FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/32UC/LSC/2021/0018**
Property	**:**	**2, 14, 19, 24 and 25 Mablethorpe Park, Seaholme Road, Mablethorpe LN12 2AP**
Applicants	**:**	**G Coupe, A and Catherine Coleman, Alan McNamara, David Emmitt, Michael Henderson**
Respondent	**:**	**Floorweald Limited**
Type of Application	**:**	**Determination of service charges: s27A Landlord and Tenant Act 1985** **Costs determination: s20C Landlord and Tenant Act 1985**
Tribunal Members	**:**	**A M Davies, LLB** **P Mountain**
Date of Decision	**:**	**3 December 2021**
Date of Determination	**:**	**15 December 2021**

DECISION

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1. Each of the Applicants' liability to pay service charges is reduced by the amounts shown below:

For the year ending 31 December 2015	£24.00	Set up fee
For the year ending 31 December 2016	£ 0.24	Miscellaneous
For the year ending 31 December 2017	£ 9.20	Fire protection services
For the year ending 31 December 2018	£ 0.08	Miscellaneous
	£ 9.32	Fire protection services
For the year ending 31 December 2019	£22.56	Fire risk assessment
	£24.00	Company Secretarial
	£8.64	Year end accounts
	£18.00	Debt collection
	£ 0.40	Bank charges
	£8.24	Post/stationery
	£24.00	Handover fee
For the year ending 31 December 2020	£ 7.20	Year end accounts
	£51.84	Debt collection
	£ 4.80	Bank charges
	£11.96	Post/stationery
For the year ending 31 December 2021 (est)	£12.00	Fire risk assessment
	£ 7.20	Year end accounts
	£ 4.80	Bank charges
	£ 0.80	Post/stationery

The estimated cost (£300 for the estate) of testing fire equipment to be reduced to the actual cost incurred.

2. Pursuant to Section 20C, Landlord and Tenant Act 1985 the Respondent may not include in the Applicants' service charge accounts any costs incurred as a result of this application.

REASONS

HISTORY

1. Mablethorpe Park is a small residential estate on the east coast, owned by the Respondent. It contains 25 plots, each let for an original term of 99 years at an initial rent of £250 per year subject to annual upwards only adjustment by reference to the Retail Prices Index. Each plot contains a brick-built chalet dwelling and includes the right to park a private vehicle on a designated space within the estate.

2. The common parts of the estate are let by the Respondent to Tingdene (North Denes) Limited under a lease dated 30 September 2015. The lease creates a term of 99 years at a peppercorn rent and is otherwise drawn in similar terms to the leases of the Applicants, including an obligation to contribute a fair and reasonable proportion of the Respondent's costs of providing services. The Tribunal was not provided with a copy of the plan to this lease, but understands that the common parts include a roadway and footpath, boundary structures, and bollards which are lit at night, together with the usual services: electricity, water and sewerage. There is also a soakaway provision for surface water drainage, and a fire extinguisher.

3. The Applicants and Mr and Mrs West objected to the service charges demanded in 2019 and 2020, and the budgeted service charge for 2021. They did not pay. Correspondence failed to result in any agreement, and on 29 February 2021 the Applicants and Mr and Mrs West applied to the Tribunal for determination of service charges for the years 2015 to 2021 inclusive. They also applied for an order under s20C of the Landlord and Tenant Act 1985 ("the 1985 Act") that the Respondent's costs incurred in defending the application should not be added to their service charge accounts.

4. Mr and Mrs West subsequently assigned their lease, and the tribunal is advised that they are no longer party to the application.

