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

Case Reference : **CAM/26UH/LSC/2016/0073**

Property : **1-26 Kilby Road, Stevenage SG1 2LT**

Applicants : **Mr Jason Anderson & Ms Daniella
Apostol Flat 10;
And the 19 Long Lessees of flats in 1-26
Kilby Road listed in the Appendix to the
directions dated 11 November 2016**

Representative : **Mr Jason Anderson**

Respondent : **Genesis Housing Association Limited**

Representative : **Mr Jack Parker Counsel**

Type of Application : **Section 27A Landlord and Tenant Act
1985
Determination of service charges
payable**

Tribunal Members : **Judge John Hewitt
Ms Marina Krisko BSc (EstMan) FRICS**

**Date and venue of
hearing** : **6 February 2017
Stevenage Magistrates Court**

Date of Decision : **16 February 2017**

DECISION

Decisions of the tribunal

1. The tribunal determines that:
 - 1.1 The service charges payable by the applicants to the respondent in respect of the service charge year 1 April 2015 to 31 March 2016 amount to £781.82 as shown in column 3 of Appendix A attached to this decision. The items of expenditure which were in dispute are shown highlighted in green;
 - 1.2 No determination is made in respect of the budget for the year 2016/17;
 - 1.3 By consent an order shall be made pursuant to section 20C Landlord and Tenant Act 1985 to the effect that none of the costs incurred by the respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the applicants; and
 - 1.4 The respondent shall reimburse the applicants the sum of £300 being the fees paid by the applicants to the tribunal in respect of these proceedings.
2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

BACKGROUND

1. On 25 October 2016, the tribunal received an application pursuant to s27A of the Act. The applicants also made an application under s20C of the Act in respect of any costs that the respondent may incur in connection with these proceedings.
2. The subject Property is a development of flats known as 1-26 Kilby Road, Stevenage SG1 2LT
3. The applicants are a number of current tenants of flats within the development and the respondent is the current landlord of the development.
4. The leases impose an obligation on the landlord to insure the development, to carry out repairs and redecorations and to provide other services as set out in the leases.
5. The leases impose an obligation on the tenants to contribute to the costs and expenses incurred by the landlord in carrying out its obligations.

There is a provision for the tenants to pay monthly sums on account of the liability which arises.

The lease terms were not in dispute

6. The service charge year is 1 April to 31 March following. The applicants have raised issues about the reasonableness of some of the costs incurred in the year 2015/16.

A majority of long lessees have exercised the right to manage and it was not in dispute that the right to manage took effect on 17 January 2017.

The applicants also raised issues as to the reasonableness of the budget in respect of the period commencing 1 April 2016. Of course, the actual service charges payable in respect of the period 1 April 2016 to 16 January 2017 can only be determined after 16 January 2017 when the respondent prepares a final account of the costs which it claims to have expended over that period. Only when a final account has been prepared can the reasonableness of the costs actually incurred be determined.

The budget only drives the amount of the monthly payments on account to be made by the tenants. All of those payments for period to 16 January 2017 have now (or should have now) been paid. In these circumstances, it is something of a sterile exercise to spend time on the budget. The better course is for the respondent to produce the account for the period end and if any of the applicants challenge actual expenditure claimed they can make an application pursuant to section 27A of the Act.

7. At the hearing the applicants were represented by Mr Jason Anderson, a joint lessee of flat 10 and the respondent was represented by Mr Jack Parker of counsel.

The tribunal identified with the parties the following issues to be determined:-

- 7.1 The service charges payable for the year 2015/16, as regards grounds maintenance, communal cleaning and management;
 - 7.2 The application pursuant to s20C of the Act in relation to any costs which the respondent may incur in connection with these proceedings; and
 - 7.3 An application for reimbursement of fees and costs.
8. In early 2016 several of the applicants led by Mr Anderson made an application to tribunal for the determination of service charges payable in respect of the year 2014/15 – ref CAM/26UH/LSC/2016/0002. The hearing of that application took place on 11 April 2016. The main focus of that hearing concerned the costs of grounds maintenance, cleaning of the communal parts of the building and the cost of management. The same issues were the focus of the hearing before us on 6 February 2017

which in many respects, was a re-run of hearing last year. Two matters arise from this. The first is that the two members of the 2017 tribunal were also members of the 2016 tribunal. The inspection carried out on 11 April 2016 was very close to the end of the service charge year 2015/16 now in issue and thus it stood us in good stead for the current dispute. Secondly, the decision in the 2016 hearing should be read in conjunction with this decision, in which we do not propose to go over familiar ground not in dispute.

