge schedules of who contributes to what are not always straightforward.

The estate layout is that there are a number of different areas and landscapes around the estates. Sometimes it is necessary to go off the estate onto the public highway and then back onto the estate to access them. Some areas are blocked paved and used for access roads or parking spaces and some areas are laid to grass or beds into which flowers and shrubs have been planted.

In some places or respects the estate is a little crowded or congested but overall it is different and pleasing on the eye and appears to be generally reasonably well maintained and cared for. It happened that on the occasion of our visit the grounds maintenance contractor was on site.

The hearing

6. The hearing commenced at 10:55. The applicant (Ms Jones) represented herself and was accompanied and supported by a friend, Mrs Gould.
7. The respondent was represented by Ms Vidgeon who was accompanied and supported by Ms Denise Hirst-Marsden, the current property manager. Also present as an observer was Ms Debbie Pipe. All three of those persons are with Countrywide Estate Management, the managing agents.
8. During the course of the hearing a number of concerns and issues that Ms Jones had were clarified to her satisfaction such that in the event there was relatively little for the tribunal to determine.
9. This is another of those cases which demonstrate that if there is a good and responsive dialogue between the parties, issues and concerns could and should be resolved without recourse to the tribunal. If those present at the hearing had met a week or two prior to the hearing we have little doubt that they would have been able to resolve matters between themselves.

The lease and service charge regime

The demise

10. The lease is dated 7 December 2001 [A31]. There are four parties to the lease:
 1. Redrow Homes (Southern) Limited as Landlord;
 2. Redrow Homes (South East) Limited as South East;
 3. Joan Sylvia Kessler as Lessee; and
 4. The Maltings Management (Braintree) No. 1 Limited as Company

11. The lease defines the demised premises to be plot 31 being a flat within the Block and a car port as edged red on a plan annexed to the lease. The detail is set out in the First Schedule [A46]. We draw attention to the express exclusion of:

“(a) any parts of the Block (other than any conduits expressly included) lying above the said surfaces of the ceilings below the said floor surfaces

(b) any of the structural or main timbers and joists of the Block the foundations and the roof or any of the walls therein...

(c) the windows and window frames (other than the glass therein)

(d) any conduits accessway door or staircases in the Block which do not exclusively serve the Flat”

The block is defined to be the building comprising the flats and houses numbered 31 to 33 and car ports and the communal areas.

There is no definition of ‘Communal Areas’ but there is a definition of ‘Common Areas; which are defined to be:

“The lobby, hallway, passageway, stairways and any part of the block not included in the demise together with the roads forecourts boundary walls fences gates sewers and conducting media within the Estate the whole of which property is shown hatched black on the Plan annexed hereto”

(We pause here to observe that in physical terms on the ground the block comprises the subject flat which laid out on the ground floor and first floor but which is accessed by its own front door at ground level directly off the blocked paved area and thus has its own internal stairway to the first floor, two other flats which are accessed via a shared entrance door and common parts and common stairway plus four car ports, one of which is demised with the lease now vested in Ms Jones.)

The Estate is defined to be the land now or formerly comprised in Title Number EX640108. We were not provided with a copy the title plan for that title. However, the lease plan shows four shaded or hatched or cross-hatched areas with annotations against each one;

- *Areas of Shared Access Conveyed to Plot Shown but maintainable by the users thereof;*
- *Areas to be retained and maintained by management company;*
- *Land dedicated to Highways Authority for general use of and maintainable by the plot owner fronting or adjacent (no planting/landscaping permitted); and*
- *Communal areas within the flats to be maintained by management company*

We have not seen any other title document of a property within the development and have no way of knowing to what extent (if any) the above annotations fit in with or compliment any of the service charge regimes.

The service charge regime

12. We can summarise this as follows:

The service charge year (or maintenance charge year) is the period 1 April to the following 31 March.

The 'service charge' is defined to be "*a fair proportion of the total cost of the aggregate Annual Maintenance Provision for the Block of each Maintenance Year computed in accordance with Part II of the Fourth Schedule (or such other proportion as may be determined pursuant to Part I of the Fourth Schedule)*"

The Annual Maintenance Provision includes:

- The estimated expenditure to be incurred in the following maintenance year on the matters set out in the Fifth Schedule;
- An appropriate sum as a reserve; and
- A reasonable sum to remunerate a surveyor appointed by the Company in respect of administrative and management expenses.

