



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

Case Reference	:	CAM/33UF/LVM/2016/0003
Property	:	Trafalgar Court, 42 Cromer Road, Mundesley, Norfolk NR11 8DB
Applicant Managers	:	Bruce Roderick Maunder Taylor & Michael Harrison Maunder Taylor, Brosnan House, 175 Darkes Lane, Potters Bar, Hertfordshire EN6 1BW
Respondents	1	The leaseholders recorded on the sheet attached to the application form
	2	The freeholder, London Land Securities Limited, of 70 Tudor Road, Hampton, Middlesex TW12 2NF
Type of Application	:	Application for the variation of an order appointing a manager [LTA 1987, s.24(9)]
Tribunal Members	:	G K Sinclair & G F Smith MRICS FAAV REV
Date of paper Determination	:	31 st March 2017
Date of Decision	:	7 th April 2017

DECISION FOLLOWING PAPER DETERMINATION

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1. For the reasons set out below the tribunal determines that the application appears partly misconceived. The basic fee which the applicant's want to be "reviewable annually by the managing agent" is much lower than authorised by the last variation to the management order agreed by the tribunal on 23rd June 2015. With just over one year of the management term left to run the tribunal would either decide an actual figure now or leave matters for consideration when or if the current management order is reconsidered in 2018.

2. The tribunal prefers to leave the current rate of charge in place for one more year, but on the basis of the evidence produced authorises the charging of all thirty-two flats pro rata as from the budget due to be prepared in July 2017, i.e. for the final year of this order. The amount recoverable by the local managing agent for the year 2017/2018 is therefore £6120 plus VAT.
3. For the avoidance of doubt the hourly rates chargeable by the managers remain as per the order of June 2015.

Discussion

4. By this application the joint Managers seek a variation of paragraph 4.1 of the Schedule to the tribunal's Management Order dated 6th August 2012, namely :
Save for any major works contracts or long term agreements in respect of which statutory consultation is required, fees for typical management services shall be a basic fee of £175 per flat p.a. plus VAT (with in this case only no fee for the unbuilt flats). "Typical" services included within this fixed fee are defined as ...
5. By its decision dated 23rd June 2015¹ the tribunal varied this to read :
Save for any major works contracts or long term agreements in respect of which statutory consultation is required, the management fee paid to Norwich Residential Management be increased by 2% from £4 500 plus VAT per year to £4 590 plus VAT (with in this case only no fee for the unbuilt flats). "Typical" services included within this fixed fee are defined as ...
6. The Managers note that the 8 unbuilt flats are nearing completion and ask that the restriction on charging fees in respect of them be deleted and paragraph 4.1 be further varied to permit Norwich Residential Management, as the Managers' local managing agents, to adjust their fees on an annual basis without requiring prior authorisation by the tribunal.
7. In response the application London Land Securities filed its statement of case under cover of a letter dated 2nd February 2017 and received in the office on 3rd February plus accompanying documents including past invoices from Norwich Residential Management, the managers' local managing agent, and also from Maunder Taylor. In turn Michael Maunder Taylor, on behalf of both managers, filed a brief statement in reply dated 17th February 2017. The tribunal has also had sight of the management order made in 2012 and the decision varying it dated 23rd June 2015.
8. Given that the variations permitted by the tribunal in June 2015 included increasing the rate of remuneration of the local managing agent to £4590 plus VAT per annum, divisible between the twenty-four completed flats only, it is surprising that the variation sought identifies the headline rate which the local managing agent is permitted to increase at its discretion as £175 per unit plus VAT. The rate approved in June 2015 is the equivalent of £192 per unit plus VAT.
9. There is only one year of this order left to run. If minded to vary the current rate the tribunal would fix the new rate itself rather than leave it to the unfettered discretion of the local agent. The letter accompanying the application talks in terms of annual increases of between 1% and 3%, but any increase from the

¹ Case Ref CAM/33UF/LVM/2015/0001

starting figure of £175 would need to be much higher than that in order to beat the existing figure of £192. With only one year left to run the tribunal determines that any increase or mechanism for periodic increases is best left until the terms of any new management order fall to be negotiated. This part of the application is therefore refused.

10. The local managing agent was entitled to charge a unit cost in respect of the flats that were already complete, so as to encourage the freeholder to proceed more urgently with its development of the remaining eight flats, which had been left as a building site since well before the tribunal first became involved with this case in 2001. The evidence that curtains are at the windows of these eight flats and beds have been installed strongly suggests that, if not already complete, they are nearing completion. In the tribunal's determination there seems to be no legitimate reason why they should not be complete before the beginning of the next service charge year in August. For the purposes of next year's budget it is therefore appropriate that the managing agent's unit charge should from this August onwards be levied against all thirty-two flats. The net result is that, with the unit charge remaining the same at £192 plus VAT, the amount recoverable by the managing agent should increase from £4590 plus VAT to £6120 plus VAT.
11. Although not formally part of the application, the respondent has in its statement of case and documents attached drawn the tribunal's attention to certain matters which need to be corrected. They are twofold.
12. First, the bundle before the tribunal includes invoices from Norwich Residential Management which seek to impose a late payment fee of £25. There is no provision in the management order, essentially a modest variation of a template provided to the tribunal by Mr Bruce Maunder Taylor in 2012, for imposing such a charge. Paragraph 1.10 in the Schedule of Rights, Functions and Services does provide that :

In the event that the Tenants shall be in breach of the covenants in the Leases and/or their obligations as provided in this Management Order, the Managers shall be entitled to recover from any such Tenant on a full indemnity basis any costs, fees, charges, expenses and/or disbursements reasonably incurred or occasioned by them in the appointment of any solicitors, counsel, surveyors or any other professional reasonably retained by the Managers for the purposes of enforcing such covenants or obligations, whether or not the Managers bring any proceedings in court or before any tribunal.

PROVIDED THAT in default of recovery of the same from the particular Tenant in breach of the covenants in the Leases and/or the obligations as provided in this Management Order, the Managers shall be entitled to recover the same through the service charges.

A £25 late payment fee does not appear to fall within that provision.
13. Secondly, some invoices from Maunder Taylor show that while the earlier ones show that Michael Maunder Taylor's time has been charged out at the rate of £150 per hour approved by the tribunal in June 2015 some of the more recent ones show that this has increased, without any authorisation by the tribunal, to £158. For the avoidance of doubt the rate should remain at £150 until next year, when an increase to a more appropriate rate can be considered and account taken

not only of inflation but also Michael Maunder Taylor's now greater experience in residential property management.

Dated 7th April 2017

Graham Sinclair

Graham Sinclair
Tribunal Judge