RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24UD/LSC/2009/0077

Re: 35 & 43 Hoddinott Road, Eastleigh

Applicant	Robert Williams, Flat 43 Mr J Hatcher, Flat 35
Respondents	Freehold Managers plc
Date of Application	6th May 2009
Date of Inspection	3 September, 2009
Date of Hearing	[1] 3 September 2009 and [2] 15 March, 2010
Venue	[1] Wells Place Centre, Eastleigh; [2] Barrack Block, London Road, Southampton
Representing the parties	Mrs F Williams and Mr Williams for the Applicants [1] Mr Roberts and Mr Day, Belgarum for the Respondent
Also attending	[1] Mr B Davis, Flat 37

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
D Lintott FRICS	Valuer Member
Mrs J Herrington	Lay Member

Date of decision 18 March 2010

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that for the accounting years 2006 to 2009 inclusive, the reasonable and payable sums for the following items in the service charge account for those years in respect of Flats 35 and 43, Hoddinott Road, Eastleigh are as follows:
    a. Buildings insurance: £150 per Flat per year
    b. Accountancy fees: £35 per Flat per year
    c. Save as above, no service charges are payable per Flat for each of the years in question provided that if in due course the respondent shall prepare

accounts for the year 2009 complying with the terms of the leases, it shall be open to any party to these proceedings to make further application to the tribunal in respect of them, including in relation to buildings insurance and accountancy fees.

2. Section 20 C: The Tribunal makes an order under section 20 C of the Landlord and Tenant Act 1985 that any costs incurred by the lessor in connection with these 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 Applicants.

Reasons

Preliminary.

3. This was an application made by the Applicants under section 27A of the Landlord and Tenant Act 1985 for determination of service charges for each of the service charge years 2006 to 2009 inclusive. The application is based on accounts and/or demands for those years. The Applicants further applied for an order under Section 20C of the Landlord and Tenant Act 1985 (hereafter called the Act).

Inspection.

4. The Tribunal Inspected the Block of 14 Flats containing numbers 35 and 43 Hoddinott Road Eastleigh. The block was built 3 or 4 years ago as part of a very substantial development. The block is of brick with timber frame under a tiled roof. The internal common parts comprise an entrance hallway and staircase. The external common parts serving this block only are a bin store, service road and parking spaces. Those parts are lit by illuminated bollards. The block and its immediate common parts are part of a much larger development including roads, borders and other services for the wider estate. We inspected those parts of the estate in the immediate locality.

5. The block itself appears to be in good condition for its age and character. The bin store is unkempt and the entrance door damaged. One or more of the bollards is broken or is not lit. The block's immediate garden, borders and hedges are in need of maintenance. There is a roundabout nearby which apparently used to be planted but is now devoid of any shrubs and is unsightly.

Hearing.

6. The hearing was attended by those mentioned above on the first day but only by Mr & Mrs Williams on the 2nd day.

7. Background.

8. As stated in the further directions dated 4 September 2009, in the course of the first day of hearing it became apparent:

    a. that the Applicants had not seen supporting invoices for the service charges incurred by the Respondent in the service charge years 2006, 2007 and 2008, the years in question.

    b. The Respondent had not complied with, amongst others, paragraph 5b of the directions in this case dated 24 June, 2009 inasmuch as it did not

produce a copy of the plan on title number HP 608164 Filed at HM Land Registry.

c. That the terms of the leases (the Tribunal treating the lease of Flat 43 Hoddinott Road (Plot 912 Parkside) as a standard lease applicable to the Flats in this case) provided for each lessee to contribute 1/14 towards the maintenance of service charges relating to the block, together with a fair and equitable proportion of the estate service charges. The lease dated 31st March 2006 defines "estate" as "the land now or formerly comprised in title number HP 608164".

