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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case number: CAM/38UC/2009/0146

Property: 160 Southfield Park, Oxford, OX4 2BB.

Applicant: Dr D Velluti

Respondents: Oxford City Council

Represented by: Miss S McKeon of counsel instructed by Mr J King of Oxford City Council who called:

Mr A R Summers – Finance and Asset Strategy Manager
Mr G Corps – Streetscene and Environmental Services Manager
Mr C Pyle – Policy asset Manager
Ms S Smart – Service Accountant

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

Application for the limitation of service charge arising from the landlord's costs of proceedings in the Leasehold Valuation Tribunal (Section 20(c) Landlord and Tenant Act 1985).

Tribunal: Mr R Brown FRICS (Chairman)
Mrs I Butcher Solicitor
Mrs S Redmond MRICS BScEcon(Hons)

DECISION

1. Regarding the Application under s 27A of the Act the Tribunal determine that in respect of the years ending 31st March 2008 and 31st March 2009 that the amount demanded for service charge is reasonable and confirms the service charges as identified in the table below.

Service charge year	2007/08	2008/09
Management costs	£141.48	£162.80
Caretaking & Cleaning	£143.83	£180.96
Major Works: Painting/joinery		£190.36
Major Works: Flooring		£412.82

2. An order is made by consent under Section 20C Landlord and Tenant Act 1985 preventing the Respondents from recovering the costs of these proceedings (in so far as the lease permits) by way of the service charge.

REASONS FOR DECISION

The Application

3. The Application made by Dr Velluti referred to above relates to a determination of the standard and reasonableness of services and cost of services under Section 27A of the Act for the service charge years ending 31st March 2008 and 2009.

4. It is not in dispute between the parties that the lease requires service charges to be paid for the insurance and maintenance of the building as described in Clause 7.4 and Schedule 5.

The Law

5. **Extracts from the relevant law are at Appendix 1.**

The Lease

6. The Tribunal were provided with the lease to the premises dated 13th July 1990.

7. The Fifth Schedule to the lease details the services to be provided.

8. Clause 4(1) to the lease requires the tenant to pay a 'contribution' towards the annual costs and expenses as detailed in the Fifth Schedule.

9. The lease does not explain how the 'contribution' is to be apportioned between the leaseholders and the Council (Respondent) in respect of those properties subject to occupational tenancies. It appears that the Applicant pays 1/14 of the total cost for the block and this was accepted by the parties.

The Property and the Tribunal's Inspection

10. The Tribunal inspected the property on the 17th May 2010 in the presence of the Parties and their respective advisers and counsel.

11. The property comprises a purpose built flat located on the top floor of a 3 storey building of traditional pitched roof construction. The communal areas comprise access-ways drying and refuse bin storage areas.

12. The development is located to the east of Oxford city centre.

13. The Tribunal noted:
    - Generally clean common parts, although dust was noted under doormats.

- Generally clean and tidy grounds.
- Potential 'cold spots' in bedroom and living room.
- Evidence of water penetration (past or present) on the landings.
- The Tribunal inspected the loft and found that it appeared to be water tight although lacking insulation

The Hearing

14. A hearing was held after the inspection at the Best Western Hotel, Linton Lodge, Oxford.

Applicant's Case

15. The Applicant's case stems from a general dissatisfaction with the standard of services provided and in particular:
    - The change in the Respondent's method of calculating its management fee (described as an administration charge) from 10% of the costs incurred to a fixed fee.
    - The standard of caretaking and cleaning.
    - Major works painting and joinery and flooring.

For the year ended 31st March 2008 the Applicant raises the following matters:

Management Costs

16. The Applicant questions:
    - The payability of management charges despite the fact that only a few months before they were introduced the Respondent reassured the leaseholders that there would be no noticeable increase.
    - The Respondent's failure to adequately account or explain the charges.
    - The Respondent's refusal to enter negotiations to renew the lease.

17. The Applicant in her detailed submission alleges that the Respondent is in breach of section 20 of the Consumer Protection Act 1987 by providing misleading information and that the Respondent has admitted that their communication was poor. No time was given for the lessees to adjust to the new charges. Further the Respondent has failed to pursue the lease extensions with the resulting disadvantage to lessees.

