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

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| **Case Reference** | : | **LON/00AS/LSC/2017/0009** |
| **Property** | : | **Signal and Compass Buildings, Station Approach, UB3 4EG** |
| **Applicant** | : | **Thames Valley Housing Association** |
| **Respondent** | : | **Ballymore (Hayes) Limited** |
| **Representatives** | : | **Ms D Grzybowski & Mr Dawson (Applicant's Housing Managers) Mr Rolfe (Counsel for the Respondent) instructed by Charles Russell Speechlys Solicitors** |
| **Type of Application** | : | **Service Charges; S.20C Landlord & Tenant Act 1985** |
| **Tribunal** | : | **Mr M Martynski (Tribunal Judge) Mr D Jagger MRICS Mr L G Packer** |
| **Dates of Hearing** | : | **22, 23 & 24 May 2017** |
| **Date of Decision** | : | **23 June 2017** |

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**DECISION**

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## DECISION SUMMARY

1. *Service Charges:* All the Service Charges challenged by the Applicant and set out below are payable by the Applicant.

2. *Section 20C:* The tribunal declines to make an order regarding the Respondent's costs incurred in these proceedings.

## BACKGROUND

3. The Buildings in question form part of a development bordering a canal and railway line. The development has six blocks, each containing a number of flats. One of those blocks is used as an Aparthotel, three are let to individual long leaseholders ('the Private Leaseholders') with the remaining two blocks being leased to the Applicant on separate leases for each block.

4. Of the two blocks leased to the Applicant, Compass Building comprises 86 flats and is sublet by the Applicant on weekly tenancies to general needs tenants; Signal Building comprises 52 flats which are sublet on long leases on a shared ownership basis.

5. The freehold of the development is held by the Respondent Company.

6. The blocks leased to the Applicant are accessed via a side entrance and a path leading to the main front doors of the blocks and a garden containing a children's play area. The play area can be accessed by the Private Leaseholders.

7. The remainder of the development is accessed via an entrance by the piazza. This entrance includes a concierge desk whose services are not available to the Applicant's tenants or leaseholders.

8. In the Private Leaseholders' part of the development there are two garden areas, neither of which can be accessed by the Applicant's tenants or leaseholders.

9. There are three water features. Two are contained within the private gardens; one is in the piazza at the front of the development. This piazza area is open to the general public.

10. The development has an underground car park, which more or less extends over the full footprint of the development. That car park has physically separate areas for the Private Leaseholders and the Applicant' tenants.

11. The arrangement of the development, as described above, has, according to some material seen by the tribunal, led to a feeling of segregation on the part of the housing association tenants and leaseholders.

12. Under the terms of the Applicant's leases, put simply, the Applicant has ownership of the interior of its two blocks including the internal common areas. The Respondent is responsible for the exterior and structure.

13. The Applicant pays a Service Charge to the Respondent. That Service Charge comprises a charge for the upkeep of the external common parts of the development, that part of the car park used by the Housing Association tenants and leaseholders and external maintenance of the blocks demised to the Housing Association. The Applicant pays nothing towards the private gardens, nor their two water features. It pays roughly 22% of the cost of the water feature in the piazza, based on the floor space of the Applicant's blocks relative to the whole. The costs attributed to the Applicant's garden areas is 1/3rd. However, as the Private Leaseholders have access to the play area, this cost is itself shared between the Private Leaseholders and the Applicant on the basis of the same 22%. The Applicant does not dispute these apportionments.

14. The Applicant Housing Association passes a proportionate amount of these Service Charges down to its shared-ownership leaseholders. Those leaseholders additionally pay Service Charges generated by the Housing Association in its management of Signal block and the maintenance of the common parts.

15. We were told that the Applicant's shared ownership leaseholders were very concerned about the level of Service Charges payable by them (which of course includes not on the Respondent's Service Charges but those charges added by the Applicant) and that some or all of them had withheld payment of Service Charges in protest. This led to the Applicant carrying out an investigation into the Service Charge and ultimately to this application.

## INSPECTION

16. We inspected the development on the morning of 22 May 2017. We were able to look at most of the common areas, the car parks and a selection of the internal common parts of the Private Leaseholders and the Housing Association blocks.