d. The service charge accounts and budgets for the relevant years had been prepared:

   i. as to block charges on the basis of a division of certain charges between 87 properties rather than charges relating only to the block in question being divisible between the 14 Flats in the block;

   ii. on the basis that service charges relating to external common parts of those 87 units are apportioned equally between those 87 units. Further that the estate as defined almost certainly included a substantially greater area than those 87 units.

e. That the Respondent's reply to the summary statement of the Applicants states "the accounts are not broken down on a block by block basis as we maintain this property is part of a phase. As per the 4th schedule, part 1, variation of proportions, we undertook the management of the development overall as a whole on the instruction of the developer. As the freeholds were due to be sold we were subsequently instructed to break down the management into phases."

f. Taking the above into account, it appeared to the Tribunal that the accounts prepared and forming the basis of service charge demands were not prepared in accordance with the terms of the lease so that the Tribunal would be unable to determine what sums were payable by the Applicants by way of service charge.

g. For the above reasons the Tribunal adjourned the hearing to a date to be fixed subject to the following.

h. By 15th October 2009 the Respondent shall notify the Tribunal in writing, with a copy to the Applicants, as to its position concerning preparation of accounts in accordance with the lease for the years in question, at the same time providing with those notifications a copy of the plan on title number HP 608164.

i. The Tribunal will then consider that notification and decide on the future course of this application, whether by making further directions, fixing a further date for consideration of further directions, fixing a further hearing date or adjournment .

9. On 19 October, 2009 further directions, so far as material to this decision and reasons, were issued in the following terms:

a. ..... Further, the Respondents have indicated that they will prepare accounts in accordance with the Lease for the years in question i.e. 2006, 2007 and 2008 and they will be ready in time for a hearing in 2010.

b. New Accounts for the years 2006, 2007 and 2008. The Tribunal is mindful of the urgency in determining this case, first, so that all parties are aware of the position concerning service charges and payments made by the Applicants on account of them, but also to facilitate payment for ongoing services required from time to time. It is not however appropriate for accounts merely to be available for a further hearing date, as the Applicants must have adequate opportunity to consider the accounts and the vouchers which support them. Only then will the Applicants be able to consider whether they accept the accounts and accordingly whether to withdraw the current application or to amend it for determination by the Tribunal.

c. For the above reasons the Tribunal makes the following directions:

d. By 15 December, 2009 and the Respondents shall provide one copy to the Applicants and 4 copies to the Tribunal of the following:

    i. full accounts for each of the years in question to identify the service charges payable in respect of the block and the estate as defined by the Lease;

    ii. the accounts shall comply with

        1. the provisions of the 4th Schedule to the Lease; and

        2. also the RICS Service Charge Residential Management Code of Practice 2nd Edition (and the Respondents' attention is particularly drawn to Part 10 of that Code).

    iii. All relevant vouchers to support those accounts. The vouchers shall be paginated individually. They shall be indexed, the index to show the page number of the voucher, the year and the relevant heading of service charge. Further the index shall provide subtotals of those vouchers by year and heading to facilitate cross reference and checking.

    iv. In respect of the Estate service charge accounts, the Respondents shall specify precisely the basis on which they have apportioned the Annual Maintenance Provision, "on a fair and equitable basis" as provided for in Clause 1.12 of the Lease.

e. By 21 January, 2010 the Applicants shall notify the Tribunal and the Respondents in writing either:

    i. that they wish to withdraw their application; or

    ii. that they wish to amend their application.

f. If they wish to amend their application, the following further directions will have effect.

    i. The Tribunal will grant leave for them to amend the application;

ii. the Applicants shall also by 21 January, 2010 identify in writing specifically which items in the new accounts they challenge and the basis of their case in respect of each item, at the same time providing copies of any relevant documents;

iii. the Respondents shall by 5 February, 2010 provide to the Applicants a statement in reply to the amended application, at the same time providing copies of any relevant documents.

g. Hearing. The resumed hearing will take place on a date and at a venue to be notified to the parties in due course, the target date being the week commencing 2 March, 2010. If any dates in that week are inconvenient to any party, they shall so notify the Tribunal no later than 30 October, 2009. The Tribunal may wish to re-inspect the whole area of the Estate and if so, the parties will be notified and inspection will take place on the hearing date, immediately beforehand.

h. If either party seeks any variation of the above directions they must do so promptly with grounds for the application. Any such application will be considered by the Tribunal in the light of the Tribunal's comment above as to the urgency of the case.