Caretaking and cleaning

18. The Applicant says that the cleaning is poor and as there is no caretaker, all issues now have to be reported by individual lessees. The charge should not be payable because of the unacceptable delays in responding and resolving matters reported.

19. In support of this the Applicant says that there have been repeated complaints about the level of cleaning (evidenced by reference to letters from lessees and email correspondence). The fact that leaseholders have paid their service

charge is not evidence that the work has been carried out to a reasonable standard.

20. Formal walkabouts by the Respondent are not advertised and contact with the Estate Officer is difficult. The service provided once issues have been reported is extremely poor. In particular the Applicant refers to difficulties following the reporting of various matters:

- Squirrels in loft
- Roof leak
- Removal of lock to back door
- Nuisance neighbours
- Water hammer
- Roof leak (ongoing)

Email correspondence relating to these matters was produced in evidence.

Roof Works

21. With regard to the roof leak the Applicant questions whether the contribution of £76.07 should be paid on account of the poor standard of the work and inspection. The roof insulation still has to be replaced and the poor standard of repair will result in a higher cost for the next round of repairs.

Major Works

22. The Applicant questions whether or not it was reasonable to exclude the major works from the maintenance charges estimate and the actual bill despite admitting that they should have been included.

23. The Applicant acknowledges that the work (removal of old floor covering, joinery repairs, painting preparation, laying new floors and then painting had to be carried out. She questions whether or not, although the work was carried out by two separate companies, it was right to invoice it separately and thus avoid the need to serve notice. She further questions whether the charges are payable despite the fact that none of the invoices is called an 'invoice' or has a number.

24. The Applicant further questions whether the painting and joinery invoice is payable as initially she was advised that it would cost £72 plus VAT and that if it was to cost more she would be advised. No further advice was received but the final cost was £190.00. When questioned the Respondent denied having sent the first letter and later said no explanation was owed.

25. In summary the Applicant says:
- Estimated bills should be 'as accurate as they can be'.
- Should the cumulative amount of money be considered when a number of works (linked) below the £250.00 threshold is carried out?
- Can the correct procedures be ignored?

- The Respondent should have advised the Applicant as soon as increases in expenditure became known.

For the year ended 31st March 2009 the Applicant raises the following matters:

Management Costs

26. The Applicant says the management charge includes a sum for 'service contracts and buildings insurance' - £11.71. She questions whether she is required to pay this sum despite the fact that the lease only requires her to pay the premium.

27. The Estate management charge is £33.69 and the Applicant questions whether or not it is reasonable in the face of the unacceptable delays in dealing with requests for repairs and the failure of the estate manager to respond to emails.

28. The Applicant questions the reasonableness of the charge for the Service Charge Officer and Income Collection (£76.40) given that the Respondents service charge is paid by direct debit and that the bills produced are far from transparent and consistently riddled with mistakes.

29. The Applicant questions the fee (£22.70) for the Preparation of Accounts and Management of Leaseholder Liaison in the light of the inaccuracies and mistakes they contain and the fact they are not 'signed by the Council's Treasurer.

30. The Applicant questions whether the item for Contact Centre (£17.55) is in fact part of the caretaking and cleaning. If there was a caretaker then there would be no need for the lessees to call the Contact Centre.

31. In support of these contentions the Applicant says she never questioned the bills until:

- Following a leak in her flat the Respondent was unable to identify the tap in question and sent a plumber to identify the tap in question and then without mentioning a charge levied a charge of £93.19 which, when challenged, was withdrawn.
- Following an infestation by squirrels the Respondent was to be charged with the cost of poison. This charge was also withdrawn when the Respondent acknowledged that it was a consequence of failure to repair the roof.
- It took the Respondent 2 years to accept that the charge was unfair and withdraw it.
- The invoices are neither transparent nor accurate. Obtaining a breakdown is a long process and once received have to be checked with a 'fine tooth comb'.
- Generally Leaseholder Liaison has proven itself to be a 'complete failure'.

Section 20C costs

32. The Applicant seeks an order under section 20C of the Act preventing the Respondent recovering the cost of these proceedings by way of service charge under the lease.

