FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/42UD/LSC/2016/0060**
County Court claim no	:	**B32YP189**
Property	:	13 Ganymede Close, Ipswich IP1 5AE
Applicant	:	Blakenham Park (Ipswich) Management Co Ltd
Representative	:	Lorraine Taylor (Director), Daniel Wilson & Derek Wilson (Temples)
Respondent	:	Ms Shannan Hill [in person]
Type of Application	:	Determination of service charges for the accounting period 2015–16
Tribunal Members	:	G K Sinclair, R Thomas MRICS & D S Reeve MVO MBE
Date and venue of Hearing	:	16th November 2016 at Ipswich Magistrates Court
Date of Decision	:	12th December 2016

DECISION

Summary

1. This application is brought by Temples, the managing agents instructed formally by and on behalf of Blakenham Park (Ipswich) Management Company Limited, the management company identified as a party to the leases in a development known as Blakenham Park. This mixed estate of leasehold flats and townhouses was constructed just over 10 years ago just off the Sproughton Road in Ipswich, between the railway line and Bramford Road. Currently the townhouses have been sold freehold, some of the blocks of flats have been transferred to registered social landlords and the rest have been let on long leases – some to buy to let landlords and others owner occupiers. Despite the mixed tenure the whole estate is managed by temples on behalf of the management company, save that some of the roads and public spaces have been adopted by the local highways authority.

2. The principal issues in this case are:
   a. Whether the sums claimed by way of service charge are correct, and that the work has actually been done to reasonable standard; and
   b. Whether the means of calculating the service charge, which bears no relation to the method set out in the lease, is enforceable when all of the lessees and incoming lessees were advised of the adoption of this method by resolution of the management company's directors in July 2010 and have not hitherto complained.

3. For the reasons which follow the tribunal determines that:
   a. The amounts claimed by way of service charge are entirely reasonable and, although an amended schedule provided to the respondent lessee was not as enlightening as it could have been, the sums demanded are correct;
   b. There is no justification under the lease for claiming a £50 administration charge; and
   c. While the correct approach was, and still should be, to apply for variation of the material parts of all relevant leases the respondent lessee, who was provided with material information before she purchased, has not sought to challenge the revised method of calculating the service charge. In the circumstances the tribunal was prepared to uphold it.

Relevant lease provisions

4. The sample lease provided bears the date 26th October 2005, identifies Crest Nicholson (Eastern) Ltd as lessor, Blakenham Park (Ipswich) Management Company Ltd as the management company and Christine Louise Davy as lessee. The lease identifies the property as plot one, Blakenham Park, and describes the demised premises as being a one bed flat on the ground floor together with a parking space. The rent is described as £200 per annum, doubling on each 25th anniversary of the term commencement date for the first hundred years and thereafter fixed at £1600 per annum for the remainder of the 999 year term.

5. Page 2 of the Particulars identifies the premium, the declared value, and then sets out four different proportions (Parts A to D) by which the service charge is calculated. The proportions are:
   a. Part A – 8.84% (all apartment charge)
   b. Part B – 0.00% (block costs)
   c. Part C – 5.23% (car park costs)
   d. Part D – 4.18% (estate charge)

   However these proportions may be subject to variation from time to time in accordance with the provisions of clause 7.11 of the lease.

6. Clause 1 provides for various definitions, including that of "the maintenance expenses", which means "the moneys actually expended or reserved for periodical expenditure by or on behalf of the management company or the lessor at all times during the term in carrying out the obligations specified in the sixth schedule." The "lessee's proportion" is defined as "the proportion of the maintenance expenses payable by the lessee in accordance with the provisions of the seventh schedule".

7. Clause 3 (Demise) provides that the rent shall be paid by equal half yearly payments in advance on the first day of September and first day of March in each year and that the lessee must also pay on demand by way of further or additional rent the lessee's proportion. The lessee's covenants are referred to in clause 4 and the eighth schedule, including the obligation to pay to the lessor or its authorised agent the rent reserved and also to pay to the management company or its authorised agent the lessee's proportion at the times and in the manner provided.

8. The management company's covenants appear in clause 6 and the 10th schedule, but the maintenance expenses are set out in the sixth schedule. These are set out in five categories, namely Part A through to Part E. Part E is a catchall part which includes "costs applicable to any or all of the previous parts of this schedule". These include the costs of insuring any risks for which the management company may be liable for material and third-party liability, the cost of employing staff for the upkeep of the maintained property, paying all rates taxes, etc., the costs of abating any nuisance, generally managing and administering the maintained property and enforcing or attempting to enforce the observance of the covenants on the part of any transferee or lessee of any of the dwellings. By paragraph 12 the management company is empowered to provide a reserve fund or funds for items of future expenditure.