The Fifth Schedule sets out the services to be provided by the Company. The list is comprehensive and includes:

- Decoration of all rendering wood and metalwork of the Block usually decorated;
- Keeping in repair and good condition the Block and the whole of the structure including the Common Areas the roof foundations and main drains boundary walls and fences;
- Keeping in good repair and condition and clean the Common Areas hatched black on the plan, including visitor's car parking spaces and the bin store;
- Payment of rates;
- Payment of costs incurred in management of the Common Areas and the Block;
- Insurance; and
- Other relatively minor services and expenses.

13. The scheme is that the amount payable by way of service is estimated and the lessee's contribution calculated. This is payable in advance and on account by way of two equal instalments on 1 April and 1 October.

After the end of each year the Company is to prepare an account of the actual expenditure incurred and the lessee's actual contribution quantified. Having taken in account the instalments paid in advance, any balancing debit is payable on demand; and any balancing credit is allowed to the lessee.

14. Ms Vidgeon explained to us that expenditure on the development is captured by six separate schedules:

Schedule 1 The estate;
Schedule 2 Six properties being 10, 12 and 14 Railway Street and 1, 3 and 5 Trinovantian Way;
Schedule 3 Flats 10, 12, 14, 16, 18, 20 and 22 Camulus Close;
Schedule 4 Flats 130, 132, 134 and 136 Manor Way;
Schedule 5 Garage/car ports 104, 106, 108 and 110 Manor Way and 21 and 23 Trinovantian Way; and
Schedule 6 Flats 1, 2 and 3 Camulus Close

15. Ms Jones contributes to Schedules 1 and 6 only.

Evidently the Estate costs in Schedule 1 are divided equally between 21 units, each paying 4.7620 %. Schedule 1 at [102] records which those 21 properties are but Ms Vidgeon was not able to explain clearly how that list had been compiled. It was also not entirely clear to us whether all the owners of properties which have the right to use the estate roads and Common Areas are obliged to contribute to the costs of Estate expenditure. Ms Vidgeon speculated that the owners of some car ports which were sold off with some of the houses do not provide an obligation to contribute to estate costs.

The Schedule 6 costs are divided equally between the three lessees of the flats within the block, each contributing 33.33%.

16. Before moving on we wish to record a misunderstanding which was cleared up at the hearing. Evidently sometime in the past Ms Jones had been misinformed by a representative of Countrywide Estate Management that as her flat was self-contained if repairs were required to the roof, windows or external redecoration was required that would be her sole responsibility to deal with. Against that Ms Jones was concerned that she was recently required to contribute to the costs of a new communal front door leading to flats 1 and 3 and repairs within the common parts of the block. Ms Jones considered it unfair that she was obliged to contribute to works to the block yet had to bear the whole of the cost of works to her self-contained part.
17. Ms Vidgeon made it absolutely clear that Ms Jones had been misinformed. If repairs to the roof above Ms Jones' flat were required that would be a block cost. Similarly, with regard to external redecoration of the rendering to the block. Further given that the windows were expressly stated not to be demised under the lease any repairs or replacements would amount to a block cost, to which Ms Jones would be required to contribute just one-third.
18. Ms Jones said she appreciated the clarification and this enabled other matters to be resolved.

19. We have recorded this measure of agreement so that there can be no misunderstanding going forward. For the same reason we have cited the material provisions in the lease in paragraph 11 above.

The Company

20. Before moving on we record that the lease is silent as to who should be the members or shareholders of the Company.
21. At a matter of record a search at Companies Registration Office reveals that most of the members might be or have been lessees of properties within the development.
22. Ms Vidgeon told us that as originally envisaged the scheme was that the residents would control the Company. Evidently despite efforts Countrywide has not been able to encourage residents to become directors of the Company and to set policy objectives. The sole director of the Company is presently Jonathan Martin Edwards who is an employee of Countrywide.
23. Ms Jones expressed an interest in becoming a member of the Company and Ms Vidgeon agreed to make enquiries to see how that might be followed up.