THE APPLICANTS' LEASE

5. The Tribunal was provided with an example of the Applicants' leases, which are all in the same form. The landlord is the Respondent. The lease requires the tenant to pay an annual "Maintenance Charge", defined as "*such fair and reasonable proportion as determined by the Landlord (acting reasonably) of the costs, expenses and outgoings and* [sic] *reasonably incurred or payable by the Landlord in providing all or any of the Services".*

6. The Services are defined as "*the services set out in the Fourth Schedule",* and the Fourth Schedule reads:
   "Providing inspecting maintaining overhauling repairing redecorating cleaning operating insuring and when necessary replacing:
   (1) all access ways roads footpaths common parking areas, children's play area, amenity areas, and other common parts in common use or allocated for use by a particular tenant or occupier;
   (2) the perimeter fence or fences hedges (including any gates therein) surrounding the Park;
   (3) the lighting of the Park and the roads therein;
   (4) all drains sewers gas electricity water or telephone installations in common use which are not the responsibility of statutory undertakers;
   (5) signposts name posts and estate plan;
   (6) any other services relating to the Park or any part of it provided by the Landlord from time to time which shall be:
      (a) reasonably capable of being enjoyed by the occupier of the Property
      (b) reasonably calculated to be for the benefit of the Tenant and other tenants of the Park
      (c) appropriate for the maintenance, upkeep and cleanliness of the Park
      (d) otherwise in keeping with the principles of good estate management."

DIRECTIONS AND HEARING

7. Directions were issued on 27 July 2021. The parties were ordered to file and serve their statements of case, and to produce an indexed and paginated electronic PDF hearing bundle.

8. The parties could not agree on the contents of a single hearing bundle. The Respondent produced a statement of case and an indexed and paginated electronic PDF bundle as ordered. The Applicants did not supply a statement of case, and produced a single copy of a paper bundle with no index. They subsequently filed a bundle of documents sent by Word, the page numbering of which was different to the paper bundle. No reason was given for their failure to comply with directions save that they claimed to have no access to a PDF facility on the computer they were using.

9. The applications were heard by video link on 25 November 2021. Neither party was legally represented. Mr Emmitt spoke for the Applicants, who were present with him during the hearing. The Respondent was represented by its director Mr Bermant.

THE LAW

10. S 27A of the 1985 Act enables either party to a lease to apply to the Tribunal for an order as to whether a service charge is payable and, if it is, as to the amount which is payable.

11. S.19(1) of the 1985 Act provides as follows:

"Relevant costs [i.e. costs incurred by or on behalf of the landlord] *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."

12. "Service charge" is defined at s.18(1) of the 1985 Act as

"*…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…."

13. Section 18(3) provides that "*"costs" includes overheads*".

THE APPLICATION

14. Mr Emmitt told the Tribunal that the Applicants had made the application in part to obtain clarification of their rights and responsibilities. In particular they were unclear as to whether there was any distinction between a service charge as defined in the 1985 Act and the "Maintenance Charge" described in their leases. They thought that the word "maintenance" might indicate that they were responsible only for physical maintenance of the Park, and not for the cost of services connected with such maintenance.

15. The Applicants also contested their liability for the cost of major works carried out in 2018, and they sought a determination as to whether administration, enforcement and accountancy costs were properly payable under the terms of the lease.

16. The Applicants' case was obscured by many objections to the way in which supporting invoices supplied by the Respondent had been written and by numerous references to small discrepancies and accrual applications in the Respondent's accounts. They did not produce any alternative costs figures.

THE PARTIES' EVIDENCE

17. The Applicants did not provide a general witness statement or Statement of Case, but relied on their previous correspondence with the Respondent and its agents, and on a schedule of issues that they had prepared for the hearing. Each Applicant also provided a short statement in identical terms claiming that section 20 procedures were not carried out prior to the Respondent undertaking major work in 2018. The Respondent supplied a Statement of Case along with the witness statement of Mr Nigel Stonard, operations manager for the Respondent's managing agents Pembroke Property Management Limited ("Pembroke"). Mr Stonard was not present at the hearing. The Respondent had also prepared a schedule of issues identifying the positions taken by each party.