Respondents' Case

33. The Respondent relies on two previous decisions of this Tribunal: CAM/38UC/LSC/2009/0086 and CAM/38UC/LSC/2009/0083 (the latter currently subject to an appeal to the Lands Tribunal) in which they were Respondents and the Tribunal found in their favour on a number of similar issues.

Management Costs

34. The Respondent maintains that the cost of administering the contracts for insurance are a legitimate element of the management fee and in line with the Tribunal's earlier decision.

35. The Respondents say with regard to management costs that following a decision of the Leasehold Valuation Tribunal (not identified) it is no longer 'lawful' to charge fees on the basis of a percentage. The Respondent sought to charge fees on the basis of actual cost. After two consultations with leaseholders a formula was produced identifying the time/cost of the various employees of the Respondent in relation to management and resulted in the management fees now being charged. The result was an increased fee which generated the general complaint that the fee was too high.

36. After further consultation with leaseholders a second format for billing had been introduced in September 2009.

37. Counsel called the various officers of the Respondent who explained their roles in the management of the development.

38. The Management Fees cover the following areas of the service charge:

- Management of the Estates
- Service Contracts
- The Contact Centre
- Accounting and Liaison
- Service Charge Officer
- Collection
- Legal Services

39. The Respondents set out their methodology and reasons why each of these elements is reasonably included under the management charge. They say the leaseholders have equal usage of/access to these facilities and the cost is

recoverable. As far as possible they have identified the proportions attributable to leaseholders/ tenants.

40. Legal costs. The Respondents explain that from time to time it is necessary to consult with the Respondents' in house legal service on leaseholder issues and it is proper that these costs are recovered as part of the management fee. The charges made are for general legal enquiries relating to leasehold properties and it is not feasible to try and apportion the costs per building or per leaseholder. The Council confirmed that there would be no charge for a specific enquiry from an individual.

41. The Management Service includes the roles of the Finance and Asset Strategy Manager, the Streetscene and Environmental Manager, the Tenancy Operations Manager and Service Accountant. The Respondent considers that these operations are necessary to the management of the building and they are of a reasonable standard at reasonable cost. The method by which they are calculated was submitted in evidence.

42. Contact Centre costs. The Respondents say the leaseholders have equal usage of this facility and the cost is recoverable. The charges are made for calls relating to repairs and general enquiries. It would be unreasonably expensive to attribute costs by individual leaseholder's usage.

43. The Respondents say the leaseholders have equal usage of/access to all these facilities and the cost is recoverable. As far as possible they have identified the proportions attributable to leaseholders/ tenants.

The Respondent explained that there was no longer a Council Treasurer. Following the Local Government Act 1992, a process has been established for the auditing and signing of accounts by the Audit Commission. The final account (Actual Charge Invoice) is not submitted to the leaseholder until the audit is complete.

44. The Respondent says that in the light of the earlier Tribunal decisions their management fees in this case are both reasonable and payable.

Caretaking and cleaning.

45. The Respondent denies that the standard of cleaning and caretaking is poor. During the period April 2007 to February 2010 7 complaints were received none of which related to the block containing 160 Southfield Park. The Respondent called as witnesses the relevant employees of the council to explain their roles. Mr R Summers, the Finance and Asset Strategy Manager explained in his statement that all leaseholders benefited from a number of service contracts and the management of these contracts called for full consultation, the drawing up of specifications, tendering, site control, quality control and making good defects. Mr G Corps the Streetscene and Environmental Manager provided as exhibits to his statement copies of the site visit records of the Estate Officer, a schedule of the duties of the Estate Officer together with some maintenance records.

46. In the previous decisions the Tribunal found that on the balance of probabilities the standard of cleaning and caretaking was reasonable and the charge was therefore payable. The same standards apply to 160 Southfield Park.

Roof Works

47. The Respondent listed five separate job instructions in relation to this work and after it was established that it was impractical to repair the roof until the squirrels were eliminated. After elimination of the squirrels, the roof work was completed,

Major Works

48. The Respondent explained that invoices for major works are sent out as they are incurred, however they do not become payable until the actual service charge is sent out at the end of each financial year.

