

**LEASEHOLD VALUATION TRIBUNAL****LANDLORD AND TENANT ACT 1985, Section 27A as amended by the  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002****Application for determination of liability to pay service charges**

**Property:** Flat 12, 141 Waterloo Place, Manchester, M8 8BT  
**Applicant:** Waterloo Place (Cheetham Hill) Management Company Limited  
**Respondent:** Mr Ayodeji Adediran  
**Tribunal:** P J Mulvenna LLB DMA (Chairman)  
M G A Hope BSc FRICS  
**Date of Hearing:** 29 June 2010

**INTRODUCTION**

1. By an application dated 9 March 2010, the Applicant applied for a determination as to the payability and reasonableness of the service charges in respect of Flat 12, 141 Waterloo Place, Manchester, M8 8BT ('the Property').

**THE PROPERTY**

2. The Property is a second floor apartment in one of two purpose built four storey blocks in a development also comprising some dwelling-houses which was constructed by or on behalf of Rowland Homes Limited ('the Landlord') in or around 2006.
3. The common areas to each of the two buildings comprise an entrance with passageways, stairs, a lift to all floors and accommodation for services, together with lighting, external gardens/landscaping and access to secure car parking.

**THE INSPECTION**

4. On 29 June 2010, the Tribunal inspected the common areas of the Property. At the inspection, the Applicant was represented by Mr L D Samuels of Ashcroft Whiteside, solicitors. The Respondent was neither present nor represented.

**THE HEARING**

5. Directions were issued by Mr L Bennett, procedural chairman, on 26 March 2010.
6. The substantive hearing of the application was held at the Tribunal's offices, 5 New York Street, Manchester, on 29 June 2010. The Applicant was represented by Mr L D Samuels. The Respondent was neither present nor represented. The Tribunal was satisfied that all parties were given reasonable and adequate notice of the time and place of the hearing and decided to proceed in the Respondent's absence.
7. The Tribunal heard oral submissions from Mr Samuels on behalf of the Applicants.

8. The Tribunal also had before them the written evidence and submissions of the Applicant. The Respondent had not complied with the Directions and had entered no written evidence or submissions.

#### **THE EVIDENCE, SUBMISSIONS & ISSUES FOR DETERMINATION**

9. The Applicant has asked for a determination of the reasonableness of the service charges for the financial years ended 31 December 2008 and 2009 and ending 31 December 2010. The respondent has been served with quarterly demands in the relevant years in the sum of £212.50 (£850.00 per annum). His liability under the lease is to pay 1/32 of the expenditure.

10. The total expenditure on services for 2008 and 2009 was:

| Year ended 31 December 2008 | £      |
|-----------------------------|--------|
| Management fees             | 3,278  |
| Cleaning                    | 8,899  |
| Bank charges                | 77     |
| Lift maintenance            | 209    |
| Insurance                   | 2,078  |
| Repairs & renewals          | 1,064  |
| Sundry expenses             | 21     |
| Accountancy                 | 212    |
| Total                       | 15,838 |

| Year ended 31 December 2009 | £      |
|-----------------------------|--------|
| Management fees             | 3,203  |
| Landscape charges           | 2,484  |
| Cleaning                    | 4,442  |
| Bank charges                | 223    |
| Lift maintenance            | 2,797  |
| Insurance                   | 2,321  |
| Repairs & renewals          | 9,306  |
| Sundry expenses             | 324    |
| Accountancy                 | 328    |
| Professional fees           | 989    |
| Total                       | 28,487 |

11. The Applicant provided evidence of the expenditure incurred to support the level of service charges made and submitted that such charges were fair and reasonable. Mr Samuels also provided helpful information and explanations to address issues raised by the Tribunal as to the reasonableness of various items of expenditure and as to the reasonableness of the recovery of such expenditure as part of the service charge. In particular:

- (a) It was confirmed that, although legal costs were included in the accounts, they would, so far as possible, be recovered from the person against whom any action had been taken and were included in the service charge only as a last resort;