18. The Tribunal had the benefit of the parties' bundles of documents, including the Respondent's "2015 – 2021 Master Accounts Spreadsheet". The information in this document is, however, extremely difficult to follow, and may account for at least some of the Applicants' suspicions that they have not been charged correctly.

INSURANCE AND ELECTRICITY COSTS

19. In relation to costs of insurance and electricity, the Applicants objected that the charges did not accurately reflect the costs incurred in the service charge year for which they were demanded, and (in the case of electricity) the bills were based on estimated readings. Mr Emmitt confirmed that there was an electricity meter on site but said that the tenants were unable to take a reading.

20. The Respondent produced a schedule showing expenditure on insurance premiums and how the costs were allocated to service charge years since, as is common, the policy renewal date was not the same as the date on which the service charge year started.

21. No evidence was produced to suggest that the electricity or insurance costs were unreasonably high, or that the service provided was inadequate. The Tribunal therefore finds that the service charges in relation to these items were properly incurred and are payable as demanded.

REPAIRS, SIGNAGE AND PEST CONTROL

22. The Applicants contested some but not all of the cost of repairs, provision of signs and vermin control on the ground that some of the Respondent's contractors travelled from London or Essex and were therefore assumed to have charged more than local firms would have done. However local charging rates were not provided by way of comparison. They raised a query as to why they (rather than the Respondent) should be responsible for unblocking a sewer, and whether their ground rents should cover this cost. The Applicants accepted that there was a problem with vermin on site but argued that vermin control visits should have occurred as and when needed rather than on a regular basis, although they also claimed that on occasion residents had had to pay privately for additional pest control.

23. The schedules of issues prepared by the parties shows that the actual and (for year ending 31 December 2021 estimated) repairs and signage figures were largely agreed by the Applicants. Many of the Applicants' points related to minor discrepancies – almost always in their favour - between invoices and the sums in the service charge account, and minor errors in contractors' invoices. They did not produce evidence that the same work should have been carried out more cheaply or efficiently. The invoices supplied by the Respondent show that on most occasions the Respondent used contractors based in Lincolnshire, and do not indicate any excessive charging. The Tribunal heard no evidence that the work undertaken was unsatisfactory.

24. The Tribunal finds that the Respondent was entitled to use its trusted contractors. There is no evidence that repair/signage costs were unreasonably high, or that the cost of pest control was either unreasonably incurred or excessive. Service charges in relation to these services are payable as demanded.

MAJOR WORKS

25. In 2018 works were carried out to the estate roadway with a view to improving the road surface, filling in potholes, and reducing standing surface water. The Applicants claimed that they did not receive the letters sent by the Respondent's agents during the consultation process as required by section 20 of the 1985 Act. They produced as evidence of this an email from the Respondent's agent apologising for failing to send out a letter, but the letter referred to in that email was not one of those required to be sent as part of the section 20 procedure. It also appeared to be common ground that a number of letters from the Respondent's agents were returned unopened by one or more of the Applicants. Mr Emmitt claimed that as a result of the agents' alleged failure to consult, the Applicants should not pay more than £250 each towards the cost of this major work.

26. Further, the Applicants stated that the work on the road was deficient, in that it had improved but not remedied the surface water problem. They complained that the original work had been "chaotic", and that further work done under warranty was also of a low standard. No independent evidence of this was produced, however.

27. There was produced to the Tribunal an undated partial copy of an email purporting to be from Hemswell Surfacing Limited, a local contractor giving alternative costs estimates for the work to the road. Mr Emmitt said that he had obtained this late in 2018 after the work had been completed by the Respondent's contractor. There was no evidence that Hemswell Surfacing Limited had been provided with the same specification as the Respondents' contractor or that they had all the facts. For example their terms are "subject to adequate drainage outlets" but Mr Stonard states that there are no surface water outlets available due to the low-lying nature of the site, and that soakaways have to be used.