17. For the most part, the gardens in the development appeared to be maintained to an acceptable standard. There is a problem with railway sleepers used in the development generally. These are used as borders and retaining garden walls and a number of them are rotting. In some respects, the garden in the development where the Applicant's buildings are situated is not quite as attractive as in the other parts of the development. This however appears to be due, at least in part, to the fact that there is a children's play area in this garden and, as a

consequence, this area will have more intensive use that other garden areas.

18. The internal common parts of the Private Leaseholders and shared ownership blocks are adequately maintained at a broadly similar standard. Those parts of internal common areas of the Block leased to the Applicant and used for general needs weekly tenants (which is the Applicant's responsibility) were in a poor condition with extensive stains to the carpets and walls.

**THE APPLICATION AND THE PROCEDURAL HISTORY**

19. It is necessary to set out in some detail the procedural history of this application as that, in part, has informed our decisions.

20. Although the Applicant is probably only a medium-sized association in respect to other housing associations, it is still of a considerable size with a large turnover and with access to considerable resources. We were told by the Applicant's representatives at the hearing that they had taken some legal advice regarding the application, however the application itself did not appear to be drafted by lawyers and professional legal resources were not used in the detailed preparation for the final hearing. The Applicant was not legally represented at the Case Management or final hearings.

21. The application lodged with the tribunal by the Applicant is in the most general of terms. The application had attached to it a schedule setting out costs headings for each calendar year in dispute (2013-2016); however, each cost heading was challenged in repeated generic terms. For example, for the year 2013, the challenges to each head of Service Charge were variously and repeatedly as follows:-

> We have not been provided with documentation that backs up the costs.
>
> We have not been able to reconcile invoices that were provided, with the amount charged.
>
> We require supporting documentation to support the amount being charged.
>
> Based on the information available to us, we do not believe the charge is reasonable for the services provided.

22. In the light of the very general nature of the application, a Case Management Conference was arranged and took place on 14 February 2017. At that hearing, it was explained to the parties that the tribunal required a more precise formulation of the challenges made by the Applicant. The tribunal ordered the Applicant to prepare a schedule setting out its challenges to the Service Charge using three columns with the following information in each:-
    (a) the item and the amount in dispute
    (b) the reason(s) why the amount is disputed
    (c) the amount, if any, which should be paid for that item

23. In response to this direction the Applicant then produced further schedules. These did not clarify matters any further.

24. In response to the Respondent's complaint about the generic nature of the challenges made in the application, the tribunal, by letter dated 20 March 2017 directed the Applicant as follows:-

> In short, Thames Valley must spell out the exact reasons it disputes any of the service charges demanded.

25. Unfortunately this direction did not achieve the desired result and by the time of the final hearing we were left with all the Service Charges for the years in question being challenged in very general terms. For example the following comment is repeated over and over in the schedule:-

> TVH has not received sufficient back up information from Ballymore through invoices received or through explanations provided to justify this specific charge. We are therefore disputing the whole amount.

26. It appears that the Applicant has been trying to carry out an in-depth audit of the entire Service Charge accounts. It may have been a better use of resources for the Applicant to have considered the Service Charge heads in general, decided which of those required further investigation and concentrated on those items.

27. The Applicant complained throughout the proceedings that the Respondent had failed to supply it with necessary information and invoices. From the evidence shown to us and the submissions that we heard regarding the meetings between the parties prior to and after the application was made, we are generally satisfied that the Applicant was supplied with the necessary information.

28. The Applicant prepared a vast amount of documentation for the final hearing contained in several lever arch files. The indexing of those files was somewhat confused, there being no logic that we could discern in the filing within those files.

29. At the final hearing, the Applicant agreed to withdraw many of its challenges and only those challenges still in issue at the final hearing are dealt with in this decision.

**THE ISSUES, EVIDENCE AND OUR DECISIONS**

*Cleaning yardsman – all years in issue*

30. Two people are employed to clean around the development, one full-time, one part-time.

31. When pressed in the hearing, the Applicant's representative stated that they considered that only 75% of the costs of this item should be allowed as reasonable.

