



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

Case Reference : **MAN/00BY/LSC/2015/0014**

Property : **7 Layton Way, Manor Court, Liverpool, L34
5NR**

Applicants : **(1) David Mercer (2) Nicola Mercer**

Respondent : **Manor Court (Prescot) Management Co. Ltd**

Representative : **Residential Management Group**

Type of Application : **Section 27A(1) Landlord and Tenant Act 1985**

Tribunal Members : **Mr P A Barber LLB, LLM
Mr K Kasambara MRICS**

Date of Hearing : **23 June 2015**

Date of Decision : **23 June 2015**

DECISION

DECISION

The “gated service charge” is not payable in addition to the Estate Charge but must be charged as part of the Estate Charge in accordance with the Reasons set out below.

REASONS

The Application

1. The Application is made under section 27A of the Landlord and Tenant Act 1985 in relation to the reasonableness and payability of a “gated service charge” levied by Manor Court (Prescot) Management Company Limited acting through its agent, RMG. The application relates to charges for the service for the years 2012, 2013, 2014 and the current year.

Inspection

2. On the 23 June 2015 the Tribunal inspected the area. We saw a new residential development of mixed flats and houses which is not yet fully completed (about 2 plots remaining). Next to the Applicant’s house is a private car park for a number of cars. The Applicant has 2 allocated parking spaces which form part of the demise. There is an electric gate powered by the communal electricity system preventing access to the car park. The gate works by remote control.

The Hearing

3. The Applicant represented himself and Mr Rose of RMG represented the Respondent. Both parties had produced documents and detailed submissions setting out their position.
4. Briefly, the Applicant contends that there is no provision in his lease for him to be charged a “gated service charge” and that the charge is not payable. The Respondents set out in their submission that the lease is drafted in sufficiently wide terms so that they are entitled to charge a “gated service charge” in addition to the estate charge.
5. The parties are not, in our view, far apart in relation to the interpretation of the lease. The Applicant accepts that he is liable to pay for the costs of maintaining the gate but that it should not be a separate charge to the “Estate Charge”. It appears that the Respondents in their submission also agree that it should not be a separate charge and that the confusion may have arisen by their accounting preference to separate out various “elements” of the estate charge and call them different things.
6. Where the parties’ positions fall apart is in relation to how the payment for the costs of the electric gate should be split up.

Findings of fact and Reasons

7. The lease provides the answer to this conundrum. What follows is our judgment in how the lease should be interpreted. The Respondents will now have to recalculate the estate charge currently payable by the Applicant (if any) but ironically it may

result in the same charge, dependent upon the way in which the other leases are drafted.

8. Clause 2 of the lease defines the “estate charge” by reference (so far as is relevant) to “the proportion applicable to the Property of the sums spent or to be spent by the Management Company on the matters specified in the Fourth schedule...”.
9. The Fourth schedule sets out the covenants by the Management Company in relation to the Open Space Areas and Accessways. In relation to the Accessways the covenant is to “keep the Accessways and the area shown edged blue on Plan 1 (if any) in a neat and tidy condition and to maintain cleanse repair renew and replace all trees plants play equipment streetlights lamps and columns serving the Accessways whether grassed or hard core and to cut and maintain the same regularly as necessary.” Accessways is defined in clause 2 of the body of the definitions as any “pedestrian ways forecourts or drives....coloured yellow or hatched black...on Plan 1...”. Both parties agree that this covenant is wide enough to include the electric gate and we accept that position.
10. It was not clear from the documents where the area edged blue is and which plan is Plan 1, but again this will not matter to the outcome of this Application. We have a copy of what we are told is Plan 1 for another lease, (page 63 of the Respondent’s bundle) which seems to show the car park as the area edged in blue. We were told, however, that all of the leases were the same for the leasehold house occupiers and that the areas edged in blue represent all of the car parking areas.
11. It follows, therefore that the maintenance of the electric gate forms part of the estate charge and contractually is only payable as part of the estate charge not in addition to the estate charge.
12. It also follows from the wording of the lease that only those leaseholders whose leases identify an area edged blue on Plan 1 or identify the areas as “Accessways” in their leases are liable to pay the costs of maintaining the electric gate as part of their estate charge. The Respondents will have to check the position carefully in order to properly determine the liabilities of the various leaseholders for payment of the estate charge for the various properties.
13. Accordingly, the Respondent must properly determine in relation to each leaseholder whether their lease obliges them to pay the estate charge as defined in their respective schedule 4 definition as including the costs of maintaining the electric gate and charge that to all those leaseholders as a “proportion applicable to the Property”. What this means is that the whole amount must be divided between the applicable leaseholders proportionately. It may be, for example, that the proportion applicable to the Applicant’s property may be a higher proportion if he has 2 allocated spaces as opposed to only one (or none) but what is important is that the Respondent cannot take parts of the estate charge and allocate this to only some leaseholders outside the terms of the lease.
14. We were referred to *Barney & Morrell v Eastern Green Limited* [2013] UKUT 0331. Our decision is in accordance with the aspects of that judgment impinging upon the issues in this application.

15. Given our views on this matter and the fact that the Respondent will now be obliged to recalculate the estate charge in line with this decision the Parties are at liberty to return any issues in relation to that to this Tribunal.
16. We decline to make an Order under section 20c. The Respondent is a resident owned management company with, presumably, one share per leaseholder. In the circumstances of this Application and although given the outcome, it would be inequitable to prevent the Respondent from recovering its reasonable costs as part of the Estate Charge under Part II of Schedule 5 to the Lease.