49. With regard to the joinery works the cost was under £250.00 per unit and the Respondent was not therefore required to consult. In any event the Respondent maintains that the lessees were kept informed. These costs were both reasonable and payable. The works were separate projects.

Section 20C costs

50. The Respondent will not seek recovery of the costs of these proceedings through the service charge.

Tribunal's Deliberations

51. In making its decision the Tribunal considered the importance of the decision in Schilling *v Canary Riverside Developments PTD Ltd* (LRX/26/2005. LRX/31/2005 and LRX/47/2005) his Honour Judge Rich stated at paragraph 15:
'If a landlord is seeking a declaration that a service is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable'.

52. The Tribunal considered all the evidence, written and verbal, submitted by the parties.

53. There is clearly some confusion amongst leaseholders as to the various roles played by members of the Respondent authority and consideration might perhaps be given to appointing a single point of contact for all matters relating to the estate.

Management Costs

54. The Tribunal is satisfied on an interpretation of the Lease, supported by the legal authorities submitted, that the management costs include the following:

- Management of the Estates
- Service Contracts
- The Contact Centre
- Accounting and Liaison
- Service Charge Officer
- Collection
- Legal Services. – in so far as they relate to leaseholder enquiries

55. The Tribunal concludes that the old method of calculations (10%) was incorrect and resulted in a *de minimis* charge to the lessees which did not represent the true cost of the services provided (see RICS Service Charge Residential Management Code approved by the Secretary of State for England and Wales under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993). The Respondent acknowledges the service provided was not always to the standard expected. The Tribunal finds however that despite these acknowledged failings, steps have been taken by the Respondent to address these issues. The Tribunal understands the Applicant's concerns in respect of the sudden increase in charges; however, this is not something which the Tribunal can consider. It does not affect payability although it goes to the standard of management. Similarly the issue of an individual leaseholder's ability to pay cannot be considered by the Tribunal. The Tribunal's duty is to consider whether or not the fee paid is reasonable for the service provided. The Tribunal makes no finding as to the precise amount ascribed to each element of the Management Fee but has considered the global figure.

56. The issue of the lease extension is separate being subject to its own statutory regime. The fees for considering this matter would not normally fall within the management fee.

57. In considering the level of the Management Fee the Tribunal noted the admitted failings of the Respondent in terms of progressing minor works and communication (e.g. with respect to the attendance to repairs) but concludes that for the fee charged, the service was of a reasonable standard.

58. The Tribunal considered carefully the formula put forward by the Respondents and while the latest formula is open to scrutiny as to detail, the Tribunal concludes that the overall result produced a cost basis which reflects the level of management costs in the market place for this type of property. All of the items included in the methodology relate to matters which would commonly be included in the menu of services to be provided by a managing agent including the cost of overheads. Having decided to use a cost based formula the Respondent would be advised to collect data and compare it to the market place.

59. The Tribunal considered the questions as to whether or not the proper costs of administering an insurance contract fell with the management fees as defined by the lease or should be excluded as the Applicant was only required to pay the premium (5th Schedule). The Tribunal concluded that under 5th schedule final paragraph the Respondent was entitled to recover its costs of administering the contract of insurance.

60. The Tribunal notes the position with regard to the signing of the accounts and that the procedure in place ensures independent auditing of accounts. The Tribunal under section 27A(a) of the Act has jurisdiction to determine 'the person to whom the accounts are payable'. In accordance with their decision at paragraph 1 above the Tribunal determines that service charges are payable to the Respondent.

61. The Tribunal noted that there were inconsistencies in the invoices issued to the applicant. However, this decision will result in new invoices being issued. In respect of clause 4(3) of the lease regarding ascertaining and accounting for the actual contribution, the Tribunal is satisfied that the Council's present arrangements satisfy the requirements therein.

62. The Tribunal considered the evidence of the Applicant in relation to the suggestion that the management fee should not be recoverable on the basis of the standard of service offered by the Respondent. The Respondent on the other hand so far as management fees were concerned had calculated their costs by reference to a formula which produced a result that was within the band of reasonableness that the Tribunal would expect for a service of this type. As far as costs for services were concerned the Respondent had tendered the works but details of those tenders were not produced in evidence. The Tribunal recognise that this is a broad-brush approach and that there would be additional expense involved in further refinement. The Tribunal therefore relied on their knowledge and experience of such matters and concluded on the balance of probabilities that the standard of service offered by the Respondent was reasonable in relation to the fee charged.