28. The Tribunal does not accept the Applicants' claim that the Respondent failed to follow all correct section 20 consultation procedures before undertaking the major work. While there were apparently deficiencies in the original work, rectification was undertaken without further charge under warranty. That warranty is still effective, in the event that further repairs are required. Mr Stonard states that the Respondent's agents continue to keep the condition of the road under review. The

Tribunal finds that the cost of this major work was correctly recovered by the Respondent through the service charge account.

FIRE RISK ASSESSMENTS AND EQUIPMENT CHECKS

29. The cost of health and safety checks – in practice fire risk assessments and annual equipment inspections – were queried by the Applicants as being unnecessary, wrongly supplied by an Essex based company, and capable of being provided free of charge by the local fire prevention service. They also queried an increase in the cost of the fire risk assessment from about £270 in 2018 to about £564 in 2019.

30. A Fire Risk Assessment having been carried out in 2016 at a cost of £474 should have been sufficient. A further Fire Risk Assessment should only have been required had there been some major change on site. Annual fire equipment checks appear to have cost the Respondent £40 pa, and these should be allowed. It appears that the cost of a further detailed fire assessment in 2019 may have been incurred because recommendations in 2016 and/or subsequent equipment checks had not been fully carried out. The Tribunal has not seen all relevant documents, but determines that following the 2016 assessment the cost each year should have been limited to £40, and additional costs have therefore been removed from the service charge account. The estimated cost in 2021 - £300 for fire alarm maintenance - has not been specifically reduced by this order but must be adjusted by the Respondent to reflect actual costs incurred for equipment maintenance, which in previous years has been £40, and any necessary repair or replacement.

ACCOUNTANCY FEES

31. The Respondent has included in the annual service charge accounts a sum of £600, increasing to £660, for the preparation of service charge accounts by their Kent-based chartered accountants. The Applicants queried whether this charge was permitted by the lease, claimed that the amount was excessive, and pointed to various alleged discrepancies between the management accounts, the invoices relied upon and the final service charge accounts. They claimed that these discrepancies indicated that the figures had not been properly checked, and that the accountant's work was not of an acceptable standard.

32. The Tribunal finds that professional preparation of service charge accounts is a service "in keeping with the principles of good estate management" the cost of which may be recovered from the Applicants under paragraph (6)(d) of the Fourth Schedule to their leases. Further, the amount charged is modest and acceptable. The Tribunal finds that the work undertaken by the accountants was correctly performed and resulted in service charge figures the Respondent was able to rely upon when sending out service charge demands to its tenants. It follows that these fees are correctly included in the service charge accounts.

MANAGING AGENTS' FEES

33. The Applicants queried whether the lease terms enable the Respondent to recover managing agents' fees, as they are not specifically mentioned in Schedule 4. The Tribunal finds that it is in keeping with the principles of good estate management that the Landlord should use professional managing agents, and that the reasonable cost of doing so is therefore recoverable under the terms of the Applicants' leases.

34. The estate was managed until late 2018 by ABC Real Estate, whose charges varied between approximately £1500 and £1815 each year. These agents made no additional charge for expenses such as bank charges, secretarial costs, postage or debt collection. Mr Bermant told the Tribunal that he had been able to negotiate a relatively low fee with ABC Real Estate because of that company's existing business relationship with the Respondent, and also due to the small and apparently simple nature of the Mablethorpe Estate. However, he said, by 2018 ABC Real Estate were struggling to deal with the quantity and quality of correspondence from Mr Emmitt, and no longer found that their quoted fee was sufficient to cover the amount of work required to manage this estate. In fact they were unwilling to continue acting at all. The Respondent, according to Mr Bermant, then had some difficulty finding a managing agent that was prepared to take on such a small estate with a poor history of relations with its tenants, and had to accept that the annual fee would be considerably higher. The work was taken on, from the end of 2018, by Pembroke Property Management ("Pembroke") based in Kent, and the annual fee increased to around £3600 to £3700, or about £148 per tenant.

