

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL**

Property: 34 The Maltings, Kennet Road, Newbury, Berkshire RG14 5HZ

Applicant: Mrs BE Keates

**Respondent
Landlord:** James Butcher Housing Association Limited, 39 High Street, Theale,
Reading Buckinghamshire RG7 5AH

Case number: CAM/00MB/LSC/2006/0004

Application: Application for a determination of the liability to pay
Service charges including the reasonableness of service charge
(Section 27A Landlord and Tenant Act 1985)

An application for the limitation of service charge arising from the
landlord's costs of proceedings (Section 20C Landlord and Tenant Act
1985)

Tribunal: Mr JR Morris (Chairman)
Mrs H Bowers MRICS
Mr L Jacobs FRICS

Date of Hearing: 19th April 2006

Attending Hearing:

Applicants: Mrs BE Keats

Respondents: Mr R Gordon James, Interim Leasehold Services Manager

STATEMENT OF REASONS

The Application

1. The Applicant applied to the Tribunal on the 21st January 2006 under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to whether costs incurred by way of service charge for the year ending 31st December 2005 and the estimated expenditure for the extended fifteen month year ending 31st March 2007 are reasonable and payable. The extended year is to accommodate a change in the financial year.

The Law

2. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 18

- (1) In the following provisions of this Act "service charge" means 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, improvement or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
- (3) for this purpose
- (a) costs includes overheads and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

Section 19

- (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; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.

Description of the Property, Building and Estate

- 3. The Property is a purpose built one bedroom second floor flat in the Building, which is a three-storey block of 40 sheltered flats, constructed of brick under a pitched tile roof constructed in the 1980s. The Estate comprises the Building, a car park and a secluded garden laid to lawn with shrubs and flower beds.

Inspection

- 4. The Tribunal inspected the Estate in the presence of the Tenant, the Landlord's Representative and Mrs Ann Newman the Scheme Manager.
- 5. Externally the Building is in good order and well maintained. The windows have secondary glazing except in the common parts. Some flats have French doors, which do not have secondary double glazing although some tenants have had it fitted. There is a door entry system into a carpeted common hall. There is a lift and three communal staircases. There is a small common room furnished with chairs and tables off which is a kitchen. There is a laundry room with coin-operated machines (£0.60 per wash for washing and £0.20 per use for drying). There is also a guest room with en suite wash hand basin and w.c. There is a bin room for waste disposal. A fire alarm, appropriate appliances and emergency lighting serve the Building and there is an emergency call system of personal pendants and pull cords to enable tenants to summon the Scheme Manager or central out of hour assistance. The Scheme manager is available 8.30 a.m. to 5.00 p.m. Monday to Friday. The town centre is within walking distance of the Building.

The Lease

- 6. The Lease requires tenants to be of a minimum age, which is the statutory retirement age. The Lease is for a term of 99 years. The Estate is defined as being the Residential Estate known as the Maltings and the Common Facilities are defined as the entrance halls, bin stores, laundry rooms, drives, parking areas, lounges, toilet facilities, paths, gardens and other areas used in common by the residents of the Estate.

7. The Tenant under Clauses 1 and 2 covenants to pay a Service Charge, which shall represent a fair proportion attributable to the Demised Premises of the cost of the matters referred to in the Second Schedule.

8. The Landlord under Clause 5 covenants:

5 (1) "to keep in good and substantial repair the structure and exterior of the Estate of which the Demised Premises forms part ... and the Common Facilities and to keep the Common Facilities properly lighted and cleaned so far as the Landlord shall consider it appropriate to do so and properly to tend and keep clean and tidy and generally maintain the grounds of the Estate"

5 (3) "to maintain the services of a resident manager (either in person to by the provision of a remote control alarm system which ever may be considered by the Landlord in its absolute discretion appropriate....)"

5 (4) To insure and keep insured at their full rebuilding or replacement cost all buildings upon the Estate including the Demised Premises ... against loss or damage by fire and aircraft and such other risks as the Landlord may in its absolute discretion consider desirable in an insurance office of repute....

9 Under the Second Schedule

1. The amount of the Service Charge for each year shall be certified by the Landlord's Accountants as soon as reasonably possible after the end of the Landlord's financial year

2. The said certificate shall contain a summary of the Landlord's expenses in the preceding year and the Service Charge shall make reasonable provision for the estimated expenditure by the Landlord in the current year in complying with all its obligations herein and without prejudice to the generality of the foregoing: -

- (i) The cost of the Resident Manager's Salary and emoluments and provision of accommodation for the Resident Manager and all other costs in connection with the provision of the Resident Manager's service or remote control alarm system
- (ii) The cost and expenses of periodic or cyclical maintenance decoration and repair of the structure exterior Common Facilities and all other parts of the Estate not demised or usually demised to any resident thereof save it shall be in the Landlord's absolute discretion as to what works shall fall within the definition of periodic or cyclical maintenance decoration and repair
- (iii) The costs of lighting cleaning and (if appropriate) heating the Common Facilities
- (iv) The rates taxes and other outgoings (including insurance or risks other than structure and contents) payable upon the Estate not separately occupied by the Tenant
- (v) The expense of Insurance of the Estate
- (vi) A charge in respect of management of the Estate which shall not exceed the sheltered management allowance permitted from time to time by the Department of Transport Local Government and the Regions or such of the body who shall take over the responsibility for fixing the same

