



**Residential  
Property**  
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Landlord and Tenant Act 1985: Section 27(A)**

**Case Reference: CH1/OOMS/LSC/2008/0009**

**Applicants:** D.C.Wheeler (Flat 1)  
N.C.Tapper (Flat 2)  
Miss K. Farrer(Flat 3)

**Respondents:** Remus Management

**Premises:** Flats 1 – 3, 21 West Road, Southampton SO19 9AH

**Date of Application:** 28 January 2008.

**Date of Hearing** 30 April 2008

**Appearances for Applicants:** Ms Stock (Phoenix Leaseholders Association)  
Mr Wheeler  
Ms Farrer

**Appearances for Respondents** Mr Stonard, Ms Wood and Ms Barnett (Remus  
Management)

**Leasehold Valuation Tribunal:** Mrs B. M. Hindley LL.B  
Mr D. Lintott FRICS  
Mrs J. E. S. Herrington

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 to determine whether the service charge budget for the year ending 31 December 2008 is reasonable.
2. The statutory provisions relevant to this application are set out in Sections 18 and 19 of the Act.
3. Section 18 provides that the expression 'service charge' for these purposes 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, improvements or insurance or the landlord's costs of management. And
  - (b) the whole or part of which varies or may vary according to relevant costs.'

'Relevant costs' are the costs or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable, and the expression 'costs' includes overheads.
  4. Section 19 provides that '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.'
  5. The specimen counter part lease provided, dated 27 February 1987, showed that the flats were leased for 1000 years from 20 March 1853, with ground rent of £50 payable in two equal instalments on 1 January and 1 July.
  6. Under Clause 6 of the lease the landlord covenants (subject to contribution and payment) to 'maintain and keep in good and substantial repair and condition:-
    - (a) The main structure of the Building including its foundations walls roof gutters and rainwater pipes and chimneys
    - (b) All such sewers pipes drains wire ducts and conduits in under and upon the property known as 21 West Road aforesaid as are enjoyed or used by the tenant in common with the owner or owners of the flat or flats in the Building
    - (c) The main entrances passages landings staircases and any other parts of the Building and the Grounds enjoyed or used by the tenant in common with the owners and occupiers of the other flats in the Building and will subject to clause 6(8) hereof keep any grassed or garden areas within the grounds in a neat and tidy condition.
  7. Under Clause 5 (33) the tenant covenants to pay a one quarter share of the following costs charges and expenses:-
    - (a) All costs and expenses incurred by the Landlord for the purpose of complying or in connection with the fulfilment of its obligations under Clause 6
    - (b) All rates taxes and outgoings (if any) payable by the landlord in respect of the Building and the grounds or any part of them
    - (c) The costs of management of the Building and the grounds including all surveyors costs and legal costs and disbursements
    - (d) The remuneration and other expenses as may be appropriate of a cleaner and gardener to clean and look after generally the parts of the

Building not forming part of the Flat or flats belonging to other tenants in the Building and the Grounds

- (e) The cost and expenses of preparing and supplying a statement of the accounts of income and expenditure
- (f) The cost of enforcing or attempting to enforce against any lessee tenant or occupier of any of the flats in the Building the performance or observation of any covenant contained therein
- (g) The costs of or in connection with the lighting of entrance halls landings stairways and passages of the Building not forming part of the flats therein

