

10753



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

Case Reference : **MAN/30UP/LIS/2014/0008**

Properties : **(1) 42 Willow Hey, Skelmersdale, WN8 8NJ**
(2) 48 Inglewhite, Skelmersdale, WN8 6JE
(3) 35 Stanley Court, Lord Street, Burscough L40 4LA

Applicant : **West Lancashire Borough Council**

Respondents : **(1) Mr I C Bennett**
(2) Mr P Benton
(3) Mr L Shields

Type of Application : **Reasonableness of service charges**

Tribunal Members : **Mr J R Rimmer**
Mr J Faulkner

Date of Decision : **26th November 2014**

Decision

Decision

The service charges which are the subject of these applications are reasonably incurred at reasonable cost and are recoverable by the Applicants WITH THE EXCEPTION of the ground rent which is not recoverable as a service charge but may be recoverable by other means.

Application and background

- 1 The Applicant is the Borough Council responsible for the management of its housing stock in West Lancashire through its management company, One Connect Limited rather than having divested itself of its housing stock to a Registered Social Landlord. Within its management portfolio are those dwellings, both flats and houses, sold under the "Right to Buy" scheme. The properties that are the subject of this application are three of those in respect of which it is alleged that service charges are unpaid and it is now necessary for the Applicant to apply for a determination as to the reasonableness or otherwise of those charges prior to any application for forfeiture of the leases to those properties. The Application relates in relation to each property to service charges for the years from 1st April 2013 to 31st March 2014 and then 1st April 2014 to 31st March 2015.
- 2 The Application had originally related to four properties, but by the time directions were given as to the future conduct of the matter by a Deputy Regional Judge on 2nd September 2014 the Applicant had resolved its difficulties with one Respondent who was then removed from the proceedings. There has however been no response from the remaining three leaseholders, either to the application generally, or those directions in particular.
- 3 In the absence of any response from the Respondents, and after the receipt of a statement in support of the application from the Group Accountant with responsibility for Public Sector Housing at the Council, the Application was set down for a determination by the Tribunal without a hearing. The Tribunal also dispensed with an inspection of any of the properties concerned as the members were familiar with the housing stock of the Applicant and its varied locations within the Borough.

Evidence

- 4 The Applicant provided a comprehensive bundle of documents for the assistance of the Tribunal containing details of the leases of the properties, invoices for the services in respect of which arrears were alleged to have arisen, payment records and correspondence between the parties. That correspondence included copies of the summary of rights and liabilities that must be provided to leaseholders before proceedings to recover service charges may be commenced.

5 The leases for the properties contain provisions relating to the service charge at various points:

- Clause 2 reserves the service charge as additional rent, over and above the nominal annual ground rent, for what may be termed as the usual services for properties of this type and including an appropriate part of the insurance premium under the Applicant's block residential policy. The services themselves are listed within this Clause. There is the usual provision for the payment of a budgeted sum in any current year with an adjustment to be made after the year end when final
- Clause 3 contains the covenant by the leaseholder to pay the relevant charge
- There is no corresponding covenant by the lessor to provide the services but the Tribunal is satisfied that one can be implied in view of the other terms of the leases.
- All the relevant leases appear, on the information available to the Tribunal, to be almost identical in their terms, although there may be some transposing of particular clauses, or the inclusion of others, not being relevant to this application, affecting the order and numbering of provisions

6 The only significant evidence submitted was that in the statement of Darroll McCullough exhibiting a schedule of the various charges made and the particular services to which they relate, although a lengthy Statement of Case was provided with the Application, some 69 paragraphs in length and extending over some 27 typewritten A4 pages. setting out the basic principles relating to the recovery of service charges, the relevant provisions of the leases and the law as set out in Landlord and Tenant Act 1985. In the absence of any particular challenge to any of the itemised service charge heads listed the Tribunal is happy to sum them up as those services which might normally be found relating to the common parts and shared facilities of blocks of flats, or similar dwellings. There was certainly nothing unusual about what was being supplied by the Applicant to give the Tribunal any cause for concern. The Tribunal did note, however, that within the total debt being referred to in each application, ground rent was included within the list of services. It is the view of the Tribunal that this should be separate from the services and subject to a separate demand, or demands. The ground rent appears at the 12th of 13 items in the schedule provided by Mr McCullough where the annual cost of each head of the service charge is set out.

The Law

- 7 The law relating to jurisdiction in relation to service charges falling within Section 18 is found in Section 19 Landlord and Tenant Act 1985 which provides:
- (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
- 8 Further section 27A Landlord and Tenant Act 1985 provides:
- (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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

Determination

- 9 In the light of the above the Tribunal draws two conclusions.
- As set out in paragraph 6, there is nothing in what the Tribunal has read to suggest that the amounts claimed for the services provided are unreasonable, nor are the services themselves unreasonable in their nature.
 - No evidence has been forthcoming from any of the Respondents to cast any doubt upon that suggestion.

to this conclusion the Tribunal enters one caveat in relation to the wrongful inclusion of the ground rent as a service charge.

- 10 Within the Statement of Case accompanying the Application the Applicant raises the issue of its costs associated with the making of this application. These costs are not defined within the lease as themselves being a service, or ancillary to such services as are provided but fall separately within the leaseholders' covenants in Clause 3 of the lease (either in sub-paragraphs 11 or 12, depending on various versions of the leases used). These costs are purported to be recoverable if they are incurred in preparation for, or in pursuance of proceedings for forfeiture of the lease under sections 146, or 147 Law of Property Act 1925.
- 11 It is clear that this Application in preparation for such proceedings: the Applicant requiring the Tribunal's decision as to the reasonableness of the service charges before being able to support forfeiture proceedings upon the outstanding debt. It is the tribunal's view however that the costs will be a matter for the County Court within those proceedings, should they be commenced, and not within the current jurisdiction of the Tribunal which is limited to the consideration of an Application under Section 20C Landlord and Tenant Act 1985 to limit landlord's costs of Tribunal proceedings forming part of service charges in future years. There is no such application in these proceedings.