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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/45UE/LSC/2014/0068**
Property	:	**Deerswood Court, Ifield Drive, Crawley ,West Sussex RH11 0HE**
Applicant	:	**Leseholders of Deerswood Court as shown on attached schedule**
Applicant's Representative	:	**Mrs A Ritchie , Chase Property**
Respondent	:	**Crawley Borough Council**
Respondents' representative	:	**Ms F Thomas of Counsel**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Mrs F J Silverman Dip Fr LLM** **Mr N Maloney FRICS FRIPM MEWI**
Date and venue of hearing	:	**21 January 2016** **Crawley Magistrates Court**
Date of Decision	:	**27 January 2016**

DECISION

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1 The Tribunal declares that:

1.1 the Respondent's surveyors' fees as charged to the Applicant tenants were reasonable and payable by the tenants under the terms of their respective leases.

1.2 the management charges raised in this case were reasonable and payable by the Applicants under the terms of their respective leases.

1.3 subject to the re-service on the Applicants of amended demands showing the corrected figures and compliant with the Service Charges Summary of Rights and Obligations Regulations 2007 the service charges demanded by the Respondent landlords are reasonable and payable by the Applicants in accordance with the terms of their respective leases.

2 No order is made under s20C Landlord and Tenant Act 1985.

REASONS

1 The Applicants are the leasehold owners of various apartments forming part of the building known as Deerswood Court Ifield Drive Crawley West Sussex RH11 0HE (the building) of which the Respondent is the freehold owner.

2 The Applicants issued an application in the Tribunal on 5 August 2014 asking the Tribunal to make a declaration under s27A Landlord and Tenant Act 1985 as to the reasonableness or otherwise of the Respondent landlord's service charges for major works, for the service charge year 2014-15 and the proposed service charges for the current service charge year 2015-16.

3 Directions were issued by the Tribunal on 19 September 2014, 1 October 2014, 23 October 2014 , 13 November 2014 and 24 August 2015.

4 The matter came before a Tribunal sitting in Crawley on 21 January 2016 when the Applicants were represented by Mrs A Ritchie, lay representative, and the Respondents by Ms F Thomas of Counsel. The Tribunal heard oral evidence from Mr G Tarran and Mrs A Clarke for the Respondents. Other witness statements included in the hearing bundle were taken as read and were fully considered by the Tribunal in reaching its decision.

6 The Tribunal carried out an inspection of the building immediately before the hearing. The building comprises a cluster of purpose built blocks of flats (99 flats in total) about half of which are in private ownership, held on long leases granted by the Respondent. The remainder of the flats are let by the Respondent on short term tenancies. The low rise blocks are set around garden areas interspersed with pedestrian footpaths and residents' parking spaces. The external appearance of the building and its surroundings was pleasant, clean and well maintained with evidence of on-going maintenance (replacement of broken flagstones). The major works to which this application applies had been completed except for snagging. The Tribunal was shown the newly installed door entry system and replacement lighting to common parts in the interior of one block. It is understood that similar systems have been

installed throughout the building. Their attention was also drawn to the new television aerials on the exterior of the building. All three of these items had been matters of complaint in the Applicants' case to the Tribunal. The building is situated on a residential road comprising similar blocks of flats and small houses with a church and school close by. Crawley town centre with all main facilities including a railway station is approximately a mile from the building. A local bus service serves Ifield Drive. Gatwick Airport and the M23 are within easy reach.

7 The Applicants' claim is based on s27 Landlord and Tenant Act 1985, relating to the payability and reasonableness of service charges as between landlord and tenant. Such a matter falls within the jurisdiction of the Tribunal.

8 A bundle of documents was placed before the Tribunal for its consideration. Page references in this document are to pages in the bundle.

9 The Applicants each hold their property on leases identical to or similar in form to that included in Tab 2 of the hearing bundle. The sample lease is dated 4 May 1999 and includes tenants' service charge covenants in clauses 3A-D and in the sixth schedule. The landlord's corresponding repair and right to recover covenants are contained in clauses 5 and 6 and the 9th schedule. The service charge year runs from 1 April to the following 31 March.

10 At the commencement of the hearing the Respondent made an application to admit into evidence a short second witness statement from Mr Tarran a copy of which had been supplied to the Applicant's representative on the previous evening. The reason for the application was because Mr Tarran had discovered that his calculations of the Applicants' service charge contained inaccuracies favouring the Respondent. Although the Tribunal is normally reluctant to admit late evidence, in the present circumstances the Tribunal considered that it was in the interests of justice to do so and the Applicant did not object. The Tribunal heard oral evidence from Mr Tarran who explained that he had inadvertently applied a percentage of 7.74 when calculating the site manager's costs resulting in the incorrect calculation of the service charge. Applying the correct percentage of 5.53 the final account total was reduced to £31,475.91.

11 A statement of issues was set out at Tab 7 of the bundle. The Applicants confirmed that they did not contest the service or contents of the s20 notice except in respect of the surveyor's fees and site manager's overheads. Issues which had subsequently been raised in their Scott Schedule relating to communal lighting, the door entry system and new television aerials had now been resolved between the parties and no longer formed part of the Applicants' case.

