FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00FF/LSC/2018/0047**
Property	**:**	**Flats 2, 8, 30, 52 and 65 Langley House, Dodsworth Avenue, York YO31 7TR**
Applicants	**:**	**(1) Mr and Mr C Coates (2) Mrs M Cutler (3) Mr D F Lindsey (4) Mr G M Greenwood and (5) Mrs E D White**
Respondent	**:**	**Domus Services Limited**
Type of Application	**:**	**Section 27A, Landlord and Tenant Act 1985**
Tribunal Members	**:**	**A M Davies, LLB** **A Ramshaw, MRICS**
Date of Decision	**:**	**15 March 2019**

DECISION

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1. The contribution of each of the Applicants to the management fee charged by the Respondent for the year ending 31 March 2018 shall be one sixty eighth of £22,348.00 and shall increase incrementally in each of the years ending 31 March 2019 and 31 March 2020 by a percentage equivalent to the increase in RPI in the 12 months prior to March in each year.

2. There shall be no other adjustment to the Respondent's Service Charge accounts.

3. Pursuant to section 20C and by consent, Landlord and Tenant Act 1985 the Respondent's costs of this application shall not be added to the Langley House service charge account.

REASONS

BACKGROUND

1. Langley House is a purpose-built estate consisting of three buildings linked by internal bridges, a carpark, grounds, and a site manager's house. Built in the 1980s, it is about a mile from York City Centre, and contains 68 flats and a large communal sitting room with kitchen facilities. Other areas available for common use by the residents are: toilets, laundry, luggage room, and guest bedroom. There is one lift. Corridors and landings are carpeted. Each resident has door keys for access to the building.

2. The site manager has an office on the ground floor. His responsibilities are (a) the welfare of the residents and (b) reporting to the managing agents any problems that arise on the estate. Flats at Langley House are only available for sale to people aged 55 or over.

3. There is a recognized tenant's association.

4. The estate is managed by Accent Foundation Limited ("Accent"), a company in the same group as the Respondent. The management contract, originally dated 2010 and revised in 2012, continues from year to year unless terminated by 6 months' notice served by either party. The contract sets out Accent's management responsibilities and provides that their fee is to be whatever is collected from the residents, less 5% which is payable back to the Respondent. The Respondent therefore has an interest in the annual value of the management fees.

5. The Applicant Mr Greenwood, having corresponded extensively with the Respondent, remained unsatisfied in relation to the service charge accounts relating to: electricity costs, management fees, administration fees, the overall annual increases in service charges, and the current and proposed collection of monies to be set aside in a reserve fund for cyclical work, future major repairs, and replacement of equipment as and when necessary. The years covered by these issues begin with the service charge year ending 31 Mach 2014, and extend into the future.

6. Mr Greenwood made an application to this Tribunal on 26 July 2018. The remaining Applicants applied subsequently to be joined in to the application.

THE HEARING

7. Prior to the hearing the Tribunal were shown round the estate by the site manager, in the presence of Mr Whitfield of Accent, the Respondent's solicitor Mrs James, and Mr Coates for the Applicants.

8. A hearing took place later the same morning, and was attended by the same people together with the remaining Applicants and a number of other leaseholders from the Langley House. Mr Greenwood spoke for the Applicants at the hearing.

9. The Tribunal had had the benefit of reading the parties' statements of case, and the documents they had submitted in support. It was common ground that the Applicants' leases were in identical terms, except for necessary differences.

THE LAW

10. Section 27A of the Landlord and Tenant Act 1985 enables a party to a lease to apply to the Tribunal for a determination as to the reasonableness and payability of service charges. No charge is payable by the leaseholder unless it is provided for in his lease. Section 27A(4) states: "*No application….may be made in respect of a matter which – (a) has been agreed or admitted by the tenant….*"

ELECTRICITY CHARGES

11. The Respondent admitted that when the contract with British Gas for the supply of electricity to Langley House came to an end in 2014 or early 2015, a replacement tariff was not negotiated until 2017, and that this resulted in a high standard rate being applied by British Gas and passed on to the Applicants.