- (b) The increase in expenditure on repairs and renewals had increased from 2008 to 2009 because of improved management procedures and the increased occupancy of the apartments resulting in a need for more repairs;
  - (c) The expenditure on the two purpose-built blocks is consolidated in a single service charge account and apportioned equally between all of the 32 lessees of the two blocks;
  - (d) The reserves shown in the accounts were intended to be a sinking fund for cyclical maintenance and major repairs, subject to approval by the Applicant's shareholders at Annual General Meetings (in this respect, it was observed that a significantly large bill was anticipated for the consumption of electricity on communal provision);
  - (e) The extent of the work undertaken to justify the level of administration fees was explained.
12. The Respondent has made no submissions and, neither at the time of the service of invoices for payment nor since the application was made, challenged the service charges on the basis of unreasonableness or because the standard of the services undertaken was unacceptable. The Respondent has simply failed, without explanation, to pay the sums due.

#### **THE LEASE**

13. The Respondent holds the property for a term of 999 years from 1 January 2007 under a Lease made on 22 February 2008 between (1) the Landlord (2) the Applicant and (3) the Respondent. The Tribunal has read and interpreted the Lease as a whole but in reaching its conclusions and findings has had particular regard to the provisions of Schedule 6 which sets out the services to be provided by the Landlord and the Management Company, together with details of the method of calculation of the service charge and its recovery. The schedule lists in some detail the services which might be provided. The Respondent has not challenged any of the expenditure on the basis that it was outside the scope of these details.

#### **THE DETERMINATION AND DECISION**

14. The Tribunal considered the evidence and submissions and relied on its own knowledge and expertise to determine what costs could properly and reasonably be recovered as part of the service charge.
15. The Tribunal has assessed the reasonableness of the service charges made by the Applicant, which amount to £850.00 for each of the years in question. There is no subsequent adjustment in any of the years and the annual accounts appear to suggest that any surplus was properly earmarked for the subsequent year's expenditure in accordance with Schedule 6 to the Lease.
16. The Tribunal has considered the reasonableness of the underlying evidence of invoices and accounts. The service charges of £850.00 for the years ended 31 December 2008 and 31 December 2009 are, on the basis of the evidence before the Tribunal, reasonable. The estimated service charge of £850.00 for the year ending 31 December 2010 is not unreasonable, but there were indicators observed during the Tribunal's inspection which suggest that there will need to be stronger management monitoring and control of the delivery of services, particularly in respect of the landscaped areas

which were litter-strewn, unkempt and showing some signs of neglect. These matters will have to be addressed satisfactorily if the charge is to be considered reasonable when the final costs are known.

17. Having assessed and considered these issues, and in the absence of any challenge by the Respondent, the Tribunal has determined that the service charges made to the Respondent were fair and reasonable in each of the years which are subject to the application.

## **COSTS**

18. Neither party asked for an order for costs to be awarded against the other. The Tribunal did, however, consider the power to award costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides:

‘(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.’

19. The Tribunal did not consider that any of these circumstances arose in this particular case and concluded that it would not be appropriate to award costs to either party.
20. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides:
  - ‘(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
  - (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).’

21. The Tribunal has reviewed all the evidence in this case and has determined that it would not be appropriate to make an order for reimbursement in the circumstances of this case.
22. No application was made by the Respondent under section 20C of the Landlord and Tenant Act 1985 that an order be made that the costs incurred, or to be incurred, by the Applicant in connection with the proceedings before the Tribunal should be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. The Tribunal has not, therefore, considered the position.

### **ORDER**

That the service charges in respect of the Property for the following years be as indicated and that the Respondent be required to pay the service charges under the terms of the Lease:

- (a) For the year ended 31 December 2008, £850.00.
- (b) For the year ended 31 December 2009, £850.00.
- (c) For the year ending 31 December 2010, £850.00.



Signed.....

P J Mulvenna

Chairman

3 July 2010