32. The evidence on this issue presented by the Applicant (in common with the evidence presented by the Applicant on the other issues considered in this decision) was very limited and consisted of the following.

(a) A witness statement from Saima Saifie, a Housing Property Manager employed by the Applicant. The only parts of her statement that are relevant to this head are as follows;

> Litter – We requested that the grounds staff schedule be displayed on the notice board, but the information provided was not clear or legible information for ground staff attendance and what they would be doing and when. Litter on the estate has improved only after email requests of Yardman's duties and numerous complaints from us and the Resident Inspector.
>
> Neglected areas on the estate – Our inspections also highlighted areas on the estate that were neglected with lots of Cigarette ends and litter and weeds growing.

(b) A witness statement from Tajinder Gill, a Senior Housing Officer employed by the Applicant. The only parts of her statement that are relevant this head are as follows;

> I have been managing Compass building since 2012.
> Since I have been managing Compass I have seen a deterioration in the external part of the building and poor maintenance. Resident (sic) have complained they are paying for the grounds as part of their Service Charges and not receiving an efficient service. On a number of occasions whilst carrying out inspections I have seen cigarette butts in the grounds. The sleepers have rotted away. I met with the General Manager at Ballymore on 5 July 2016 to go through various issues. It was raised with him the condition of the sleepers and in general the condition of the grounds maintenance. Peter said that all this was going to be done. I was on site on 30th March. Please find attached photos which illustrate that this work has not been completed. At the meeting on 5th July I asked them to provide schedule that the Yards Man has to follow on a weekly basis. However the schedule Peter had he could not print. The one that was put on the notice board was in extremely small fonts. It could not visibly be read.

Attached to the statement were photographs of the rotting sleepers in the garden area. We were also shown a photograph of numerous cigarette butts by the main entrance to that part of the development where the Applicant's buildings are situated.

(c) A witness statement signed by a number of the Applicant's tenants and long leaseholders. Some parts of this statement concern complaints about matters that fall into the remit of the Applicant rather than the Respondent. The relevant parts of that statement reads as follows;

> 28/1/11 – entrance to building littered with cigarette butts, discarded food wrappings and dead plant matter; graffiti on walls
> 2/1/11 – poor maintenance of ground floor access area
> 9/8/13 – main entrance littered with cigarettes butts from hotel staff and guests
> 2/9/13 - main entrance littered with cigarettes butts from hotel staff and guests
> 29/7/14 – dirt and rubbish at main entrance, disabled lift area and stairs
> 7/11/14 – dirty and littered entrance

33. For the Respondent, this issue was addressed in the witness statement of David McCann, a Senior Portfolio Manager employed by the Respondent. He stated that the yardmen carried out daily litter picking, sweeping and tidying of the external areas of the estate. He continues;

> Occasionally there may be instances of litter remaining for several hours/overnight, simply because if the litter is dropped just after the yardman has finished litter picking in a given area, the litter will remain until he revisits that area the following day.

34. At its highest point, the Applicant's evidence only possibly raises an arguable issue regarding the cleaning of the area adjacent to the entrance to the Applicant's part of the development. This area is problematic. No smoking is allowed beyond this entrance, therefore anyone who wishes to smoke can only do so at this entrance. It may be that this area, if it is only visited once per day by the yardsman, may quickly deteriorate due to the smokers.

35. The statements from Ms Saifie and Ms Gill are so general as to be of no real evidential value. There is no clear record of methodical regular inspections on their part. The nearest we come to this is the statement from the residents. However, given the limited number of recorded dates, it is not possible to conclude that this area is generally neglected or if the records are just of times when rubbish has accumulated in between visits from the yardsman. The recorded incidents of rubbish accumulating number just six over a period of four years.

36. The most that can be said is that there may be a case for the Yardsman to visit this area more frequently.

37. As to the print out of the yardman's schedule (the complaint was that the font size was too small), this is a document that can be enlarged by the Applicant either through printing or photocopying.