10. Further directions were issued on 3 February, 2010 in the following terms:

a. since further directions dated 19 October, 2009 were made, further documents have been produced by the Respondent and considered by the Applicants. The Applicant's position on the documents is set out in their letter to the Tribunal dated 29 January, 2010.

b. The Tribunal is concerned about the passage of time and delay in determining this application. The following directions are made accordingly.

c. By 19 February, 2010 the Respondent shall provide replies, with relevant documents, in respect of the letter dated 29 January, 2010 of which copies are annexed.

d. By 1 March, 2010 the Applicants shall provide the Respondent with their observations on those replies

e. ...

f. it is proposed that the hearing shall take place on 15 March, 2010. The Tribunal does not propose a further inspection.

11. It will be apparent from the above that the Tribunal gave the Respondent every opportunity to prepare proper accounts in accordance with the terms of the lease. However, the Respondent indicated difficulty in preparing new accounts for 2006 and the Tribunal refused the request to be relieved from the requirement to prepare the accounts for that year. They did however produce new accounts for the years 2007 and 2008.

a. 2007 accounts. As noted at paragraph 8e above, the original accounts had been prepared for a phase of the entire development known as Phase 9. They had indicated to the Tribunal on the first day of the hearing that there

were 87 units in that phase. However, the new 2007 accounts indicate there are 73 units in Phase 9. Furthermore, in these new accounts there is simply a reference to the Estate costs of phase 9 apportioning £935 to the block the subject of this application. There is no indication whatever, as required by the directions, as to how that apportionment has been made to the block in question in a fair and equitable way. The same applies to the 2008 new accounts.

b. Furthermore, no attempt has been made to vouch or index vouchers for any of the new accounts as required by the first directions referred to above. We have been provided with some vouchers but without any indication whatsoever as to what they relate and we have not found it possible to work out, but without indexing and cross referencing, what the Respondent's case is in respect of them.

12. Consequently it has been quite impossible, despite the directions, to consider the new accounts in detail at all. Furthermore, the Respondent has completely failed to make any response whatsoever to the Applicant's letter dated 29 January, 2010 as required by the last set of directions.

13. On the 2nd day of the hearing on 15 March, 2010 we had before us a letter from solicitors acting for the Respondent dated 12 March, 2010. The letter refers to the Applicants disputing the service charges of £1346.89 which we calculate to be all the items in the Applicant's application for the years 2006 to 2009 inclusive for each of the 2 Flats owned by the respective Applicants. The letter goes on to say that the cost of instructing counsel for the hearing is disproportionate to the amount of the disputed service charge and that therefore they attempted to settle the claim about a month previously direct with the Applicants offering to waive the disputed service charges and to pay £100 application fee paid by the Applicants. That offer had been rejected by the Applicants. Further, that they had that day, 12 March, 2010, written to the Applicants repeating the offer. The Applicants had refused the offer of one month ago and the Respondent's solicitors expected that it would be refused again.

14. That letter goes on to say that the Respondent is willing to waive the disputed service charges, does not wish to incur costs of the 2nd day hearing and invited the Tribunal to allow the tenant's application and to determine that the disputed service charge of £1346.89 in respect of each of the Flats is not payable by the Applicant tenants.

15. At the hearing on 15 March, 2010, we considered the position. Apart from other aspects of the matter, it appeared to the Tribunal that the offer which had been made by the Respondent was historical in that it related to the original accounts on which the original application had been made. The Applicants had not had any replies to the legitimate queries that they had set out in their letter of 29 January, 2010 and so it was not possible for Mr and Mrs Williams to consider the offer.

