



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

Case Reference : **MAN/00BT/LSC/2018/0058**

Property : **Lowry Court, Mottram, Hyde,
Cheshire SK14 6TG**

Applicant : **Fairhold Mercury Limited**

Representative : **JB Leitch Limited**

Respondents : **All Leaseholders (see Annex)**

Type of Application : **Landlord and Tenant Act 1985 (“the
1985 Act”) – Section 27A(3)**

Tribunal Members : **Judge C. Wood
Ms. S Latham**

Date of Decision : **15 April 2019**

DECISION

Decision

1. The Tribunal determines that, in accordance with section 19(2) of the 1985 Act, no greater amount than £113,798.65 is payable in respect of the works to be carried out at the Property as outlined in the Schedule of Works (set out in Annexes 5 and 6 to the Applicant's Statement of Case dated 26 November 2018, (the "Statement of Case")).

Background

- 2.1 Directions were issued dated 9 November 2018, ("the Directions").
- 2.2 The background to the Applicant's application is set out in the Statement of Case, submitted in accordance with the Directions. This also sets out the relevant lease provisions relating to service charges, and details the determinations sought by the Applicant.
- 2.3 No written submissions were made by any of the Respondents.
- 2.4 Determination of the Application was scheduled for Friday 8 March 2019, following an inspection of the Property at 10:30 on the same date.

Inspection

- 3.1 The inspection was attended by Mr.N.Gaskell, Associate Director of Mainstay Limited, managing agents of the Property, Mr.C.Emmett, Manager of the Property, and Ms R.Dobson, Health & Safety and Fire Safety, Mainstay Limited.
- 3.2 The Property comprises 36 residential flats arranged over 2 floors, together with administrative and communal areas including lounge, communal kitchen, laundry on the ground floor, and a guest suite on the first floor.
- 3.3 The Tribunal's inspection covered all of the areas of the Property where works, as set out in the Schedule of Works, are proposed.
- 3.4 In response to the Tribunal's enquiry at the time of the inspection as to the reason for the significant disparity in some costs as between the 2 quotations received by the Applicant, the Applicant has subsequently confirmed to the Tribunal that it is unable to provide any definitive reasons for this but that it might be attributed to "commercial reasons" such as the cost to the contractor of sourcing materials or instructing a sub-contractor to carry out aspects of the works.

The Leases

- 4.1 A specimen lease was included in the Applicant's written submissions. In the Applicant's Statement of Case, it is confirmed that all of the leases of flats at the Property are in substantially the same form and content.
- 4.2 In paragraph 9, reference is made to specific provisions of the lease which it is claimed establish both the Applicant's obligations to provide services and/or to carry out works of the kind which are the subject of this Application, its right to charge the costs of such services and works as service

charge expenditure and the obligation of each Respondent to pay service charge.

Law

- 5.1 Section 18 of the 1985 Act provides:
- (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.
- 5.2. Section 19 provides that –
- (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 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.
 - (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.
- 5.3. Section 27A provides that:
- (1) an application may be made to an 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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
 - (2) Subsection (1) applies whether or not any payment has been made.
 - (3)
 - (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- 5.4 In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

Reasons

- 6.1 The Tribunal is obliged to Ms Dobson for her detailed explanation at the inspection of the anticipated scope of and the regulatory and/or legal requirements for many of the works as set out in the Schedule of Works.
- 6.2 The Tribunal is satisfied that, under the terms of the Leases, the proposed works are within the Applicant's obligation to maintain and repair the communal areas at the property, and that such costs constitute service charge expenditure.
- 6.3 Based on their inspection, and on the Applicant's submissions, the Tribunal is satisfied that the estimated costs for the proposed works are reasonable, subject to subsequent necessary adjustment as provided in section 19(2) of the 1985 Act.