9. The seventh schedule deals with the lessee's proportion of maintenance expenses, its calculation, certification, challenge, adjustment and manner and timing of payment.

10. Following dissatisfaction with the quality of management provided by the first set of managing agents employed by the management company, Countrywide, a meeting of the management company was held at Ipswich on Tuesday 6th July 2010. The notes or minutes of the meeting begin by stating as follows:

    > Crest Nicholson and Countrywide have held several meetings. JD noted that he was dissatisfied with the handling of the service charge invoices.
    >
    > It was agreed that the resolutions from the Residents Association meeting

need to be actioned including the appointment of Temples on the basis of the substantial reduction in administration costs by running the site as one development as opposed to a series of sub developments and the re-apportioning of the service charge in line with their Budget proposals and costs that are attributed to property types as opposed to how Countrywide are based on property location and view of the common open spaces as opposed to the direct benefit relating cost centres.

11. On the same date a "service charge calculation resolution" was approved by the board. It reads as follows:

> Each property should be individually assessed as to the elements of service charge the property benefits from. The service charge to be calculated in 2 schedules:
>
> Schedule 1 Contribution from all Properties – apportioned between 399 properties[1]
>
> Schedule 2 Contribution from all Leasehold Flats – apportioned between 117 flats.

12. In justifying and arguing the efficacy of the above the applicant sought, at the hearing, to rely upon clause 7.11 as a means of recalculating the service charge proportions. The paragraph reads as follows:

> If at any time (including retrospectively) it should become necessary or equitable to do so the Management Company (acting reasonably) shall recalculate on an equitable basis the percentage figure(s) comprised in the Lessee's Proportion appropriate to all the Properties comprising the Development or Building or Block (as the case may be) and shall then notify lessees accordingly and in such case as from the date specified in the said notice the Lessee's Proportion so recalculated and notified to the Lessee in respect of the Demised Premises shall be substituted for that set out in the Definitions and Paragraph 1.1 of the seventh schedule and the Lessee's Proportion so recalculated in respect of the said Properties shall be notified by the Management Company to the lessees thereof and shall be substituted for those set out in their leases.

Material statutory provisions

13. Section 18 of the Landlord and Tenant Act 1985 defines the expression "service charge", for the tribunal's purposes, 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...

14. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :

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.

15. The tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of

[1] This should probably refer to 390 units, not 399

payment are set out in section 27A of the Landlord and Tenant Act 1985. The first step in finding answers to these questions is for the tribunal to consider the exact wording of the relevant provisions in the lease. If the lease does not say that the cost of an item may be recovered then usually the tribunal need go no further. The statutory provisions in the 1985 Act, there to ameliorate the full rigour of the lease, need not then come into play.

16. By section 21 of the same Act a tenant may require the landlord in writing to supply him with a written summary of the costs incurred over the previous twelve months. The landlord shall comply with the request within one month of the request or within six months of the end of the period referred to in subsection (1)(a) or (b) whichever is the later.[2] The section sets out the requirements of a summary of costs to be supplied under section 21, and if the relevant costs are payable by the tenants of more than four dwellings the summary must be certified by a "qualified accountant".[3]

Inspection, hearing and evidence

17. The tribunal inspected the respondent's block and surrounding area on the morning of the hearing. Present were representatives of Temples and a director of the management company who was also a lessee on the development. Neither the respondent nor her boyfriend were present during the inspection. Members of the tribunal parked in some parking bays facing a large square laid to grass in front of the material block. Although complaints had from time to time been made about the management company's maintenance of the square the tribunal was informed that this area had in fact been adopted by Ipswich Borough Council along with the adjoining road through the estate and some other public areas.

18. The tribunal viewed the exterior of the respondent's block and the entrance lobby and stairs. Floors were covered with a plain robust carpet, the walls were painted and corridors adequately lit. Outside, the gardens were mainly laid to grass and edged with a shrub border intended as a hedge to keep members of the public to the paths and to catch litter which regularly blows about. Each flat has one parking space but this in many cases has proved to be inadequate, cars have blocked driveways and resulted in damage to the edges of the grassed public areas. By the entrance to the car park to this block is what is intended as a drain to catch surface run-off. The top of the drain comprises a series of sections of metal grill, resulting in some damage and curling of the edges due to the weight of vehicular traffic driving over them. As if this were not bad enough, the tribunal was told that this drain did not connect at either end to the main surface drainage system. This was a design error or unwise shortcut which the builders had been allowed to get away with and had not been picked up before completion and handover.