The expenditure in dispute

Grounds maintenance

9. The contractor remains E & P Cleaning Contractors. The amount paid to this contractor was said to be £17,822.58 for grounds maintenance + £144.00 for a supply of rock salt. In addition, tree works were carried out by CSG Ushers at a cost of £2,310.00. Thus, the total claimed under this head of expenditure was £20,276.58.
10. During the course of our inspection on 6 February 2017 a number of issues about the quality of the beds, shrubs and related communal areas on the estate were drawn to our attention. Some were the same as had been drawn to our attention on 11 April 2016.
11. Mr Anderson had commissioned a report prepared by Mr Jonathan Compston of Ridyards Limited. Mr Compston readily acknowledged he had no academic qualifications but what he did have was experience of running a landscaping company since 1994. Mr Anderson had made a written application for permission to call Mr Compston to give oral evidence as if he were an expert witness. That was opposed by the respondent.
12. In the course of case management and without having had the benefit of seeing the report, it was directed that the report be disclosed to the respondent, that the respondent be at liberty to serve a reply to it and that the question whether Mr Compston be called to give oral evidence would be dealt with at the commencement of the hearing when both parties would have the opportunity to make submissions.

The report is at [415] and the respondent's reply to it is at [446]. The reply drew attention to rule 19 governing expert evidence and to a number of deficiencies with the report. Although that reply was served some while ago none of the deficiencies had been addressed by the time of the hearing.

13. Having heard rival submissions, we decided to grant permission for Mr Compston to give evidence on one point and that was the approximate hourly rate paid to a grounds maintenance firm over the year in question. He said that was about £25.
14. Mr Compston accepted that he had not been to the development during the year with which we are concerned; his first visit was not until

October 2016. He also accepted that he was not given a clear explanation as to the extent or boundaries of the estate and he did not have any information as to the nature and extent of grounds maintenance works actually carried out by the contractor. He had simply been told that the grounds maintenance costs were about £20,000.

15. Mr Parker said that his principal submission would be that the tribunal should not take Mr Compston's evidence into account. In the circumstances, Mr Parker was reluctant to cross-examine Mr Compston to any extent. He did ask some questions though. Mr Compston accepted that it was clear from his cursory glance that some grounds maintenance work had been carried out over the year in issue.
16. One of the matters which Mr Anderson drew to attention was a number of tree stakes or supports which were now redundant as the trees had matured and were no longer in need of such support. Mr Compston was of the view that such supports should be removed when no longer required, mostly for aesthetic reasons. It was his practice to remove them when no longer needed. However, it was not part of the applicants' case that the contractor had charged for the removal of the stakes but had failed to do so. Rather it was an example of the respondent not giving clear guidance or instruction to the contractor and what was required to maintain the grounds in the desired good order.
17. At [264] is the respondent's generic list of tasks that might be carried out under this head. It is rather bland. We were not provided with a copy of the contract entered into by the respondent with the contractor.
18. Oral evidence was given by Ms Grace Brady, whose witness statement is at [84]. Ms Brady is employed by the respondent as Neighbourhood Assistant for the Hertfordshire area. In brief Ms Brady told us that it was her responsibility to visit the development on a monthly basis to ensure that services are delivered in a consistent, reliable and responsive manner, more specifically to ensure that estate and block service contracts are delivered to agreed standards which meet customer's expectations and that any faults or issues are rectified quickly. It was one of Ms Brady's tasks to grade the service delivered as gold, silver or bronze.
19. As regards grounds maintenance Ms Brady said it was her understanding that in the months March to November the contractors visit fortnightly and in the months December to February they visit once per month. It was also her understanding that they were on site for about 4 or 5 hours with a squad of about 4 persons, sometimes more. It was left to the service provider to decide exactly what tasks would be carried out on each visit. To some extent that was weather dependant and what was found on arrival on site. For example, if fly tipping or extensive littering had taken place that might be given a

priority, in autumn leaf clearance might feature highly on the 'To Do' list.