The service charges demanded of Ms Jones

24. For ease of reference we summarise the services charges demanded of Ms Jones:

Year	Schedule 1	Schedule 6	Total
2012/13	£365.88	£300.44	£666.32
2013/14	£383.14	£151.54	£534.68
1014/15	£372.97	£159.71	£532.68

25. The Schedule 6 costs were mainly insurance save that in the year 2012/13 repairs and maintenance costing £350 were incurred and Ms Jones of those costs was £116.66. In the light of the clarification given above this was no longer in issue.
26. The Schedule 1 costs related mostly to grounds maintenance. Countrywide Estate Management had provided a full set of supporting invoices such as that had them. They were substantially, but not wholly complete.
27. In broad terms we were told that the contractor visits on a fortnightly basis, normally with two operatives who will be on site for 3-4 hours. There is a generic specification but exactly what work is undertaken on each visit will depend upon season and priority. For example, sometimes the contractor will be asked to focus on more extensive litter picking, or removal of ivy or other planting growing too vigorously. In

the summer months' grass mowing will be undertaken in preference to routine cutting back.

28. The contract has been with the same contractor for the years in issue and he is not required to add VAT to his invoices. His paperwork is not pristine. He bills monthly using a template invoice and does not always get the month or year quite right. However, because he bills monthly we were told that the office was able to keep track of the payments made to him and to ensure that double-billing does not or should not occur. For the three years in question the monthly price has been £300.
29. We were also told that in addition to what might be regarded as routine grounds maintenance the contractors also provides other ad hoc services as and when required. Some examples include removal of fly tipped bulky items, typically mattresses/furniture, bulk laying of bark chips to the flower/shrub beds and extensive cutting back of trees, shrubs or other vegetation. The additional services provided are always at the direction or request of the property manager, usually following a complaint by a lessee/resident.
30. Ms Hirst-Marden told us that last year she carried out a competitive review of the provision of grounds maintenance services. She said that she met three contractors on site and walked around with them to explain what was required. The bids she received from those contractors were greater in amount than paid to the existing contractor, compounded by the imposition of VAT.
31. Ms Jones, who told us that she had some accountancy experience, had gone through them carefully and had raised some apparent discrepancies. These were noted by Ms Vidgeon and Ms Hirst-Marsden and we adjourned to enable them to consider them and make further enquiries about them.
32. On resuming we were told by Ms Vidgeon that:
 - 32.1 In 2013/14 at [158] there is a duplicate or wrong invoice in the sum of £945 and that Ms Jones' account would be credited with £45.00 being her 4.7620% share of that expense.
 - 32.2 In 2014/15 at [173-176] there was no duplication and one of the document was prepared as a credit. Ms Vidgeon said that she would obtain and show to Ms Jones the transaction listings relating to those documents.
 - 32.3 In the accounts for 2014/15 some items have listed as accruals in the expectation that supporting invoices would be forthcoming. If, in the event, those invoices were not provided by the contractor(s) concerned credits will be made to the 2015/16 accounts to reverse the accrual debits which were not in fact expended.

33. Ms Jones told us that she was content with the above explanations. Ms Jones also acknowledged that realistically she did not have any evidence to show that the monthly sum charged by the contractor for the basic monthly service was unreasonable in amount. The costs incurred struck a chord with the members of the tribunal as regards the service provided to this development. On the evidence and information before us we could not properly conclude that the costs were unreasonably incurred or unreasonable in amount.

Closing remarks

34. We wish to thank the persons present at the hearing for the constructive and courteous manner in which the hearing was conducted. As we have mentioned earlier if only the parties had got together earlier any misunderstanding or discrepancies in the paperwork could easily have been sorted out without the need for an application to the tribunal.
35. Ms Jones helpfully acknowledged that since Ms Hirst-Marsden has taken over as property manager there has been a marked improvement in service level and responsiveness.
36. One of Ms Jones' complaints was that the six-monthly on account demands were not always sent timely. Ms Jones remarked that on one occasion she received four six-monthly demands and one year-end balancing debit demand all within a few months of each other and this gave rise to budgeting difficulties. Ms Jones would also prefer a monthly payment plan and Ms Vidgeon explained that this would be possible within certain parameters and again it appears that Ms Jones may have been unwittingly misled on a previous occasion about Countrywide's policy in this regard.
37. Going forward we can but urge Countrywide Estate Management to try and get its demands out on time and also urge Ms Jones to set aside funds on a monthly basis if a payment plan cannot be agreed because, like death and taxes, service charges are inevitable.

John Hewitt
Judge John Hewitt
7 April 2016

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.