(3) In the event that the actual expenditure by the Landlord upon such costs and expenses in any financial year shall exceed or fall short of the estimated expenditure

for that year then the deficit or shortfall (as the case may be shall be carried forward to the following financial year and shall be taken in account when settling the Service Charge for that year

(4) The Service charge shall be paid by the Tenant by calendar monthly instalments by Bankers Standing Order or Direct Debit as the Landlord shall require

10. Under Clause 7(c) it is agreed and declared:

“That following the determination of this Lease ...the Landlord shall pay on the Repayment Date...to the Tenant ...the Repayment Sum which shall be the Sale Price received by the Landlord from the new Tenant of the Demised Premises from which shall be deducted:

- (i) Such sum as may be due and owing ...in respect of arrears of the Service Charge
- (ii) Such sum as the landlord may reasonably estimate to be required per annum shall expend to put the premises in good repair and condition...
- (iii) A sum equal to two and one half per cent of the Sale Price
- (iv) A sum equal to one half percent of the Sale price for each year or part of a year
 - a) from the commencement of the term to the date of determination thereof or
 - b) [where there has been a payment on the assignment of a Lease under Clause 4(10)(ii)] “from the date of such payment on the previous assignment to the date of determination of this Lease”
- (v) The cost of transferring the repayment Sum to the recipient thereof ...

Matters in Dispute

11. The Applicant stated in her Application that:

- The service charge increase by the Respondent is excessive.
- The Sinking Fund established from the proceeds of sale of flats should be used to pay the cyclical maintenance but the Landlord is now trying to change this and require the Tenants to pay a contribution to this item in the Service Charge although there is a healthy balance in the sinking fund.

Hearing

Preliminary Matters

12. The Hearing took place on the 19th April 2006 and was attended by the Applicant and the Respondent's Representative.

13. A number of matters were mentioned in the written Statements of Case which the Tribunal addressed at the commencement of the Hearing to assist the parties in the presentation of their case as follows:

- a) It appeared from the Application that all items of the Service Charge were in issue. It was therefore directed that a full hearing on the 'standard track' should take place to ensure the Applicant, who represented herself, and the Respondent had sufficient opportunity to prepare and present their respective cases to the Tribunal.

b) Merely because there is a substantial increase in a Service Charge does not mean that it is automatically unreasonable. However it is an indication that the Service Charge may be unreasonable when looked at in detail.

c) The Tribunal cannot take into account the personal circumstances of residents or that the accommodation is intended for older or vulnerable residents except that the needs of such residents may be reflected in the services provided and paid for through the Service Charge, for example the services of a resident manager and emergency call system.

d) The financial situation of the Landlord and its intention to sell its freehold interest in the Estate or the fact that the Landlord is a charity are not significant matters of themselves.

Applicant's Case

14. The Applicant in a written Statement of Case stated that the Service Charge produced by the Respondent for the year ending 31st December 2004 showed an increase of 6% on the previous year but that the Service Charge produced for the year ending 31st December 2005 showed an increase of 34.5% on the previous year.
15. Originally the Tenants had been requested to pay an increase of 65% for the year ending 31st December 2005. This had been because the Landlord had included an amount for cyclical maintenance of £10,000 in the first version of the Service Charge Account. This amount should have been paid out of the Sinking Fund. Under the Lease when a tenant leaves the Estate and the tenant's flat is sold to another tenant, 0.5% of the sale price for each year that the outgoing tenant was resident is recoverable by the Landlord and in the past this amount has always been paid into the Sinking Fund. This fund has always been used to pay the cost of all the maintenance although the Applicant noted in her written statement that no mention is made of any Sinking Fund in the Lease. The Landlord is now trying to change this and introduce a charge for this work into the Service Charge and yet the Sinking Fund is quite healthy and stood at £74,000 in July 2005. The Tenants objected to this increase and the item of cyclical maintenance was withdrawn.
16. The Applicant referred to correspondence between herself and the Respondent dated 4th July 2005 in which she pointed out that the maintenance costs had been met from the Sinking Fund and questioned why it was now found necessary to charge for cyclical maintenance in the Service Charge. The Respondent answered this letter on the 11th July stating in effect that the Sinking Fund was now to be used for the cost of major works only and that the cost of day today maintenance was to be a Service Charge item.
17. The Applicant then referred to the meeting that had been held on the 1st December 2005 at which the matter of the maintenance charge and Sinking Fund were discussed (a copy of the minutes was provided). It was stated at the meeting on behalf of the Landlords that it was necessary to make a charge for day to day maintenance rather than continue to take this from the Sinking Fund as there was no control over the amount of the 0.5% from sales into the Sinking Fund. It was stated that the windows would need to be replaced in 8 or 9 years and this could cost in the region of £150,000

and the Sinking Fund should be used for this purpose. Nevertheless it was conceded that the proposed charge of £10,000 was excessive and that this would not be charged for 2005 but that the cost of day to day maintenance would be charged to the Service Charge in future years. It was further conceded at the meeting that the estimate of costs was high overall but it was requested that tenants pay the amount stated and any excess would be reflected in the next account.