20. Ms Brady also explained that if a particular complaint had been made about some aspect of the service the contractor might be directed to focus on that.
21. Ms Brady prepared monthly visit reports. Samples are at Vol 2 [1-150]. Some reports are illustrated with photographs taken on her mobile phone and some photographs are annotated with text. The impression given is that a photograph included within the report was taken on the occasion of the visit to which the report relates. Mr Anderson has gone through the reports very carefully and has ascertained that some photographs are duplicated re-used on multiple occasions – some examples:

The same photograph is seen on pages Vol 2 [3, 4, 6 and 12]

The same photograph is seen on pages Vol 2 [4, 14, 23, 36, 91, 104 and 117]

The same photograph is seen on pages Vol 2 [23, 36, 64, 91, 92, 104, 117 and 129]

Ms Brady explained that if on a visit the condition or look of something was the same as shown in a photograph already on file she would recycle the 'old' photograph and re-use it rather than take a fresh photograph. Ms Brady also explained that sometimes the same photograph was used but she changed the text of an annotation as may be appropriate.

Ms Brady was adamant that she was thorough on her monthly visits, signed in and inspected all parts of the estate and the buildings. Ms Brady denied the suggestion put to her by Mr Anderson that on occasions she merely signed in and then left fairly promptly.

Ms Brady accepted that during the year in question there were occasions when the service delivered by the contractors was not up to scratch.

22. Mr Ware also gave oral evidence. His witness statement is at [90]. Mr Ware is now employed by the respondent as an Area Manager. In 2015/16 he was Business Manager for Hertfordshire and North London. He had about 2,500 properties under his control. Each development is assigned a Neighbourhood Manager and a Neighbourhood Assistant who were members of his team and who were line managed by him. In this role, Mr Ware was kept informed of issues arising on the developments for which he was responsible.
23. Mr Ware acknowledged that in the year in issue there were gaps in the service delivered by the contractor. He explained that generally the

process was that where issues arose they would be taken up informally in the first instance at a low level by Ms Brady contacting a contractors' supervisor. If no progress was made the complaint would escalate to manager level and if need be then to a higher level. Arising from Ms Brady's reports he would get involved if and when needed. Rebates from a contractor would be sought as a last resort in an extreme case but those tended to be rare. He explained that the problem with Kilby Road was the frequency of visits – there was some incremental improvement noted for a while and then something might slip back a bit. Mr Ware speculated that the contractor was aware that the contract was due to come up for renewal shortly and the prospects of him retaining it were slim, so that there was limited incentive for step change improvement.

24. Mr Ware explained the scoring system used by Ms Brady and that generally Hertfordshire scored well with mostly golds and silvers but that Kilby Road did not score quite so well.
25. Mr Anderson called Mrs Catherine Marshall to give evidence. Her witness statement is at [139]. Mrs Marshall explained that in June 2016 she made a complaint to Ms Brady about leaves being blown under bushes and being left to rot and rose bushes being hacked down and the general poor standard of grounds maintenance. Mrs Marshall was unhappy with the response she received from Mrs Lynch whom she felt was unfriendly and also that the contractors just continued as before.

Discussion and conclusion.

26. Again, we were faced with little real or helpful evidence as to the service actually provided against which we might measure the reasonableness of the cost incurred. Mr Parker invited us to conclude on the balance of probabilities that the costs were reasonable for the service provided. He reminded us that Mr Compston accepted a service was provided and no evidence of a cheaper service was adduced. Mr Anderson invited us to conclude that on balance the service quality delivered was poor and the price was wholly unreasonable. He was also highly critical of the monthly reports provided by Ms Brady. He submitted that the reports and her evidence was vague and unreliable, that she evaded questions and had been inconsiderate to residents.
27. We had no doubt that Mr Compston is an experienced contractor, perhaps with more focus on commercial or retail parks, and that he was an honest witness. But, his evidence was of limited value to us for several reasons, mostly due to the lack of detail as to what work was actually carried out and the number of contractors' employees on site and the number of hours worked. Also, Mr Compston, like the rest of us, did not know how much money had been spent on new planting.
28. We found Mrs Marshall to be an honest witness upon whom we could rely with some confidence. But, we do have to bear in the mind that the first time she had cause to complain was after the end of the year with which we are concerned, but there comes a time when a person

