

Tribunal as to the reasonableness of the service charge levied in respect of the Premises for the year 2008 and in respect of the budget for 2009.

1.2 Directions were issued on 4 February 2009 with which the Applicant complied but there had been no submission of any evidence on behalf of the Respondent.

2. The Premises:

2.1 The Tribunal inspected the Premises immediately prior to the hearing on 30 April 2009. The Premises comprise a two-bedroom flat in a converted Grade II listed convent school. The conversion had been effected in the 1980s. The whole building is an imposing brick edifice on four floors. The windows are single-glazed sash windows in wooden frames. The gutters and downspouts are plastic. The building has been divided into four sections each with its own entrance protected by a security system. There is a large tarmac area to the rear and sides of the building marked out for a large number of car parking spaces. There are eighteen garages but they are not part of the demise. Some of the garages are owned by people who are not resident at Brandon Court. Some other neighbouring properties have rights of way over the yard of Brandon Court. Within the grounds there are a few mature trees and there is a narrow strip of garden at the front of the building between the public pavement and the building itself.

2.2 The internal common hallways and staircases were clean and well carpeted. Decoration was generally in good order. There was a sign

of some water ingress in the ceiling at the top of one of the staircases but this did not appear yet to be a major problem.

2.3 Altogether the building and grounds gave the appearance of being well cared for and in good order.

3. The Hearing:

3.1 This took place at the Central Library, Portsmouth on 30 April 2009.

Present were Mr Ben Dickens who is the Chairman of the Applicant Company and Ms Helen McRae of Leasehold Legal Services who have been instructed by the Managing Agents, Labyrinth Properties, to make this application as a first step to recovery of any service charges owed by the Respondent.

4. The Law:

4.1 By Section 27A of the 1985 Act it is provided that:-

(1) 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.

...

(3) An application may also be made to a Leasehold Valuation

Tribunal for a determination whether, if costs were incurred for

services, repairs, maintenance, improvement, 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 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.

5. The Lease:

- 5.1 The Respondent's lease was made on 1 April 1986 between Brandon Property Developments Limited (1) and R M Such and D A Parker (2).
- 5.2 By clause 2 (i) of the lease the 'service charge' was stated to "consist of the fraction mentioned in the fifth schedule hereto (one fiftieth) of the costs expenses outgoings and matters mentioned in part 1 of the fourth schedule ..."
- 5.3 By clause 2 (ii) of the lease it is stated that "the service expenses for each calendar year shall be estimated by the lessors' managing agents ... or if none the lessors whose decision will be final as soon as practicable after the beginning of the calendar year and the lessees shall pay the estimated contribution by two equal instalments on the 25th day of March and the 29th day of September in that year ..."
- 5.4 By clause 2 (iii) of the lease it is provided that "as soon as reasonably may be at the end of the year 1987 and in each successive year when the actual amount of the service expenses for the three years ending on the 31st day of December or such succeeding third year (as the case may be) has been ascertained the lessors shall give notice thereof to the lessee and the lessee shall forthwith pay the balance due

to the lessors or be credited in the books of the managing agents or if none the lessors with any amount overpaid.

- 5.5 By clause 4 (i) of the lease the lessee covenanted with the lessors "(d) to pay costs charges and expenses (including solicitors' costs counsel's fees and surveyors' fees together with any value added tax or other tax payable in respect of such costs and fees) incurred by the lessors for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than relief granted by the court."
- 5.6 By clause 6 of the lease the Lessor covenanted with the lessee to "maintain repair redecorate and renew" the roofs and main structure of the building, the boundary walls fences gutters water and gas pipes, electric cables and wires, the entrance hall landings and staircases of the building leading to the flats and the grounds and accessways of the common external parts.
- 5.7 By clause 6 (d) of the lease the lessors were given the duty to insure and keep insured the building and the boundary walls and fences against loss or damage by fire and other risks as the lessors shall from time to time think fit.
- 5.8 By clause 6 (e) of the lease the lessors were given the duty to provide for the lighting of and keeping clean the entrances entrance halls landings and staircases of the building.

- 5.9 By clause 6 (f) of the lease the lessors were required to decorate the exterior of the building with two coats at least of good quality paint at least once every four years.
- 5.10 By clause 6 (g) of the lease the lessors were required not less frequently than once every year to provide to the lessee a summary of the costs expenses outgoings and matters mentioned in Part 1 of the fourth schedule for the previous calendar year together with a statement of the amount (if any) standing to the credit of the lessee in the books of the managing agents.
- 5.11 By Part 1 of the fourth schedule of the lease there is listed the expenses of the landlord in complying with its covenants in clause 6 of the lease together with the fees and disbursements paid to any managing agents appointed by the lessors in respect of the building and in connection with the collection of rents and service charge contributions from the lessees of the flats. This schedule also refers to the fees and disbursements paid to any accountant solicitor or other professional person in relation to the preparation auditing or certification of any accounts of costs expenses outgoings and matters referred to in that schedule of the lease and the collection of the contributions and payments due under clause 5(3) of the lease.
- 5.12 By paragraph 13 of the fourth schedule of the lease the managing agents or if none the lessors may provide for a reserve fund to meet part or all of some or any of the costs expenses outgoings and matters set out in Part 1 of the fourth schedule of the lease which it is

anticipated will or may arise during the remainder of the term granted by the lease.

6. The Evidence:

6.1 Ms McRae had provided the Tribunal with a Statement of Case which included a statement of account in respect of 30 Brandon Court, copies of the applications for payment that had been sent to the respondent, a copy of correspondence with the lessees, copies of the certified accounts for 2008, a copy of the budget for 2009 and a copy of the invoices in respect of expenses that had been incurred during 2009 to date which had not yet been the subject of certified accounts.

7. The Consideration:

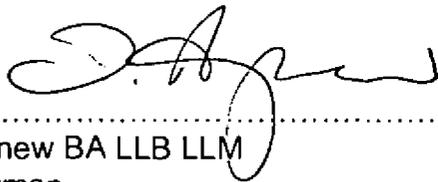
7.1 The Tribunal looked at every item of expenditure that had been incurred during 2008 which totalled £72,504.00. It also looked at each item that had been budgeted for expenditure during 2009 and Mr Dickins and Ms McRae answered the Tribunal's questions which arose from those documents.

8. The Conclusion:

8.1 The Tribunal was very impressed with Mr Dickins and Ms McRae's grasp of the detail to do with the maintenance of Brandon Court and with their appreciation of what needed to be done to maintain this building which is an unusual one and in view of its sheer scale and age is not an easy building to look after. Whilst some of the expenditure was substantial this was necessarily so for a building of this nature. The Tribunal was satisfied that costs were kept as low as was reasonably practicable.

- 8.2 The Tribunal determined therefore that the service charges as demanded for 2008 were reasonable as were the charges based on the budget for 2009.
- 8.3 As at the date of the Tribunal hearing, 30 April 2009, the Respondent therefore owes the Applicant the sum of £2758.46 covering the service charge for 2008 and the first six monthly payment of the budget for 2009.

Dated this 4th day of June 2009



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D Agnew BA LLB LLM
Chairman