



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

Case Reference : **MAN/00BS/LSc/2015/0053**

Property : **All apartments at Whitegates,
Wilmslow Road, Cheadle SK8 1HG**

Applicant : **Commerson Estate Management
Limited**

Respondent : **See Annex**

Type of Application : **Section 27A Landlord and Tenant
Act 1985 – Service charges**

Tribunal Members : **Judge J Oliver
Mr M Bennett (Valuer)**

Date of Determination : **24th September 2015**

Date of Decision : **13th January 2016**

DECISION

Decision

1. The application is dismissed.
2. The Tribunal has no jurisdiction in respect of the issues contained within the application.

Reasons

Introduction

3. This is an application by Commerson Estate Management Limited (“the Applicant”) for a determination as to the reasonableness of service charges relating to all the apartments at Whitegates, Wilmslow Road, Cheadle (“the Properties”) for the year 2015.
4. The Respondents to the application are the leaseholders of the Properties (“the Respondents”).
5. The Tribunal issued directions on 17th June 2015 (as revised) providing for the filing of statements and thereafter provision was made for the determination of the application without a hearing.
6. The Tribunal inspected the Properties on 24th September 2015. Mr Azizul Haque attended the inspection on behalf of the Applicant.
7. The issue for determination is the cost of the installation of self closers on all fire doors as required by the Fire Authority in their letter to the Applicant dated 16th January 2015. At the inspection it became apparent that the fire doors referred to are the entrance doors to the individual apartments and not the doors serving the common areas.
8. The Tribunal adjourned the application for a period of 21 days to allow the Applicant to make further enquiries with the Fire Authority.
9. The Tribunal received a request for a further adjournment from the Applicant on 14th October 2015 that was granted for a period of 21 days. Thereafter the Tribunal received no further information from the Applicant.

The Properties

10. The Properties form part of a complex built in 1988. There are thirty one apartments of which 21 have two bedrooms and the remainder have one bedroom. The Properties are on two floors and are served by a lift.
11. The complex is one for occupation by any person over the age of fifty five years.

The Law

12.

(1) Section 27A(1) of the 1985 Act 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.*

13. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
14. 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.*

15. 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.*

16. “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

Submissions

17. The issues for determination the Tribunal are, firstly, the reasonableness of the proposed charges for the installation of self-closers on all the fire doors within the complex. The Applicant proposes a specific self-closing device at a greater cost than the device proposed by the Respondents. Secondly, whether the cost should be taken from the sinking fund.
18. The Applicant received a letter dated 16th January 2105 from Greater Manchester Fire & Rescue Service arising from an inspection. Amongst

other matters raised the letter stated that, in accordance with Article 17 of the Regulatory Reform (Fire Safety) Order 2015-

“All fire resisting doors should be fitted with a positive action self-closing device.

The term “Self Closing” means doors fitted with a positive action self-closing device capable of shutting the doors fully (rising butt hinges or gate springs are not acceptable). Concealed (mortised) door closers are not acceptable without a satisfactory test certificate pertaining to the door tested with such a closer in situ.

Failure to comply with the Regulations is an offence, which may result in the Fire and Rescue Authority issuing an Enforcement Notice to ensure compliance.”

19. The Applicant provided details of their choice of the self-closer manufactured by Briton. The description stated:-
“In contrast to a conventional rack and pinion door closer in a slide channel application, the linear cam action principle of the Briton 2700 Series is extremely efficient. The initial opening force decreases very rapidly as the door opens allowing, in particular, children and the elderly to overcome the closing power without any problem.”
20. There were two models within the range, one being a standard model, this being the model proposed by the Applicant.
21. The Applicant also provided details of a cheaper self-closer, but this did not offer the option of a decreasing opening force as referred to above.
22. In support of their application for the type of self-closer, the Applicant referred to a research report dated August 2006 entitled “Householder interaction with self-closing devices on doors”. This highlighted concerns of people using self-closers and of the doors closing rapidly on children and pets. It also highlighted the problems of trying to go through doors with bags where the doors closed too quickly and were heavy to hold. The type proposed would mitigate those complaints.
23. The Tribunal did not receive any written submissions from the Respondents but it had the benefit of a statement sent by the Applicant to the Respondents that referred to the Respondents’ objections. This said that some objected to the chosen self-closer upon the basis that a normal self-closer would be sufficient for the “less vulnerable residents”. A further objection was “that the payment of higher specified door closer would provide no economic value to those residents that would opt for a normal door closer (if optional door closers were to be provided).
24. The Tribunal was advised the cost difference between the types of self-closer is £100 per item.
25. The Applicant advised the likely cost per closer would be £150 incl. Vat, although there was the possibility of negotiating a better price per item. The total cost was therefore likely to be in the sum of £4,950 incl. VAT including a contingency said to be £400 but which would appear to be £300.
26. The Applicant advised that when they had assumed responsibility for the management of the Properties in 2011 a fire risk assessment had highlighted some works, the cost of which was taken from the sinking fund.