16. Furthermore, in the absence of compliance with the directions as referred to above the Tribunal was unable to consider the detail in the 2006 accounts or the new accounts. It was perfectly clear to the Tribunal that the Respondent's managing

agents, Belgarum, have been unable, or possibly unwilling, to prepare a case or documents which the Tribunal could properly consider.

17. Notwithstanding that, the Tribunal decided it was in the interests of justice that it should consider the application in full, even if it had to rely largely on its own knowledge and experience, in the almost complete absence of proper accounts or evidence to support them. This is not a course which the Tribunal took lightly, but in all the circumstances it felt it had no other option.

Consideration

18. First, we took into account our inspection in September 2009. In that respect we also had the benefit of photographs taken by or behalf of the Applicants which were in the original case papers. From our knowledge and experience, there was no doubt that little if any work had been done by or behalf of the Respondent in complying with its covenants in respect of which charges might be recoverable as service charges. Not being at all satisfied that work had been done, we are equally not satisfied that much if any work had been done by the managing agents. The Respondent has not taken any opportunity to justify intelligibly the service charges either in the old or the new accounts.

19. Of all the heads of charge listed in any of the accounts, the only heads which we can be confident on the balance of probability had been incurred were those relating to buildings insurance and accountancy fees. (We hope it is a reasonable assumption that buildings insurance on this block to comply with the lessor's covenant has been in place for each of the years in question). Because of the problems recounted above, we have no idea how the figures in the accounts have been apportioned: whether partly in relation to the estate charges and partly to the block charges. The best that we can do is to consider from our knowledge and experience what we would expect each tenant per unit reasonably to be paying for each of the years in question, and in doing so we have taken an average for those 4 years.

20. Mrs Williams told us that they pay the Respondent direct for ground rent and insurance premium, the insurance premium being about £130 per annum. We considered that, on average, a premium per unit would be about £150 per annum and so determined.

21. We proceeded in the same way in relation to accountancy fees and determined the sum of £35 per unit per annum.

22. For lack of sufficient evidence we found that no other heads of charge were payable.

23. [The consequences of the above decisions are that the Respondent will need to recalculate what sums have been paid by each of the Applicants as against what is recoverable. Any sum found to be due from either Applicant will be payable or any sum overpaid word be dealt with under the 4th schedule to the lease. These accounting matters are not within the Tribunal's jurisdiction.]

24. Section 20 C. In all the circumstances of this case, we had no hesitation in making an order under Section 20 C that all any of the costs incurred or to be incurred by the Respondent in connection with these 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 Applicants.

25. We made our decisions accordingly.

Note.

26. We hope that the decisions we have made on this application may draw a line in respect of service charges up to 31 December, 2009. However, this will not put an end to issues between the lessees and the Respondent unless and until, at very least, the Respondent in future produces service charge accounts which properly comply with the terms of the lease. Further, it must be able to demonstrate the veracity of such accounts by making vouchers available to the lessees for inspection. It must also ensure that the lessors covenants are complied with in terms of carrying out all works required by those covenants and for which the cost is recoverable from the lessees as service charge. We recognise that the terms of the leases seem to have been drafted on the basis that the entire estate would always remain in the ownership of one freeholder. It is plain that the subject block is part of a phase only. We do not know how many phases there are. However, it is essential, with a view to avoiding further proceedings, whether in court or the Tribunal, that a way forward be found for the benefit of all Freeholders and all lessees on the entire development. This might well involve legal variations to the leases and service charge provisions and will necessitate the co-operation of the landlord(s), the freeholders and the lessees. Further, it is essential that the management complies with the RICS Management Code of April 2009.

[Signed] M J Greenleaves

Chairman

A member of the Tribunal
appointed by the Lord Chancellor