38. Overall therefore, there is no evidence on which we could conclude that the costs attributable to the yardsman have been unreasonably incurred or that the work is not of a reasonable standard and the costs are therefore payable.

*Gardening – all years in issue*

39. As noted above, because the private residents have access to the play area in the Applicant's part of the development, those residents contribute to the costs of that area.

40. The Applicant's evidence on this issue can be summarised as follows:-

(a) Ms Saifie:

> Sleepers - Rotting and disintegrating sleepers. Numerous requests made to start repair work on the decaying sleepers that have been left to disintegrate for nearly 4 years without any work done to repair or replace them. The PM from Ballymore said that the quotes would be provided when they engaged a new maintenance contractor and work would be done shortly after. This was not done. We made repeat enquiries and even provided solutions to replace the sleepers and no action was taken. At a resident meeting in August 2016, Ballymore promised residents that they would provide them with quotes and advise on when the work could be done. There was no action until now April 2017 weeks away from the FTT hearing and I have been advised that works are taking place by residents enquiring what is going on as work is finally being done to the sleepers and other parts of the estate but we TVHA nor the residents were advised prior to works.
>
> Poor planting – Beds and landscaping around Signal and Compass looked neglected for years but was finally done in October 2016 after months of pushing for this. Also for a number of months there was no grounds service and to my knowledge service charge was not adjusted accordingly.

(b)Ms Gill mentions the sleepers in passing but otherwise does not add anything.

(c) Residents' statement:

> Wooden sleepers have been in a state of disrepair for over two years now.
> 6/5/14 – uncut hedges housing rats; decomposing dead rat/s producing bad odour
> 8/7/14 – rats in garden

We were shown a number of photographs which showed some bare/neglected parts of the garden in the Applicant's part of the development.

41. For the Respondent, the issue of the sleepers was addressed in the witness statement of David McCann, he says as follows;

> The sleepers were installed in 2006 during the construction phase of the TVHA gardens, so they are now 11 years old. They have degraded at a faster rate than anticipated due to the banning of creosote preservative, which would previously have been applied to outdoor wooden features. Some of the timbers did start to degrade in 2102 and for the next few years several patch repairs were carried out. However, more recently it has reached the point where large scale repairs are necessary and we have investigated several options. However, the options initially identified were cost-prohibitive and would have resulted in significant increases in the service charge. We have recently discovered a contractor with a more cost effective solution, and have begun works to repair the damaged areas. These repairs will be phased over 18 months – 2 years.

42. Our conclusion on these issues is that whilst the poor state of the sleepers is clear, this represents work not done and costs not incurred and not an issue of unreasonable cost.

43. Any challenge is therefore as to the quality of management which led to the state of the sleepers, and whether the cost of the management was not reasonable. It was clear fro the hearing that the sleepers have been an issue on the radar of the Respondent's managing agents and one that is being addressed. In the absence of any more cogent evidence from the Applicant, it is impossible for us to conclude that there was any failing in management on this issue that would bear upon the reasonableness of the limited management fee.

44. Further, whilst we were troubled by some photographs which appeared to show sections of garden left bare and unplanted, the evidence was not dated nor detailed enough to conclude that there was a failure to carry out the basic gardening service. Given the lack of focussed evidence from the Applicant, those photographs could be explained by damage caused by residents/vandals (we were told that there had been an episode of newly laid plants being pulled up by vandals) or that the areas were in the process of a replanting scheme.

45. We do not have sufficient evidence to conclude that the limited cost of the gardening contracts (a few pence a week per flat) were unreasonable in amount or that the standard of gardening was not reasonable for the cost incurred.

*Mechanical plant – all years*

46. This was not something that was included in the Applicant's Statement of Case, but an issue introduced only via the Applicant's witness statements.

47. Shortly before the final hearing, the Respondent complained of this to the tribunal. The tribunal directed that the Respondent would have a choice as to how to proceed. It could either respond to those new issues, in which case the tribunal would consider them. Otherwise, tribunal would decline to deal with them because they had not been contained in the Applicant's Statement of Case. The Respondent elected to take the second option. As a result, we concluded that we would not be able to consider this issue.