19. At the hearing the respondent's main challenges were to the quality of the work charged for, whether some of it (particularly gardening) had actually been done, and the reliability of the costs schedule which had been served upon her. A copy of this schedule, described as the budget for the period 1 September 2015 to 31

[2] See s.21(4). Subsection (1)(a) refers to cases – as here – where the accounts are made up for periods of 12 months, the request being limited to the last such period ending not later than the date of the request

[3] See s.21(6)

August 2016, can be found at page 54 in the bundle and comprises four columns. Column 1 lists the various charge items under the headings "all properties" and "flat only". Column 2 lists the global totals, column 3 records the subtotal per unit for each section and column 4 the cost per property per annum for each item charged for.

20. Thus, under "all properties", the first item is Litter Picking at a global charge of £3 650 and a cost per property per annum of £9.36. The total of the items listed under "all properties" is £79,900 and a unit total of £200.25. In the items grouped under "flats only" the global total is £73 700 and the property total is £629.91, making a total claimed for the property under both groups of £830.17. However, if one totals the figures in the fourth and final column those shown under "all properties" in fact total £204.81 instead of £200.25 but those under "flats only" total £188.97 instead of the claimed £629.91.

21. When Ms Hill challenged Temples about why she was being asked to pay £830.17 instead of an apparent total of £390.83 the response was to send her a revised schedule appearing at page 55 in the bundle. The only difference is that the final column, showing the item cost per property per annum for each cost item, had been deleted. No explanation was given to her for the apparent discrepancy of around £440.

22. The applicant did better at the hearing by explaining that the "all properties" part should be divided by 390 units while the "flats only" part should be divided by 117. Unfortunately, when a junior member of staff had been asked to calculate the schedule on page 54 he had divided everything by 390 in the final cost per property per annum column, with the result that the final column added up to much less than the actual cost as per the proportions approved by the board of the management company in July 2010 (as noted in paragraph 11 above).

23. On the subject of specific items of work the respondent challenged the claimed cost of gardening, arguing that she had not seen it being done. This was strongly disputed by Mrs Taylor, a director of the management company and resident on the estate, who said that the gardeners came every Monday and Thursday and she saw and spoke to them when walking her dogs. The applicant stated that the cost of grass cutting was apportioned between the flats and townhouses as per the plan appearing at page 38 in the bundle, but noting that the square immediately in front of the respondent's block and some others are not included because they have been adopted and are maintained to a different standard by contractors employed by Ipswich Borough Council. Mr Wilson stated that the contractors used by Temples do a twice yearly weed and feed on the lawns. The lawns have borders which the firm is trying to make dense rather than pretty, to keep away litter blowing across from other parts of the development.

24. To the respondent the cost of external decoration of the block seemed rather high until it was explained that the global cost was in fact for painting the external doors on 12 blocks. Upon hearing this she and her boyfriend seemed to accept that it was reasonable.

25. Under "all properties" on page 54 the £10 000 shown under "miscellaneous" was said to be a figure which, on past experience, was for unforeseen items, goods

which had been abandoned in flats, items placed in the wrong bins (for which Ipswich Borough Council imposed a charge), and removing abandoned cars, etc. under "flats only" the final but unexplained item shown as £2 500 should have referred to "inflationary increase" as in the top section of the schedule.

26. Mr Wilson said that Temples had inherited unpaid communal estate electricity bills since construction and had also to unpick water meter problems, etc. -- all as part of their standard fee. He commented that it was not bad as an estate, with decoration kept in good condition and a handyman on site who touches up.

27. Asked about the method of calculating the service charge under two schedules rather than the five Parts mentioned in the sixth schedule, Mr Wilson explained that his firm had originally come on board to simplify and reduce the cost of the management scheme devised at the outset by Countrywide. It had been agreed to by the management company, which was resident-controlled, in 2010. This new charging structure was explained by letter to all existing lessees and owners and a pack was created and given to estate agents to show potential purchasers, including the respondent when she bought the flat she had until then occupied as the lessee's tenant until 2015. A copy was not in the bundle but, as this was not a matter of contention, Mr Wilson was asked to forward to the tribunal of the information pack provided to estate agents, as he claimed.

