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

Case Reference : **MAN/30UM/LSC/2016/0006**

Property : **10, College Lane, Rawtenstall, Rossendale,
Lancashire BB4 7LA**

Applicant : **Complete Property Management Company
Limited**

Respondent : **Mr & Mrs N Forrest**

**Type of
Application** : **Landlord and Tenant Act 1985, Section 27A
and Section 20C**

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

Date of Decision : **11th November 2016**

Order

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Application and background

- 1 The Applicants is the management company having responsibility for the provision of services to the development at College Lane, Rawtenstall, Lancashire. The Respondents are the leasehold owners of the house at no 10, College Lane. A copy of the lease for the property has been provided to the Tribunal. Its principal terms are that it is granted at a premium and a rent of £1000.00 a year for 999 years from 1st January 2005.
- 2 Upon the development are a number of other houses let on the same basis as that let to the Respondents. These properties are set in the grounds of a former school, some being new build and some being adaptations of former school buildings. There is also the former main school buildings, now converted into self-contained flats. In total there are 7 houses and 10 flats.
- 3 The Respondents have for some time disputed the amount of the service charge they have been expected to pay to the Applicant, alleging that services are included that they have no responsibility for under the terms of the lease. This application has been made to resolve that issue.
- 4 The lease contains provisions relating to the service charges at several points in the leases, often referring back to definitions contained in the introduction to the lease:
 - Clause 5.1 contains the covenant by the tenants to pay the “estate charge”, which is the “estate charge proportion” of the “estate service costs”
 - The “estate charge proportion”, so far as the Respondents are concerned is 5.55% of the “estate service costs”
 - The “estate service costs” are the costs and expenses incurred by the management company in supplying the “estate services” described in the fifth schedule of the lease.
 - That Schedule sets out those services as being
 - 1 To maintain and repair and where the Estate Management Company acting reasonably considers it necessary to renew and replace:
 - 1.1 The access way
 - 1.2 All such service installations in under and upon the estate and such other service installations which serve the estate which serve more than one of the flats or other tenants of the estate.
 - 1.3 The Estate Common Areas
 - 2 To maintain and where necessary renew all boundary walls and fences of the estate

- 3 (actually numbered 4 in the lease, there being no number 3) to keep the estate common areas clean tidy and reasonably well lit so far as practicable.
- The “Estate Common Areas” means the access road and the pathway adjacent thereto which are not included in this lease and which are intended for common use by the tenants and occupiers of the estate.

Submissions and Evidence

- 5 Following directions provided by a Deputy Regional Judge of the Tribunal the Respondents provided a Statement of Case which set out their position, firstly in relation to the principle that their obligation was only to contribute to those costs to which related to those matters within the “estate services” and secondly, a partly completed schedule outlining what they considered the appropriate costs to which they were required to contribute.
- 6 Thereafter the Applicant provided its further observations on the position, together with the accounts pertaining to the service charge for the last completed financial year, that being the only one disputed for the purposes of determining the fundamental issue as to what could be legitimately charged for.
- 7 Both parties put forward in their submissions extensive arguments to support their respective views, all of which were considered by the Tribunal in the course of its deliberations. The two most pertinent were in relation to what rights the Respondents had to use of land forming part of the development but not contained within their demise of 10, College Lane and what rights were granted to the Respondents by the lease in relation to other land.
- 8 The Applicants based its position upon what might be regarded as the current situation in practice whereby the Respondents could enjoy access to the extensive landscaping and parking areas of the development as being within the “estate common areas” and which accorded with the descriptions of those areas in other leases of other properties within the development.
- 9 The Applicants preferred the more literal interpretation of the wordings within their lease as to what they were required to contribute to and were entitled to enjoy in accordance with the definitions provided in paragraph 4, above.

The Law

- 10 The law relating to jurisdiction in relation to service charges falling within Section 18 Landlord and Tenant Act 1985 is found in Section 19 of the Act 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
- 11 Further section 27A Landlord and Tenant Act 1985 provides:
 - (1) An application may be made to a leasehold valuation 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.

