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

Case Reference : **MAN/00BN/LSC/2017/0048**

Property : **10 Barton Street
Manchester
M3 4NN**

Applicant : **Mr Jack Khan**

Representative : **Mr L Khan**

Respondent : **Barton Street Management Co Ltd**

Representative : **Edge Property Management Ltd**

Type of Application : **Landlord and Tenant Act 1985 – s27A
& s20C**

Tribunal Members : **Judge J Holbrook
Deputy Regional Valuer N Walsh**

**Date and venue of
Hearing** : **10 October 2017
Manchester**

Date of Decision : **03 November 2017**

DECISION

DECISION

The Applicant is liable to pay service charges to the Respondent equivalent to 2.4724988% of the costs reasonably incurred by the Respondent in the provision of services to the Estate in each service charge year.

The application for an order under section 20C of the Landlord and Tenant Act 1985 is refused.

REASONS

Background

1. On 19 May 2017, the Tribunal received an application under section 27A of the Landlord and Tenant 1985 ("the 1985 Act") in respect of 10 Barton Street, Manchester M3 4NN ("the Property"). The application concerned service charges demanded in respect of the service charge accounting year which commenced on 1 January 2017.
2. The application was made by Mr Jack Khan who holds a long leasehold interest in the Property under a lease ("the Lease") dated 12 December 2005 made between Watkin Jones & Son Limited (1), Barton Street Management Company Limited (2) and Steven Peter McHugh (3).
3. Mr Khan also applied for an order under section 20C of the 1985 Act preventing the costs incurred by the Respondent in connection with these proceedings from being regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.
4. The Respondent named in the application was Edge Property Management Limited. This is the managing agent for the Barton Street development (which includes the Property). However, the right to demand and receive service charges rests not with the managing agent, but with the estate management company named in the Lease: Barton Street Management Company Limited. As such, it is the estate management company alone which is the appropriate respondent to the proceedings, and the Tribunal so orders.
5. A hearing was held in Manchester on 10 October 2017. The Applicant was represented at the hearing by his father, Mr L Khan. The Respondent was represented by Mr P Green of Edge Property Management Ltd. The Tribunal had previously issued directions for the conduct of the proceedings and, in compliance with those directions, both parties had submitted statements of case and documentary evidence in support.

6. The Tribunal had made an internal and external inspection of the Property (and the wider development) immediately prior to the hearing.

Description of the Property and of the Estate

7. The Property is a two-storey townhouse located in central Manchester. It results from the redevelopment of a Victorian police station, with adjoining police houses, to form a development of 58 residential units ("the Estate"), comprising four townhouses (of which the Property is one) and 54 new-build apartments. The Property has a street frontage onto Barton Street and retains its original facade. However, the interior has been substantially refurbished to form a modern two-bedroom house with open plan living accommodation upstairs. There is a balcony to the rear of the Property at first-floor level and this faces the remainder of the Estate, overlooking a communal outdoor space at its centre.
8. The Property is attached to the townhouses either side of it, but it is physically independent of the other buildings on the Estate. These are new-build apartment blocks (some of which incorporate elements of the old police station facade). The apartment blocks are arranged around three sides of a square, with the townhouses making up the fourth side, and are otherwise of a conventional modern construction. They include internal common areas, such as hallways and stairs and there are also communal lifts. There is modest communal landscaping outside and, beneath the Estate, there is a communal car park. This is accessed for vehicles by means of an electric roller shutter door. Pedestrian access to the car park is also provided by means of stairs and lifts from within the apartment blocks.
9. There are communal refuse collection areas, both in the underground car park and in the external area in the middle of the Estate. In addition, the car park houses a water booster unit which serves the whole of the Estate, including the townhouses.
10. The Estate appeared to be in a generally fair state of repair and in a clean and tidy condition at the time of the Tribunal's inspection. However, we noted that the fascias to the Property itself showed signs of rot and were in need of remedial attention.

Issues

11. The central issue for determination in this case is not the actual amount of the service charges which are payable by the Applicant, but rather the relevant proportion of the total cost of providing services to the Estate which he is liable to pay under the Lease. Mr Khan's position is that the costs of providing services should be apportioned by reference to the way in which they are consumed by the different units which make up the Estate. He argues that, because the townhouses consume

fewer services than the apartments, they should bear a lesser contribution to the overall costs.