63. In summary, the lease does not require that the leaseholder only pay for those services that are actually used by that leaseholder (for example, reduced collection costs where an individual pays by direct debit). The Council's costs might well be greater per unit if so treated. In the Tribunal's experience the unit cost is on the low side. The Applicant has brought no evidence of management charges. In particular, the Tribunal found that the costs of the Contact Centre were properly included as an element that contributes to the management of the block.

Caretaking and cleaning

64. The Tribunal finds that the Fifth Schedule to the Lease does provide for the Landlord to employ a resident caretaker or caretaking services. The Tribunal find that the caretaking services are included within the menu of services provided by management.

65. The Tribunal noted the Applicant's submissions with regard to the problems experienced with regard to caretaking and cleaning. The Tribunal noted that it is always difficult to judge the quality of caretaking and cleaning at one visit as it depends on the timing of that visit in relation to the cleaning schedule. However, they concluded on a balance of probabilities that the standard was within the band of reasonableness as defined by Section 19 of the Act.

66. The Applicant provided no alternative evidence of the expected cost of cleaning of a given standard. The Tribunal after considering the evidence given concludes that the standard of cleaning is reasonable and is reflected in the costs which are also considered to be reasonable.

Roof Works

67. The Tribunal concluded that the management of the roof works had been below the standard expected. However, the cost charged at £76.07 was below what they would have expected for the work involved and accordingly determines that the costs of those works are reasonable and payable. The current works referred to by the parties carried out earlier this year will be the subject of 2009/10 accounts and are not considered here.

Major Works

68. With regard to the joinery and painting, the Respondent served Notice of Intention as a precaution in February 2008 and Notice under s.20 in July 2008. However, the final cost of the work fell below the statutory level of £250 per flat. The Tribunal find that the Respondent was not required to serve Notice.

69. With regard to the flooring, the Respondent served Notice of Intention in October 2008 and Notice under s.20 in December 2008.

70. The question of the validity of the Notices served was not raised as an issue in dispute between the parties. The Applicant disputes whether or not these two sets of work should have been considered as a single contract.

71. The Applicant confirmed at the hearing that she did not challenge the cost or standard of the works undertaken.

72. In respect of both sets of work the Tribunal find that Notices were served (although it makes no determination on the validity thereof as this was not at issue).

73. It is not for the Tribunal to determine the planning of works to any particular programme. In this case the Tribunal find that the Respondent planned the work as two separate projects and costed and implemented them accordingly.

74. The Applicant asks whether or not it is reasonable to have excluded these works from the budget. The Respondent accepts that they should have been

included but points that notice of the work was given separately and final costs were notified on completion but not received until the year end accounts were completed.

75. The Tribunal concluded that it would have been preferable for the major works to have been included in the budget. However, notice had been given and the costs (which are not in dispute) are recoverable.

76. The Tribunal has some sympathy with the Applicant in so far as the accounting procedures of the Respondent do lead to a lack of clarity and took this into consideration when determining the amount of the management fee.

77. In finding that these charges for major works is reasonable, the Tribunal notes the disparity shown in the 'Actual' figures for 2008 and 2009, shown on page 35 in the bundle and that annexed to the Respondent's submissions, the latter having been amended to include the major works.

78. The Tribunal determines in respect of the major works (joinery and painting and floor covering) that both the costs and standard of the works are reasonable and payable.

79. As to the Applicant's issue with regard to documents not marked as Invoices, the Tribunal is satisfied that the two invoices for major works at pages 36 and 38 of the bundle are identified as invoices, dated and referenced. This does not affect the central issue that the costs are reasonable and payable.

Robert Brown
Chairman

Dated 22/7/10

Appendix 1

Section 18 Meaning of "service charge" and "relevant costs"

(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 for 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 Limitation of service charges: reasonableness

(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 Liability to pay service charges: jurisdiction

(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.

(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 if 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

Section 20C Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Lands Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.