Inspection

- 12 During the morning of 11th November 2016 the Tribunal inspected the development at College Lane in the company of Mr Forrest and representatives of the Applicant. It noted the position of No 10 within the development and relative to the parking and landscaped areas and the block of apartments occupying the main building of the former school.

Tribunal's conclusions and reasons

- 13 The Tribunal is very quickly drawn to the good intentions of the Applicants in the standard of maintenance applied to the landscaped areas and parking places, together with its view that these were open for use by the Respondents under the terms of the lease.

14 The Tribunal was however concerned to note the following:

- The lease is quite explicit as to the chain of obligations created by the lease so that the respondents pay their proportion of the cost of providing what is meant by the “estate Services” to the appropriate parts of the estate set out in paragraph 1 of the fifth Schedule: they are the access way, the service installations in, on, or under the estate and the “estate common areas” as defined in the paragraph.
- It accepts that this is somewhat different from how those matters are similarly described in other leases (a copy of that relating to plot 9 being supplied to the Tribunal). It is not possible to directly cross-relate the provisions with ease but it is clear that in the copy provided the common areas are more extensive and incorporate the car parking area and landscaped areas.
- The lease for plot 9, however, also incorporates an entitlement to the right to use those common areas. The Respondents lease does not. Their lease provides in paragraph 1 of the second schedule for a vehicular and pedestrian right over the access areas and a pedestrian right only over the “estate common areas” (as defined, see paragraph 4, above, again).
- This grant is entirely consistent with the obligation imposed as to what services the Respondents are required to pay for, rather than any wider definition of the common areas upon which the Applicant seeks to rely.

15 In the absence of some clear evidence that some other meaning was intended by the parties the words used in Schedule 1 to define the Respondents’ obligations they must be given their ordinary and everyday meaning. In this case it is the restrictive meaning submitted by the Respondents and not that sought by the Applicants. Indeed it is quite clear that the Respondents’ enjoyment of their property is perfectly satisfactory, notwithstanding that restrictive interpretation and it is in no way possible to deduce that the parties, at the inception of the lease intended anything different.

Reasonableness of charges

16 The inevitable consequence of that decision as to the extent of the Respondents’ liability is that it is necessary to determine what service costs are attributable to the obligations that the respondents’ are bound to meet.

17 The Tribunal was assisted in this regard by the provision of separate halves of a “Scott Schedule”, each prepared by one of the parties. And submitted with their observations upon the substantive issue of the extent of the Respondents’ obligation. The table below sets out the view of the Tribunal as to the amounts that are attributable to them. The Tribunal was not required to make decisions under all heads of the charge, agreement having been reached in relation to a number of them.

Management fees	£600.00	Should be attributable to the houses. The Experience of the Tribunal is that houses are Less costly to manage than apartments
Gate maintenance	£437.00	Agreed
Electrical works	£ 97.00	Agreed
Lamps	£183.00	Indication from the Applicants suggest this Is appropriately charged
Key entry/fobs	£ 34.00	Agreed
Electricity	£450.00	A charge of £3.75 per week per house is reasonable
Gardening etc	£NIL	Not applicable in view of the decision above
Garden improvements	£NIL	“ “ “ “ “ “ “ “
Grit	£136.00	Agreed
Building insurance	£ 40.00	Public liability for houses. This is likely to be less than for the flats
Directors’ etc insurance	£152.00	Attributable to all properties. The Tribunal considers any separation of policies would be costly
Accountancy	£375.00	Agreed
Administration fees	£NIL	Agreed
Sundry	£NIL	Agreed
Surveys	£NIL	Agreed

CCTV maintenance	£360.00	This exercised the minds of the tribunal members but they are satisfied that an element of security to the limited common areas is provided at relatively low cost.
Bank charges	£120.00	The tribunal considers fees are inevitable for this sort of banking account