35. The Tribunal, having read the correspondence in the bundles, accepts what Mr Bermant says. Although his arguments were restrained during the hearing, Mr Emmitt's written representations to Mr Bermant and the Respondent's past and present agents have been consistently rude, intemperate and vitriolic. He has also unreasonably refused to deal with the Respondent's agents, and has insisted on corresponding with the Respondent directly. The Tribunal finds that the managing agents have provided a reasonable service in the face of this unhelpful aggression and the difficulties caused by the Covid pandemic, and that their fees are reasonable in the circumstances. The management fees are properly included in the service charge accounts.

36. However the 2019 account includes a "handover fee" of £600 for the transfer of data from ABC Real Estate to Pembroke. The Tribunal considers that this is a cost attributable to the Respondent following a decision to change to a new firm of managing agents for any reason, and should not be included in the general service charge account.

37. Pembroke have added overhead costs to their management fee, which the Tribunal considers should be included within it and not claimed as additional service charges. These disallowed costs are:

    Company secretarial - £600 in 2019
    Y/e accounts - £216 in 2019, £180 in 2020 and £180 (estimate) in 2021
    Post/stationery - £206 in 2019, £299 in 2020 and £20 (estimate) in 2021
    Bank charges - £10 in 2019£120 in 2020 and £120 (estimate) in 2021

38. In 2015 the Respondent included in the service charge account a "set up fee" of £600. This is an internal management expense not properly attributable to the Respondent's tenants, and not recoverable as a service charge.

DEBT COLLECTION AND ADMINISTRATION CHARGES

39. Pembroke have charged debt collection fees to the service charge accounts. Costs connected with debt recovery should be applied to the tenant in default and should not be included in the general service charge account, as there is no provision for their inclusion in Schedule 4 to the lease.

40. Although the Applicants initially requested a determination as to administration charges, no such charges were identified in their case as put to the Tribunal. At the hearing, Mr Emmitt confirmed that the only issue they wished to raise relating to administration charges was whether late payment fees, debt recovery costs and similar charges should be included in the general service charge account. As indicated above, the tenant in default may be liable to the extent that such charges are reasonable, and these costs should be excluded from the service charge account.

MISCELLANEOUS AND RESERVE

41. Costs not identifiable as properly chargeable under the lease, however small, should not be included in the service charge account. The sums disallowed are:
£6 in 2016
£2 in 2018
The fees paid to the Land Registry, however, were identified by Mr Bermant as relating to issues affecting the residents generally, and are properly included in the service charge account.

42. Mr Bermant told the Tribunal that the Respondent has now been advised that there is no provision in the lease for a reserve fund, and therefore sums retained as a reserve in the service charge accounts will be credited to the tenants. In view of this assurance, and without any clear indication of the amounts (if any) currently held in the reserve accounts for each Applicant, the Tribunal has not included repayment of reserve fund contributions in its determination.

CONCLUSION AND SECTION 20 COSTS APPLICATION

43. This application could have been much simplified or even rendered unnecessary had the Applicants taken legal advice on the effect of their lease terms. The parties may well have settled their differences at a meeting or in correspondence had Mr Emmitt not been exceptionally rude, aggressive and unreasonable in correspondence.

44. The production of documents at the hearing was chaotic, with no cross referencing to relevant page numbers in the bundles to enable the Tribunal to find supporting invoices etc. The Tribunal has not been provided with all service charge demands for each Applicant for the years in question, and the determination is therefore necessarily presented as the reduction in service charge per year to be applied to each Applicant's account.

45. Mr Bermant confirmed to the Tribunal that the Respondent has incurred some additional management costs in relation to the application, but has not had to pay large legal fees. He did not object to a section 20C order. In the circumstances, the Tribunal has ordered that any costs incurred by the Respondent as a result of this application may not be included in the Applicants' service charge accounts.

Tribunal Judge A Davies
3 December 2021