12 In relation to the door entry system and new aerials the Respondent's representative raised an issue which had not been included in either the application or the Applicants' subsequent statement of case and Scott Schedule (Tabs 5 and 6). She said that there was some concern as to whether the works comprising the door entry system were a repair or an improvement. She said the point was relevant because not all the leases contained a clause similar to Paragraph 2 of the 9th Schedule which allowed the Respondent to carry out 'additional works' at its discretion and therefore some of the tenants might claim that they had been overcharged in relation to these items. The Tribunal said that this was not a matter which was before

them on the present application. The Applicants had had every opportunity to raise this point at the s20 consultation stage, in their application to the Tribunal , in their Scott Schedule and at the subsequent meetings with the Respondent and had not done so. There was no evidence before the Tribunal to demonstrate that the leases were not in common form as demonstrated in the example at Tab 2. The Applicants confirmed that they were not challenging this issue.

13 The Respondent accepted that the demands served by them were not compliant with the Service Charges Summary of Rights and Obligations Regulations 2007. Counsel for the Respondent stated that the demands would be re-served to show the amended figures (see paragraph 10 above) and containing the requisite information in accordance with the 2007 Regulations.

14 Various arguments were put forward by the Applicants in relation to the surveyor's fees. They conceded that the Respondent's letter dated 27 February 2014 mentioned the fees but contended that most tenants would not have realised that an extra 5% was to be added to the final bill.

15 Their argument that the Respondent should not be charging for the use of their own in-house surveyors was not sustainable in the light of the terms of the lease (Clauses 3, 7A and paragraph 1 of the 9th Schedule) and the Upper Tribunal decision in Waverly Borough Council v Arya [2013] UKUT 0501 (LC). The Applicants presented no evidence to support their view that the surveyors' fee should have been explicitly shown in the s20 notice, nor that the fee should be restricted only to a proportion of the building costs. The Applicants' main objection to this item was that they did not know what work the surveyor(s) had done and despite requesting the same had never been shown any invoices detailing the surveyors' fees. The Respondent's explanation of the absence of invoices in respect of surveyor's fees (and management fees which the Applicants also queried) is contained at Tab 13 page 2 (letter dated 26 October 2015) which clearly states that as the surveyors' fees are an internal expense they are dealt with by internal accounting and no invoices are issued. A similar process applies to management fees where the Respondent's contractor, who is appointed under a qualifying long term agreement, pays the individual invoices submitted by sub-contractors and a compound invoice is submitted to the Respondent for reimbursement by them. Although the Applicants remained adamant that individual invoices should have been produced by the Respondent the Tribunal accepts the Respondent's explanation for their absence. In the absence of any evidence to the contrary the Tribunal finds that the surveyors' fees as charged to the Applicant tenants were reasonable and payable by the tenants under the terms of their respective leases.

16 The Applicants argued that the accounts included three sets of management costs amounting to approximately 14% of the total costs of the works. They asserted that this was an excessive sum and that such costs should not normally exceed 12%. The only evidence produced in support of this contention was an email from a sole practitioner (Tab 1 page 6) which the Respondent maintained did not provide a like for like comparison with a major works contract carried out on behalf of a public authority. The Applicants accepted that the difference of 2% was not

necessarily unreasonable but stated that in the present case it amounted to a substantial sum of money. A further argument put forward by the Respondent was that the fees under this heading had been charged in accordance with the Respondent's qualifying long term agreement with the main contractor about which the Applicants had previously been properly consulted under the statutory requirements and were therefore entirely reasonable. Taking into account the fact that the fees in question had been calculated in accordance with the Respondent's qualifying long term agreement with the main contractor and that the Applicant had brought no credible evidence to demonstrate the unreasonableness of the figures, the Tribunal accepts the Respondent's evidence that the management charges raised in this case were reasonable and payable by the Applicants under the terms of their respective leases.

17 The Applicants made an application under s20C of the 1985 Act. This was opposed by the Respondents. The Applicants had continued to pursue a claim which was largely unsustainable and where the answers to the majority of their complaints had been resolved without recourse to litigation in the course of a lengthy series of meetings with the Respondent which the Applicants described as 'extraordinarily helpful'. The only concessions gained by the Applicants during the course of the hearing arose out of a reworking of figures by the Respondent who drew to the Tribunal's attention an arithmetical error in their own calculations. On the basis that the Applicant's claim has not been successful on the grounds on which it was pleaded it would not be appropriate to make an order under s20C and the Tribunal declines to do so.

18 **The Law**

Landlord and Tenant Act 1985 (as amended)

Section 18

(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.

Section 19

(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 provisions 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.

Section 27A

(1) 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
   (a) the person by whom it would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
   (a) has been agreed or admitted by the tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  (a) complied with in relation to the works or agreement, or
  (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the

tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Judge F J Silverman as Chairman
Date 27 January 2016

Note:
Appeals
1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.