#### The Hearing

8. The applicants, all of whom had purchased their flats in 2007, expressed concern that the budget included higher estimates than in previous years for general repairs and maintenance and gardening and also included an estimated cost for planned major works and resulting supervision in the sum of £12,850
9. Ms Barnett, on behalf of the respondents, explained that whilst the lease made no mention of specific dates for the payment of permitted expenditure under the landlord's covenants, for many years these had been paid in advance. Leaseholders were supplied with an annual service charge budget in advance of the start of the service charge year (1 January – 31 December). Billings were quarterly with the option of monthly standing order payments.
10. Ms Barnett said that the major works were outstanding since 2003 when estimates had been first obtained. Formal consultation had been carried out for the second time on 4 December 2007 and on 24 January 2008 leaseholders had been informed that it was proposed to accept the lowest tender and these costs were included in the revised budget which had been issued on 15 January 2008.
11. Questioned by the Tribunal Ms Barnett produced the draft service charge accounts for the year ending 2007. These showed that the actual costs for that year had exceeded the budgeted costs in respect of the gardening and the general repairs and maintenance.
12. All of the applicants accepted that the major works, and in particular the roof works, were necessary but they were concerned at their cost and the additional on cost proposed by the respondents for supervision. In their opinion the works could be done by other contractors at a cheaper cost. They also hoped that the works could be phased so that the costs could be spread over a longer period.
13. Ms Barnett expressed her willingness even now to obtain further estimates from contractors suggested by the applicants but she emphasised that any contractor would need to satisfy certain criteria in terms of insurance, competence and financial viability. She was also not averse to the works being phased although she pointed out that, realistically, because of necessary scaffolding, the roof works and external redecoration would need to be done together, which left only the internal refurbishment to be done separately. She considered it possible that this internal work might be done by the lessees

themselves although she pointed out that such work would, of course, then require a final inspection (at a cost to the lessees) on behalf of the freeholder.

### The Inspection


14. Prior to the hearing the Tribunal inspected the subject property accompanied by Ms Stock, Mr Stonard and Ms Wood. They found it to be a large semi detached house converted into three flats accessed via the original front door with a separate maisonette at the side of the building accessed via its own front door. The house was separated from the pavement by only a very narrow strip of garden but at the side there was quite a wide area of garden. This side area could also be accessed from the rear since the wall separating it and a rear wide pathway had been removed to allow vehicular access. A car, which appeared not to have moved for a long time, was parked in the garden.
15. The brick walls of the house had all been painted and this was peeling. Whilst some windows had been replaced others were in poor condition. It was apparent that redecoration was overdue.
16. Inside the common parts consisted only of a very narrow hallway, staircase and tiny landing. The decorations were shabby and the carpet thin.

### The Determination

17. The Tribunal understood the applicants' concern at the significant increase in cost to them which the budget represented. However, the lease contained no provision for a sinking fund and the Tribunal considered that the costs of £850 included in the budget for repairs and maintenance were reasonable in the light of the actual costs of £658 in 2007. They also considered that the budgeted costs of gardening, in the sum of £240, were reasonable in the light of the actual costs in 2007 of £451.
18. With regard to the proposed major works the Tribunal noted that the respondents had obtained four estimates and had chosen the cheapest of them. The estimates, exclusive of VAT, ranged from £9,028.90p to the most expensive at £15,108.00p which represented a big increase from the third estimate at £11,900. With the resulting supervision added the cost increased to £12,817.96.
19. The Court of Appeal laid down in *Finchbourne v. Rodrigues* {1976}3AER581 that it could not have been intended for a landlord to have an unfettered discretion to adopt the highest possible standards of maintenance and to charge the tenant accordingly. However, in the light of the estimates obtained and their own knowledge and experience of work of this nature in the area, the Tribunal was satisfied that the costs were reasonable and that the additional costs of required supervision were also reasonable.
20. The Tribunal was pleased that the respondents had expressed their willingness still to seek other estimates and also to delay, or leave to the applicants, the refurbishment of the internal common parts. They hoped that now that the

applicants and respondents had met a better line of communication had been established so that the works could be effected to the mutual satisfaction of both parties.

21. Accordingly, the Tribunal determines the service charge budget for the year ending 2008, comprising estimated annual recurring expenditure of £2,653 and planned maintenance of £12,850, to be reasonable and, therefore, payable proportionately between each of the four lessees according to the terms, quarterly or monthly, each has agreed with the managing agents.
22. However, the Tribunal would remind the parties that their determination relates only to the costs included in the budget for 2008. If the applicants subsequently consider the standard of the works effected not to be commensurate with the costs charged they may apply to the Tribunal for a determination of the reasonableness of those costs.

Chairman 

Date 22/5/08