concludes, enough is enough. Further, Mrs Marshall's evidence struck a chord with what we were able to see on site during our two inspections.

29. We reject Mr Anderson's submission that Ms Brady was an unreliable witness who was seeking to deceive us. In the event, it was not helpful that Ms Brady recycled photographs to illustrate or make a point. We find that was naïve more than anything else. A photograph used to depict a well-trimmed hedge noted on the occasion of a visit ought to have been taken on that visit, rather than deploy photograph of the hedge taken some months previously.
30. There is no doubt that the estate is large, with quite extensive grassed areas, shrubs, trees and roadways and parking or communal areas. It would be quite easy to spend a considerable amount of money keeping it in a tip top condition with manicured lawns and beds.
31. We have to take into account context. The estate comprises about 200 dwellings, mostly flats, with a few houses, which are let on a variety of tenures including weekly or monthly tenancies and with some flats being let on long leases on a shared ownership basis. The development was undertaken by Paddington Churches Housing Association in the mid 2000's with a view to providing a range of affordable housing.
32. In the 2016 decision (paragraph 23) the tribunal expressed doubts about the quality of grounds maintenance service delivered and concluded that in 2014/15 it would not have been reasonable to incur a cost of more than £15,000 for the service actually delivered. From what we could see the quality of the service had not improved much, if at all, in 2015/16. Mr Ware accepted that there were service delivery issues. Thus, we conclude that in 2015/16 it would not have been reasonable for the respondent to have incurred a cost of more than £15,000. Mr Anderson was critical of the cost of the tree works at £2,310, but no alternative cost has been put forward. We have the invoice from a reputable and known contractor. We also had limited evidence as to what tree works were actually carried out. Whilst the cost seems to us to be on the high side we cannot say that it is way outside the bracket that would justify us to conclude it was unreasonable in amount. We thus allow it. We also allow the cost of the rock salt which was not challenged.
33. Accordingly, we determine the costs of grounds maintenance to which the applicants must contribute to be £17,454.00 made up as to:

Contract works	£15,000.00
Rock salt	£ 144.00
Tree works	<u>£ 2,310.00</u>
	£17,454.00

Common parts cleaning

34. Again, much the same arguments as before. Also, much the same as to Ms Brady's monthly reports and the illustrative photographs.

35. The cleaning contractor is again E & P Cleaning Contractors.
36. Mr Anderson did not call any evidence to support the assertions made in the applicants' statement of case and no evidence of alternative quotes or pricing was put forward.
37. On the occasion of our inspection our attention was drawn to a number of features, some of which were directed at cleaning, such as an issue about the cleaning of the lift, but most were directed at alleged poor management, such as a number of ceiling lights being out, defects to the fire alarm system and a possible defect to the lightening conductor.
38. The cost of internal common parts cleaning was claimed at £5,886.70. Again, there is only a generic specification before us. Visits were weekly.
39. In 2014/15 the weekly cost was £78.40 per visit which equated to £4,076.80. The 2016 tribunal determined that a reasonable cost would not have exceeded £2,600.00.
40. There was no evidence before us to justify a cost of over £5,800 for 2015/16 with no change in contractor or generic specification.

It appears from the witness statement of Ms Jesani [80] that the claim is made up as:

1 invoice at	£283.14 = £ 283.14	(Routine cleaning)
11 invoices at	£288.80= £3,176.80	(Routine cleaning)
31.03.15	£475.54= £ 475.54	(Deep clean)
30.09.15	£485.05= £ 485.05	(Deep clean)
31.03.16	£485.05= £ 485.05	(Deep clean)
Sub-total	£4,905.58	
VAT @ 20%	<u>£ 981.11</u>	
Total	£5,886.69	

41. We cannot see that there was much, if any, change or improvement in the quality of the service provided overall in 2015/16 compared with the previous year. Allowing a modest adjustment, we determine that it was not reasonable for the respondent to have incurred a cost of more than £3,000 in 2015/16. We therefore determine the cost to which the applicant's must contribute to be £3,000.00.