12. The Respondent disagrees. Its position is that the Applicant is liable to contribute a fixed proportion (2.4724988%) of the total costs of providing services to the Estate. This reflects the relationship which the internal area of the Property bears to the internal area of all the residential units on the Estate. The Respondent says that this is what the Lease provides for.
13. We note that the objection to the apportionment of the overall service charge is Mr Khan's sole objection to the Respondent's claim for service charges. He does not challenge the fact that the expenditure from which the service charge arises is recoverable under the relevant provisions of the Lease. Nor does he challenge the reasonableness of that expenditure or the standard or quality of services provided.

Law

14. 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.*

15. The Tribunal is "the appropriate tribunal" for these purposes and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
16. 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.*

Relevant provisions of the Lease

17. The Lease was granted for a term of 150 years from 1 January 2005 and reserved an initial annual rent of £150. We note that the Lease was granted in terms which were, in all material respects, the same as the

terms in which the leases of the other units on the Estate (including the apartments) were also granted.

18. The Lease obliges the management company to provide a range of services to the Estate (and the expression "the Estate" includes all the property described in paragraphs 6 to 9 above). These services include buildings insurance; maintenance of the structural parts of the buildings on the Estate; lighting and cleaning the car park, refuse collection areas and other communal areas of the Estate; window cleaning; internal and external redecoration of the common parts; and maintenance of the communal TV aerial system.

19. In return, clause 8 of the Lease obliges the tenant to pay:

"... the Current Service Charge being a charge for services provided by the Management Company and calculated and payable in accordance with the provisions of the Seventh Schedule"

20. The expression "the Current Service Charge" is defined in clause 1.3 of the Lease to mean the service charge which is payable under the provisions of clause 8. Regard must therefore be had to the provisions of the Seventh Schedule to properly understand what this means.

21. Paragraph 1 of the Seventh Schedule provides that:

"The Current Service Charge shall consist of the Service Charge proportion of the actual costs to the Management Company of providing all or any of the services set out in clause 10.1 and defraying the charges and expenses set out in Part 2 of this Schedule ("the Service Costs") in each accounting year ending on 31 December in each year"

22. The services set out in clause 10.1 are those described above, and the charges and expenses set out in Part 2 of the schedule are, essentially, the costs of and incidental to the provision of those services.

23. The expression "Service Charge Proportion" is defined in the 'Particulars' at the beginning of the Lease as follows:

"£1.25 per sq ft of the dwelling in the first year and thereafter as shown on the attached Schedule in accordance with the calculation and payment of the Current Service Charge as defined in the Seventh Schedule hereof"

24. The tenant is required to pay the Current Service Charge quarterly in advance in each service charge year. In respect of the first accounting year of the term, the obligation was to pay:

"... the provisional sum which is the Initial Service Charge"

This is defined in the Lease particulars as the sum of £1,233.75.

25. In respect of each subsequent accounting year, the tenant must pay:
- “... the Service Charge Proportion of the Service Costs for the preceding year of the Term”
26. The Seventh Schedule goes on to provide that, if the Current Service Charge for any accounting year exceeds the Initial Service Charge or the Current Service Charge payable for the preceding year (as the case may be), the amount of the excess shall be payable by the tenant. On the other hand, if it is less, the amount of the overpayment shall be credited to the tenant's account.

Discussion and conclusions

27. The Applicant acquired his interest in the Property in July 2016. He does not dispute that, hitherto, service charges for the Property have always been demanded and paid on the basis contested for by the Respondent. Nor does he dispute that the percentage mentioned in paragraph 12 above would be the appropriate percentage to use if the Respondent is right in principle about the basis on which service charge costs should be apportioned. It is agreed that the internal area of the Property is 987 sq ft (which explains the figures mentioned in the Lease for the Initial Service Charge).
28. Nevertheless, Mr Khan is concerned that this basis of apportionment results in his property bearing one of the highest service charge liabilities on the Estate. Based on the current year's budget, the anticipated service charge liability in respect of the Property is more than £2,800. Mr Khan considers this to be unfair given that – in his view – the Property receives fewer services than the apartments on the Estate. This is because Mr Khan has no need to access the internal common parts of the apartment blocks and does not use the lifts. Although he has a space in the underground car park – which is the subject of a separate lease – Mr Khan accesses the car park by means of the roller-shutter door rather than via the internal common parts of the apartment blocks. He therefore receives no benefit from the cleaning and maintenance of those aspects of the Estate. Mr Khan also says that the management company does not clean the windows of the Property and that it has been unresponsive to his requests for external repairs. In particular, the rotting fascias referred to above have not been attended to.
29. Mr Khan argues that, whilst the Lease provides an apportionment methodology for the first year of the term based on the internal area of the Property, the intention was that this would apply only in the first year, and that a different apportionment methodology would apply thereafter, based on the value of the services actually received by the Property. Mr Khan says that it is clear that this was the intention from the fact that the amount payable for the first year is described in the Lease as a “provisional sum”.