12. After correspondence relating to this with the residents' association, by email dated 6 April 2018 the Respondent (via Accent) offered, by way of settlement of their liability, to reimburse the sum of £6,800, to be paid into the Major Repair fund.

13. On 11 April 2018, the secretary to the residents' association replied: "*At the general meeting yesterday, the residents voted to accept the offer of £6,800 in recognition of the delay in re-negotiating the electricity contract. We understand that this will be paid into the Major Repairs Fund towards future expenditure.*"

14. Mr Greenwood told the Tribunal that he had not agreed to this arrangement, and that his own instructions to the residents' association had not been followed accurately. He denied that this exchange of emails created an agreement that was binding on the Applicants, and sought an assessment of the total sum overpaid for electricity (which is likely to have been considerably more than £6,800) and an order for its repayment.

15. The Tribunal finds that the Respondent offered to settle the loss caused by the Respondent's error, and that the offer was understood and accepted by the residents' association. The settlement agreement is an agreement of the sort referred to at section 27A(4) of the Landlord and Tenant Act 1985, was made on behalf of the leaseholders by their tenants' association, and is binding on the Applicants.

16. Mr Greenwood also raised an issue about the correct VAT percentage to be applied by British Gas to their supply to the Respondent. 20% has been applied in the past, and a rate of 5% has been applied more recently. Mrs James for the Respondent told the Tribunal that at present it is unclear which is the correct rate of VAT, and that enquiries would be made to ensure that any appropriate adjustment to the account was obtained from British Gas.

MANAGEMENT FEES

17. The Applicants objected to a substantial (26%) increase in management fees levied by Accent for the service charge year ended 31 March 2018. The management fee had been £22,348 pa (approximately £6.32 per flat per week) in the year ended 31 March 2017 and increased to £28,560 (approximately £8.08 per flat per week) following an internal costs review by Accent.

18. Mr Greenwood wished to see Accent's costings figures showing exactly how the Respondent could justify the increased fee. Mrs James explained that Langley House had been classed at the highest level of management fees because of the communal facilities available there, compared to other managed sites where communal facilities might be virtually non-existent, or much reduced.

19. The Tribunal noted that the increased fee was within the guidelines provided by the Association of Retired Housing Managers. However, the upper limits for management fees provided by the Association relates to schemes across the country, including London and the south east, and the Tribunal considers that the increased fee is too high for Langley House. The fee has therefore been set at the 2016/17 level for the year ended 31 March 2018 and may be increased by the equivalent of any RPI increase for the following two years. Accent's representative indicated at the hearing that after 31 March 2020 the company would be reviewing its management fees generally.

20. Mr Greenwood took the view that the Respondent was in breach of its duty of disclosure because Accent failed to produce documents justifying the management fee by reference to a detailed breakdown of management costs specific to Langley House. The Tribunal finds that such a level of disclosure is inappropriate and not required of the Respondent.

ADMINISTRATION FEES

21. By a letter dated 15 February 2019, Accent had erroneously sent notice of arrears of service charge to one or more of the Applicants. The letter had included a reminder or warning that if arrears were not paid a modest administration fee of £10 per letter and £5 per telephone call would be payable by the leaseholder.

22. Mr Greenwood described this as a threat, and claimed that it caused the recipients extreme fear and distress. He also denied that the Respondent was entitled to raise administration charges under the terms of the lease.

23. Mrs James accepted that the letters were a mistake because there had been no service charge arrears. She said that no resident at Langley House had in fact been asked to pay administration charges, and that the statement in the letter was simply a reminder of Accent's published list of charges, should they become payable.

24. The Tribunal finds that the letter was a genuine error, and that the warning about the scale of administration charges was reasonable and should not have caused undue anxiety – or at least no anxiety that the residents' association could not immediately have allayed. Further, clause 3(7)(c) of the lease states that the leaseholder must: "*pay all costs charges and expenses which may be incurred by the Lessor or its Managing Agents in connection with the recovery of arrears of the service charge attributable to the Flat.*" It is therefore clear that in appropriate circumstances an administration charge may be raised, and that reference to it in Accent's letter was justified.