Management fees

42. For the year 2014/15 the respondent claimed £220 which the 2016 tribunal reduced to £170 to reflect the quality of management provided.
43. In the budget for 2015/16 the respondent claimed £220 but in the final accounts claimed £275.

44. This increase was the result of a review explained by Ms Jasani in her witness statement at [82]. In essence a new system was adopted priced on the basis of the number of services delivered to each estate/development. How that works where there are estate charges and block charges we are not sure. It was said that between 10-13 services were delivered and the fee for that bracket was put at £275. No evidence as to what the 10-13 services were and how that justified a management charge of £275 was put before us.
45. It was clear to us that irrespective of the number of services provided the quality of management may have improved a little but continued to be below par. It was not good or responsive and requests for meetings with lessees fell on deaf ears.
46. We can but take a broad brush approach and we find that a reasonable unit fee for management should not exceed £200 for 2015/16.

Costs and fees

47. Mr Anderson made an application for costs and fees. It is obvious that Mr Anderson has spent a good deal of time and the applicants a fair amount of money in making and pursuing these proceedings.
48. In a discussion about rule 13(1)(b) and the implications following the *Willow Court Management* decision Mr Anderson realistically acknowledged that he would be unable to demonstrate that the respondent had acted unreasonably in defending or conducting these proceedings. Most of his complaints about conduct related to management shortcomings and events which occurred before the commencement of these proceedings. An example of that was that despite the clear findings of the 2016 tribunal as to the proper way to calculate the contribution to water costs the respondent maintained a claim to £252.53 in the final accounts for 2015/16 only to reduce it to the correct £179.91 after the issue of the proceedings.
49. Mr Anderson maintained his claim to reimbursement of fees of £300. The application was opposed by Mr Parker.
50. We prefer the submissions of Mr Anderson. The applicants have succeeded on some, but not all of their claims, and we find that in all of the circumstances the applicants had little alternative but to make and pursue their application. It is fair and just that the respondent reimburse the fees paid.

Section 20C application

51. Mr Parker realistically conceded that in the light of the 2016 tribunal decision on the construction of the lease, which the respondent chose not to appeal, he could not oppose the making of an order and he did not oppose it being made by consent. We have accordingly made an order.

Judge John Hewitt
16 February 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.

	1	2	3
Expense	2015/16	2015/16	2015/16
	Actual as claimed	As determined by	Amount payable
	or adjusted by R	the tribunal	each applicant
	prior to the		
	hearing		
Estate Costs (0.52%)			
Bulky Refuse	£ 6,307.23		32.80
Grounds Mtce	£ 20,276.58	£ 17,454.00	£ 90.76
Communal Repairs	£ 208.96	£ 208.96	£ 1.09
Sewage pumps	£ 3,215.44	£ 3,215.44	£ 16.72
Block Costs (3.85%)			
Internal cleaning	£ 5,886.70	£ 3,000.00	£ 115.50
Door entry phone	£ 600.53		
Fire Safety	£ 207.91	£ 207.91	£ 8.00
Electricity	-£ 1,236.68	-£ 1,236.68	-£ 47.56
Lift Mtce	£ 876.88	£ 876.73	£ 33.73
Maintenance	£ 25.06	£ 25.06	£ 0.96
Electrical repairs	£ 70.64	£ 70.64	£ 2.72
TV & Aerial	£ 63.78	£ 63.78	£ 2.45
Unit Costs			
Water consumption	179.91	£ 179.91	£ 179.91
Buildings Insurance	£ 112.64	£ 112.64	£ 112.64
Audit fee	£ 9.00	£ 9.00	£ 9.00
Management fee	£ 275.00	£ 200.00	£ 200.00
Total			£ 781.82
			Contentious Items