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

**Case Reference** : CHI/29UH/LIS/2013/0059

**Property** : Hayle Mill  
Hayle Mill Road  
Maidstone  
Kent  
ME15 6DT

**Applicant** : Hayle Mill Management Company Limited

**Representative** : Hazelvine Limited

**Respondents** : The Lessees of Hayle Mill

**Representative** : Unrepresented

**Type of Application** : Service charges  
Section 27A Landlord and Tenant Act 1985

**Tribunal Members** : Judge R. Norman (Chairman)  
Mr. R. Athow FRICS MIRPM  
Ms L. Farrier

**Date and venue of  
Hearing** : 29<sup>th</sup> October 2013  
Maidstone, Kent

**Date of Decision** : 11<sup>th</sup> November 2013

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**DECISION**

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## **Decision**

1. The Tribunal made the following determinations:

(a) The sum of £82,399 being the service charge budget for the year March 2013 to March 2014 in respect of Hayle Mill, Hayle Mill Road, Maidstone, Kent ME15 6DT ("the subject property") is reasonable and payable by the Lessees ("the Respondents") who all hold leases in respect of parts of the subject property. The Respondents' individual contributions are governed by the terms of their respective leases and are payable to the Managing Agents Hazelvine Limited on behalf of Hayle Mill Management Company Limited ("the Applicant").

(b) No order is made under Section 20C of the Landlord and Tenant Act 1985 ("the Act").

## **Background**

2. The Applicant is the management company in respect of the subject property and made an application for a determination as to the reasonableness of the service charge budget for the year March 2013 to March 2014.

3. Directions were issued on 19<sup>th</sup> June 2013 requiring that

(a) By 10<sup>th</sup> July 2013 the Applicant file and serve a statement of case and supporting documents.

(b) By 31<sup>st</sup> July 2013 the Respondents provide a statement of case setting out which items of the budget they challenged and why, together with statements of any witnesses of fact whose evidence they wished to adduce at the hearing, with supporting documents.

(c) By 14<sup>th</sup> August 2013 the Applicant, if it wished to do so, file and serve a reply.

4. In response to Directions issued, Hazelvine Limited on behalf of the Applicant provided a statement of case with supporting documents.

5. Two sets of Further Directions were issued extending the time for the Respondents to provide a statement of case and supporting documents, first to 14<sup>th</sup> August 2013 and then to 16<sup>th</sup> September 2013 should they wish to do so.

6. Letters were received from a very small number of the Respondents but the vast majority of the Respondents made no contact at all with the Tribunal and no statement of case was received from any of them or from anybody on their behalf.

## **Inspection**

7. On 29<sup>th</sup> October 2013 the Tribunal inspected the subject property, including the interior and exterior common parts. Present were Miss Eves from the Managing Agents Hazelvine and Mr. D. Fleck, who is one of the

Directors of the Applicant and, as leaseholder, one of the Respondents. There was no appearance by any other of the Respondents or by anybody on their behalf.

### **Hearing**

8. The hearing was attended by Miss Eves and Mr. D. Fleck. There was no appearance by any other of the Respondents or by anybody on their behalf but two of the Respondents informed the Tribunal that they would not be attending the hearing.

9. The Tribunal heard evidence and submissions from Miss Eves and Mr. Fleck.

### **Reasons**

10. The Tribunal considered the documents which had been provided and everything seen at the inspection and heard at the hearing and made findings of fact on a balance of probabilities.

11. In the letters received, concern had been expressed that the Respondents found themselves named in a legal process when they had not in fact disputed the service charges or even seen a budget. Also that the time to refer the matter to the Tribunal should be after the money had been expended. However, it is open to those who demand the service charges, and those who are required to pay them, to ask the Tribunal to make a decision as to whether or not the sum being proposed is reasonable and that is the position in this case. Therefore, a decision can be made about the sum to be demanded in advance of expenditure and later when the actual, as opposed to budget, figures are available it is open to the parties to apply to the Tribunal for a decision as to whether or not the charges were reasonably incurred.

12. No matter how much or how little information the Respondents had about the budget at the time the application was made, by the time the Applicant's statement of case had been provided, the budget figures and the sums required of the Respondents were known. If any of the Respondents had wished to dispute any of the budget figures then their opportunity to do so was by providing a statement of case setting out their objections. The point was made that the Applicant and Hazelvine Limited had had a long time to prepare the case but that the Respondents had not had sufficient time to respond. In order to assist the Respondents, the time for them to provide a statement of case was extended.

13. No statement of case was received from any of the Respondents. They did not attend the inspection to point out to the Tribunal anything of concern. They did not attend the hearing to make any comment about the budget or to cross-examine Mr. Fleck and Ms Eves about the budget figures. The lack of a specific challenge to the budget indicates that the vast majority of the Respondents do not wish to dispute it.

14. In the absence of any specific challenge to the budget, the Tribunal could simply have found that the budget was reasonable without further enquiry but consideration was given to the individual sums and Ms Eves and Mr. Fleck were asked about any figures which the Tribunal considered required explanation. In some cases this was because the figure appeared to be on the high side but in other cases it was because the figure appeared to be lower than would be required to manage the subject property. In each case answers were provided which satisfied the Tribunal that the budget figures were reasonable.

15. The Applicant included in the form sent to the Tribunal an application on behalf of the Respondents for an order under Section 20C of the Landlord and Tenant Act 1985. The effect of such an order if granted would be that all or any of the costs incurred or to be incurred by the Applicant in connection with these proceedings could not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.

16. We find that it is just and equitable in the circumstances not to make such an order because the Applicant was justified in bringing these proceedings to clarify the position and the Respondents did not comply with the directions.

### **Appeals**

17. 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.

18. 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.

19. 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.

20. 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.

Judge R. Norman (Chairman)