18. The Applicant said that she considered the Respondents were unjustified in altering the accounting procedure by which the Service Charge had been calculated over the previous 18 years without consultation with or prior notification to the Tenants. She said that Mr Colin Wethrop, the Respondent's Regional Housing Manager had insisted that 75% of residents had agreed to the changes however the Applicant said that many could not cope with the worry of prolonged dispute and would therefore agree to pay any increase.
19. The Applicant stated that she did not question the individual items of the Service Charge. The issue was the change in use of the Sinking Fund from being used to cover all maintenance charges to other purposes. The Applicant said that she was under the impression that the Tribunal had a much wider jurisdiction and that on the present Application it was able to vary the Service Charge provisions to ensure that the 0.5% would be expressly set aside in a Sinking Fund for the sole benefit of the leaseholders of the Maltings.

Respondent's Case

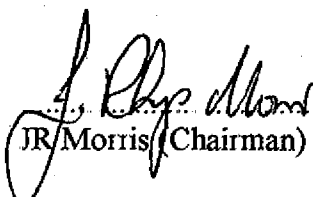
20. The Respondent's Representative confirmed that the Respondent is a Registered Social Landlord and was currently intending to transfer its interest in the Estate and the other leasehold properties in its portfolio to a similar organisation. In written representations he stated that under the Lease the Landlord is able to deduct 2.5% from the sale price of a flat but only if the Landlord has arranged the sale and this amount covers the Landlord's sale costs. The amount of 0.5% of the sale price for each year the outgoing tenant has been in residence has been put into a sinking fund for the benefit of the leaseholders of the Estate. However this is not a requirement of the Lease.
21. The comparatively high increase in the Service Charge for the period ending 31st March 2006 is because an estimate for day to day repairs was included in the Service Charge as required by the Lease and these costs were no longer being paid from the Sinking Fund. It is agreed that the estimate was too high but a repayment to the tenants will correct this when the accounts are recalculated for the next year.
22. The Maltings were a relatively modern and well maintained property. However other properties in the Respondent's leasehold portfolio were not so well maintained and some flats did not sell as well as those at the Maltings. The respondent was not required to use the funds raised by the deduction of the 0.5% of the proceeds of sale for each year of a tenant's residence exclusively for the benefit of the leaseholders of the Maltings. The Respondent was entitled to use the funds raised for any of its portfolio of leasehold properties. Whereas it would consider an application to vary the Lease nevertheless it would not wish to reduce the attractiveness of the Property portfolio to a prospective purchaser by doing so.

Tribunal's Decision

23. The Tribunal noted that although from the Application Form it appeared that all items of the Service Charge were in issue, in the event the only issue in relation to the Service Charge was the Sinking Fund. It was further noted that the Applicant was under the impression that the Tribunal had a much wider jurisdiction and erroneously believed that on the present Application it was able to vary the Service Charge provisions to ensure that the 0.5% from sales would be expressly set aside in a Sinking Fund for the sole benefit of the leaseholders of the Maltings.
24. The Tribunal found that under the Lease the Respondent was not obliged to pay the 0.5% from sales into a Sinking Fund for the sole benefit of the Leaseholders but appeared to have unrestricted use of the funds subject to its current status as a Registered Social Landlord.
25. The Tribunal found that the Applicant would have to make a separate application with a view to varying the Lease and the Tribunal recommended that the Applicant seek advice prior to embarking on that course of action.
26. The Tribunal considered the Service Charge accounts provided for year ending 31st December 2005 and the estimated Service Charge for year ending 31st March 2007. It was noted that the charge of £10,000 for cyclical maintenance had been withdrawn from the account year ending 31st December 2005 and that an amount of £3,500 for day to day repairs and maintenance had been substituted in the estimate for year ending 31st March 2007. It was noted that the estimates were likely to produce a surplus which would be refunded to the tenants.
27. No evidence was adduced that any particular item of the Service Charge accounts was unreasonable and in the absence of evidence to the contrary the Tribunal determined that the items were reasonable.

Section 20C Application

28. It was agreed that the Lease did not contain a provision, which allowed the costs in connection with these proceedings to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant of the property.


JR/Morris (Chairman)

Caution: For the purpose of reaching a decision the Committee inspected the subject property. Such inspection is not a structural survey. Any comments about the condition of the property in this Statement of Reasons are made as a result of casual observation rather than a detailed inspection and must not be relied upon as a guide to the structural condition of the property.