30. Mr Khan observes that the reference to "the attached Schedule" in the definition of "Service Charge Proportion" is confusing because it is not at all clear which (if any) of the seven schedules to the Lease is being referred to. However, Mr Khan argues that, for all but the first year of the term, paragraph 1 of the Seventh Schedule should be read as if the reference to the Service Charge Proportion was omitted. He considers that an emphasis should then be placed on the words "all or any of the services" as an indication that the amount of the service charge payable by the tenant should be calculated by reference to the services actually provided to the Property.
31. We agree with Mr Khan to the extent that we also find the drafting of the definition of the "Service Charge Proportion" confusing. If the reference in that definition to "the attached Schedule" points us to any of the schedules to the Lease, then this can only be to the Seventh Schedule. Neither the Applicant nor the Respondent argue that there may have been some other schedule, setting out revised apportionment percentages, which has somehow been omitted or lost since the Lease was settled. We agree that this seems unlikely. However, the Seventh Schedule itself contains no mechanism for the replacement of the figure of £1.25 per square foot in the definition of Service Charge Proportion with some other figure intended to take effect from year 2 of the term onwards.
32. Nevertheless, we do not agree with Mr Khan's view that the Lease requires – or even contemplates – a fundamental change in the service charge apportionment method following the first year of the term. Had this been the intention, then there would surely have been explicit provision made for it in the Lease. Such provision is absent and, whilst the drafting of the relevant provisions of the Lease is far from perfect, we consider that the intention is reasonably clear. That intention was to establish a standard service charge regime whereby the tenant makes payments on account for the current year based on the expenditure incurred in the previous year. A reconciliation exercise then takes place once the actual expenditure for the year is known. This arrangement obviously cannot apply in respect of the first year of the term, and so the Lease had to make provision for a specific amount to be payable on account during that year. However, this was still subject to the requirement for an end of year reconciliation exercise, and it is for this reason that the Lease describes the Initial Service Charge as a "provisional" sum. The use of this word does not imply that the whole basis of apportionment is to be revisited at the end of the first year of the term.
33. We consider it to be telling that the same form of lease was used for the initial sales of the townhouses as for the apartments on the Estate. In particular, the service charge machinery was the same each case. It was clearly the intention of the original parties that the townhouses should be regarded as an integral part of the Estate and that they should contribute to the general service charge costs accordingly. Clearly, there are physical differences between the apartments and townhouses and

not all residential units benefit from the same services or benefit from services in the same way. However, it would be wrong to say that the townhouses do not benefit from any of the services provided to the apartment blocks: they benefit from the communal water booster pump and from the TV aerial system, for example. Moreover, the townhouses (or rather their owners) are entitled to insurance and buildings maintenance services provided by the management company, and they have the right to take enforcement action if those services are not being provided.

34. The basis upon which service charge costs are to be apportioned to the Applicant is a matter which must be determined by reference to the contractual agreement contained within the Lease. In our view, this provides for a continuing basis of apportionment by reference to the Property's internal floor area. We accept that this might result in a service charge liability which appears to be relatively onerous. However, this is the arrangement for which the Lease provides and Mr Khan was, presumably, advised about this at the time of his purchase of the Property.
35. Finally, we have considered the application for an order under section 20C of the 1985 Act. Given that the Applicant has been unsuccessful in his challenge to the basis of apportionment of the service charge, we do not consider that it would be just and equitable to grant such an order. The application is accordingly refused.