ANNUAL SERVICE CHARGE INCREASES

25. Mr Greenwood claimed that some of the Applicants had been told by the solicitors acting for them on their purchases of flats at Langley House, that there would be no increase in service charges above 10% or £100 (whichever was the greater) in the following 2 years, on the basis of a statement in the standard pre-contract enquiry form LPE1 that no such increase was anticipated by Accent at the time the form was completed.

26. Insofar as this claim refers to a potential misrepresentation by the Respondent on which some leaseholders relied in deciding to buy their flats, it is outside the jurisdiction of this Tribunal. Further, the evidence (of Mr Coates) was unconvincing and the Tribunal has no difficulty in concluding that the LPE1 statement did not, as Mr Greenwood claimed, amount to an enforceable contract requiring the Respondent to limit service charge increases for a period of 2 years after purchase.

RESERVE FUND

27. In past years, the Respondent has obtained contributions towards the cost of cyclical maintenance and the replacement of equipment on site by means of the service charge account, and such contributions have been kept in a separate account until required.

28. Clause 3(8)(e) of the lease provides that a transfer fee of 1% of the gross sale price or open market value of the flat is payable to the Respondent when there is a change in ownership of a flat. Although the lease does not provide for this, the Respondent's invariable practice has been to retain such transfer fees also in a separate account, towards the future cost of major repairs at Langley House. Such fees amounted to some £4,500 per year on average between 2010 and 2017.

29. Recently Accent have carried out a 30-year assessment of the potential costs of keeping the property in good repair. It is clear that neither the previous levels of contribution to cyclical works/equipment replacement nor the transfer fees would be sufficient to cover the future cost of major repair and replacement relating, in particular, to the structure of the building, the windows, and the lift.

30. Clause 5(4) of the lease requires the Respondent to "*maintain, renew, replace and keep in good and substantial repair and condition*" the common parts of Langley House. There is no provision for improvements, recovery of the cost of which would require the consent of the leaseholders.

31. Mr Greenwood objected to paying (a) increased contributions to cyclical maintenance introduced into the service charge account in the years ending 31 March 2018 and 2019, and (b) a new contribution towards future major repairs introduced in the year ending 31 March 2019. He argued that the Respondent should have been collecting contributions to a major repair fund since 1985 when the lease terms began, and that it was unfair for current residents to be required to pay contributions their predecessors had escaped. As the fund would (in the main) benefit future leaseholders rather than the Applicants, he considered that the Respondent should bear the cost of creating a Major Repair fund since it had to date neglected to collect contributions to a sufficient fund.

32. Mr Whitfield told the Tribunal that Accent has recently amalgamated the cyclical and repair funds into a single fund, and that the contributions provisionally assessed for future years would be reassessed as appropriate when the need for repairs and the cost of work could be accurately ascertained, the present 30-year forecast being necessarily largely guesswork. He explained that provision must be made now via the service charge, to avoid future leaseholders being charged large lump sums, and to prevent the value of the flats falling because of such future liabilities.

33. The lease provides at clause 3(2)(b) that the tenant must contribute towards "*expenses and outgoings incurred by the Lessor* [including] *not only expenses and outgoings actually paid for during the financial year in question but also such reasonable part of all expenses and outgoings whenever incurred (including provision for future expenditure) which are liable to recur either at regular intervals or (such as major repair) at uncertain intervals….*"

34. The Tribunal finds that the contributions the Applicants have been asked to pay towards current and future maintenance expenditure are reasonable and payable. Future contributions will be reassessed at the appropriate time and at this stage there is no basis for a finding that the Respondent's projections are unreasonable.

SECTION 20C APPLICATION

35. The Applicants made a section 20C application for an order that the Respondent's costs of this application should not be added to the service charge. Mrs James for the Respondent helpfully confirmed that the Respondent did not intend to recover its costs, and on this basis the order is made as applied for.