48. We add that in any event, the issue being raised by the Applicant here was that it could not reconcile the invoices with the amounts spent in the accounts from its attempted comprehensive audit of the accounts. Having heard from the Respondent that it had provided all the necessary documents and after having put the Respondent to the test in the hearing by matching up invoices with account totals, we concluded that there was, on the balance of probability, nothing in the issue in any event.

*General repairs – all years*

49. The only issues raised in the Applicant's Statement of Case related to; (a) the garden sleepers (referred to above) and; (b) the markings in the car park.

50. The sleepers are not an issue for the reasons explained above.

51. After having inspected much of the car parking area, we are at a loss to understand the issue regarding marking. There appears to have been concern that the Applicant's part of the car park was less well maintained. The tribunal had walked through both parts of the car park. The markings appeared to us to be similar in both parts – somewhat worn but serviceable. Again this is a matter of cost not incurred, going to adequacy of management rather than a reasonableness of costs issue – and we saw no reason to conclude that it was an issue of that either.

*Management costs*

52. The management fees charged per flat (ranging from £150-250 for the years in question) are at the lower level of the reasonable range[1] of such fees charged in the Greater London area.

53. We have dealt with management fees above under other categories.

54. One of the repeated themes coming from the Applicant was the lack of information from the Respondent's managing agents. We are satisfied on the balance of probabilities that, certainly for the purpose of these proceedings, there has been no significant lack of information being passed to the Applicant. At the same time, we were concerned about the amount of time it appeared to be taking the Respondent to issue the final Service Charge accounts for the development each year – over two years after the year end with a further revision some months later. This hampered the Applicant in answering leaseholders' legitimate queries about final Service Charge costs. We were further concerned about the way in which the accounts are shown. The accounts that we saw related to the whole development without any breakdown for the individual blocks. Firstly, this again did not assist the Applicant in managing its two blocks, an in being able to answer shared owners' queries.

55. Further we note that there are separate leases for Compass and Signal Blocks, each requiring accounts to be produced for 'the Building' in question. Whilst we carefully considered the Respondents argument that this did not require separate accounts, we would have taken the contrary view if this had been an issue in the case. In any event the Respondent accepted that separate accounts should not have been a difficult matter.

[1]The tribunal has expert knowledge regarding management fees in this area

56. In all, the Applicant is being caused problems by the late accounting and, if the accounts were shown in a more comprehensive manner, the Applicant may not have felt the need to embark on its attempted detailed audit of the accounts.

57. That said, and notwithstanding these criticisms, the management charge is at the low end and we did not have sufficient evidence to persuade us that the management fee was unreasonably incurred or that management services were not sufficient for the fee that has been charged.

*Section 20B Landlord and Tenant Act 1985*

58. The Applicant asserted that some Service Charges were not payable as they had not been notified that they had been incurred within 18 months of the expenditure.

59. This is not an issue for most of the period in question as payments were demanded on account of the Service Charge– section 20B does not apply to such sums.

60. The only year that this point can relate to is 2013 where there was a deficit in respect of costs over sums claimed on account. The Applicant asserted that it not been notified of the (surplus) costs incurred in that year within 18 months.

61. We are satisfied after reading Mr McCann's witness statement and from hearing him in person that notifications of the expenditure were sent out prior to the statutory time limit.

**COSTS – SECTION 20C LANDLORD AND TENANT ACT 1985**

62. The Applicant, in making the application for a costs order, relied on the fact that the Respondent had not been willing to take part in the tribunal's mediation scheme.

63. The Respondent referred to the fact that it had given complete disclosure and had met with the Applicant on a number of occasions to try and settle and clarify matters.

64. We take the view that, given the generality and confusion in the Applicant's case, it is unlikely that mediation at the tribunal would have been possible.

65. The Applicant pursued a number of generalised and unparticularised issues throughout the application only to drop most of these at the hearing.

66. The Applicant has been wholly unsuccessful in this application.

67. Taking into account the above matters, we do not consider that it is appropriate to make an order preventing the Respondent from charging its costs incurred in this application to the Service Charge.

**Mark Martynski,Tribunal Judge**
**23 June 2017**

## ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.