27. The Applicant stated the sinking fund, as at 20th July 2015, stood at £99,561.52. It further stated that it did not anticipate the leaseholders would receive any additional invoices in respect of the work if the cost is met from the sinking fund.
28. At the inspection it became apparent that the requirement of the Fire Authority is for self-closers to be fitted to the entrance doors to the individual apartments. The Tribunal indicated, at that stage, that this cost would not form part of the service charge, the cost not relating to the common parts. The cost would be the responsibility of the individual leaseholder.
29. Mr Haque explained that the Fire Authority had served the notice on the Applicant and not upon the individual leaseholders and therefore it is the Applicant who will be liable should the notice not be complied with.
30. The Tribunal indicated the application would be adjourned for a period of 21 days to allow the Applicant time to make further enquiries with the Fire Authority to resolve the issue of liability.
31. The Tribunal subsequently received an e-mail from Mr Haque on 14th October advising that he had been unable to speak with the relevant Fire Officer and requested a further adjournment of 21 days. This was granted but no further communications have been received from the Applicant.

Determination

32. The Tribunal determines that it has no jurisdiction to deal with the issues contained within the application.
33. The requirement by the Fire Authority for the installation of self-closers relates to the entrance doors belonging to the individual apartments. The lease relating to the apartments describes the apartment as including "the doors and windows thereof". It therefore follows the cost of any self closer fitted to the entrance door must be the responsibility of the individual leaseholder.
34. It appears to the Tribunal the Fire Authority is unable to hold the Applicant responsible for the issue and the necessary notices should be sent to the individual leaseholders.
35. The Tribunal does not need to determine upon whether the cost of the self-closers should be taken from the sinking fund given the cost does not form part of the service charge.

Annexe:

Name	Interest
Mrs Dennehy	1 Whitegates Wilmslow Road
Mr Davies	2 Whitegates Wilmslow Road
Mrs Cartwright	6 Whitegates Wilmslow Road
Mrs Hough	7 Whitegates Wilmslow Road
Mrs Isaacson	8 Whitegates Wilmslow Road
Mrs Taylor	9 Whitegates Wilmslow Road
Mrs McDonald	10 Whitegates Wilmslow Road
Mr Bramham	11 Whitegates Wilmslow Road
Mr & Mrs Smith	12 Whitegates Wilmslow Road
Mr Jackson	14 Whitegates Wilmslow Road
Mrs Van De Velde	15 Whitegates Wilmslow Road
Mrs Stockley	16 Whitegates Wilmslow Road
Mrs Swirles	17 Whitegates Wilmslow Road
Mrs Court	18 Whitegates Wilmslow Road
Mrs Young	19 Whitegates Wilmslow Road
Mr Fox	20 Whitegates Wilmslow Road
Mr & Mrs Gannon	21 Whitegates Wilmslow Road
Ms Stoppard	22 Whitegates Wilmslow Road
Mrs Pennington	23 Whitegates Wilmslow Road
Mr Casson	24 Whitegates Wilmslow Road
Mrs Thompson	25 Whitegates Wilmslow Road
Mr Brooks	26 Whitegates Wilmslow Road
Mr & Mrs Simmonds	27 Whitegates Wilmslow Road
Mrs Esser	28 Whitegates Wilmslow Road
Mrs Dunkerley	29 Whitegates Wilmslow Road
Mrs Ross	30 Whitegates Wilmslow Road
Mr Walker	31 Whitegates Wilmslow Road
Mr & Mrs Brackenridge	32 Whitegates Wilmslow Road
Mrs Wood	5 Whitegates Wilmslow Road
Mr Cohen	4 Whitegates Wilmslow Road