28. A small bundle was duly provided to the tribunal. It includes a copy of the responses to standard pack enquiries sent to Ms Hill's solicitor during the sale negotiations, the last three years' accounts, the budget for 2014–15, details of the buildings insurance and the Minutes of the directors' meeting and resolution dated 6th July 2010. In addition was a document described as a "Case study – Blakenham Park (Ipswich)". It sets the scene for the resolution passed in 2010 and, as it was sent to everyone concerned, or might become concerned as a new lessee or freehold owner of a townhouse, it deserves quoting in full:

> A modern development of in excess of 400 properties a mixture two/three bedroom freehold houses, one/two bedroom leasehold mews houses over small garage blocks and twelve leasehold blocks one/two bedroom flats.
>
> Temples were approached to present to the residents Association along with three other estate management companies on how the residents could have a more hands on approach to manage the development and remove the original management firm.
>
> During Temples detailed presentation Temples were the only firm to identify the inaccuracies of the service charge breakdown, the true financial position of the management companies service charge funds and reserves.
>
> The previous managing agent had effectively overdrawn the service charge account by in excess of £70,000 and ceased to provide basic cleaning, building maintenance and grounds maintenance services while charging for them. They had also allowed the sale of properties to complete with significant service charge arrears.
>
> Temples were appointed by the members and board unanimously and set

about re-appraising each property on the site and calculating a bespoke service charge budget, resolving the arrears situation and financial "mess". Subsequently the services, maintenance and refurbishment of garden/ grounds and communal areas was completed. All this has been achieved with a tight handling finances and a costed service charge budget.

29. Asked about the claim for a £50 administration fee appearing on the County Court claim form Mr Wilson was forced to concede that the lease contains no provision for the charging of administration fees such as that and therefore he had no right to impose that.

Discussion and findings

30. The tribunal's overall impression of the service charge account for this year in question is that the overall figure is not bad, the management fee of £84.62 per unit is low, but that the broken guttering mentioned during the hearing (and which was not repaired for some time in order that the number of jobs can be done at once) was caused by vacuum cleaning from ground level, followed by repairs using a cherry picker. Another method of cleaning the gutters is likely to cause less damage.

31. Bearing in mind that it inspected the premises in mid-November, the tribunal considers that the quality of the gardening is perfectly reasonable and the fabric of the buildings is maintained in good order. Once an explanation was given for the cost of external decoration (the external doors for 12 buildings) the respondent of her boyfriend had no further objection.

32. The tribunal therefore considers that the overall cost and quality of the work undertaken by Temples on behalf of the management company is good and not subject to proper challenge.

33. The real issue here is whether the apportionment of the cost on a very different basis from that set out in the sixth schedule to the lease is acceptable and the sums calculated in that manner recoverable. The proper way of dealing with this in 2010, bearing in mind that the residents association (*quaere* the management company) approved the appointment of Temples as managing agent and their proposed method of simplifying the service charge accounts, would have been to get all the lessees and the owners of the freehold townhouses to agree variations to their respective long leases and freehold rent charges.

34. In the covering letter dated 18 November 2016 accompanying the above bundle the management company suggested at point 4 :

> We believe that the Lease allows the apportionment of Service Charge to be varied as detailed at page 112 of the pack and provided for on page 118 of the Lease in Clause 7.11.

Having considered the wording of clause 7.11 and the seventh schedule the tribunal must respectfully disagree. Clause 7.11 merely allows for the proportions applicable to the various Parts to be adjusted if equity demands it (for example if the number of dwellings on the estate were to increase), but not the radical redefinition or abolition of the charging criteria in Parts A to E as defined in the schedule.

35. The tribunal accepts that in the absence of unanimity there is statutory power under the Landlord and Tenant Act 1987 to vary long leases only. With this number of leases that could be a lengthy and expensive legal process. There is no similar provision concerning the freehold rent charges. Agreement would also have to be reached with the social landlords for their respective blocks.

36. While variation of the service charge provisions in these long leases is the most desirable outcome, as purchasers' solicitors would be able to look at the leases and understand what their clients were taking on, the tribunal recognises that for six years this method of calculating the service charge has been unchallenged; not even by the current respondent. Ms Hill is the only lessee who is party to this dispute and therefore the tribunal's decision binds her and no other.

37. Given the information provided to her or her conveyancers before she purchased the flat, had the management company sought to apply the means of calculating the service charge set out in the seventh schedule then Ms Hill could rightly have argued common law estoppel by representation as a defence to a service charge demand were it to have been calculated on that basis. As she has not sought to challenge the new "all properties" and "all flats" basis of calculation the tribunal is prepared to uphold it.

38. The tribunal therefore advises the court that the claim should be upheld save for the £50 administration charge, for which there is no lawful basis.

Dated 12th December 2016

Graham Sinclair

Tribunal Judge

ANNEXE - 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 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 sought by the party making the application.

3. 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.

4. 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 it being outwith the time limit.