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HM COURTS & TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL  
OF THE  
NORTHERN RENT ASSESSMENT PANEL

REASONED DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Landlord and Tenant Act 1985 - Section 27A(1)

Property: 11, St.David's Court, Sherborne Street, Cheetham Hill,  
Manchester M8 8ND

Development: The premises known as St.David's Lodge

Applicant: The Riverside Group Limited

Respondent: Mr.N.W.Dodd

Tribunal members: Mrs.C.Wood  
Mr.D.Pritchard  
Dr.J.Howell

Date of decision: 29 October 2012

DECISION

Background

1. By an application dated 23 May 2012 ("the Application") the Applicant requested a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the Act") in respect of the reasonableness and payability of a service charge in respect of the service charge years 2004/5, 2005/6, 2006/7, 2007/8, 2008/9, 2009/10, 2010/11, 2011/12 and 2012/13.
2. Directions dated 12 July 2012 were issued to the parties, paragraphs 1-6 of which were amended by letter dated 10 August 2012 in response to a request for an extension of time to file its Statement of Case by the Applicant. The Applicant filed its Statement of Case under cover of a letter dated 20 August 2012 from its solicitors, Trowers & Hamlins. The Applicant's Statement of Case included a Scott Schedule which itemized each item comprising the service charge for each of the years 2005-2011. The Respondent's Statement of Case was included in the hearing bundle ("the Bundle") at pages 98-99, and comprised a short statement and responses to the Scott Schedule.

### Inspection

3. The Tribunal made an external inspection of the Property and of the external and internal common parts of the Development on Monday 1 October 2012. The inspection was attended by Ms.S.Nelson of the Applicant, together with Ms.L.Walsh of Trowers & Hamlins, solicitors for the Applicant, and the Respondent.
4. The Development comprises 10 separate blocks, with a total of 104 flats. The Property is in Block 2 on the 3<sup>rd</sup> floor. The external communal areas comprise grassed areas, a number of covered bin stores, and a large residents' car park comprising 104 parking spaces together with 17 visitor spaces.
5. Ms.Nelson for the Applicant explained the difficulties which were experienced at the Development with the residents' use of the bins and flytipping by residents and the action and/or proposals for addressing them.
6. When viewing the internal communal areas of Block 2, the defects with the redecoration, which had been highlighted by the Respondent in a number of photographs submitted to the Tribunal, were pointed out to the Tribunal. Ms.Nelson explained that there was an ongoing situation with certain residents in Block 2 which again the Applicant was seeking to resolve. In response to a question from the Tribunal, Ms.Nelson confirmed that the Respondent was the sole owner-occupier in that Block.
7. The Tribunal also inspected the internal communal areas of Block 5.

### The Lease

8. A copy of the lease dated 5 April 1994 made between Bellway Homes Limited (1) Central Housing Association Limited ("the Landlord")(2) and Bulldog Premium Growth II PLC ("the Leaseholder")(3) in respect of the Property ("the Lease") was contained in the Bundle at pages 22-51 and again at pages 62-91.
9. Office copy entries confirming the Applicant's ownership of the freehold title to the Development in which the Property is sited, and of the Respondent's ownership of the leasehold title to the Property are at pages 60-61k and 92-93 respectively.
10. Under Clause 3(3) of the Lease, the Leaseholder agrees to pay the Service Charge where:
  - 10.1 "Service Charge" means " the amount payable in accordance with the Specified Proportion of the Service Provision";
  - 10.2 "Specified Proportion" means in the Lease "0.89%" but which had been increased (in accordance with clauses 7(a) and (b) of the Lease) with effect from 1 April 2009, to 0.95% by notice dated 20 February 2009 ( page 52 of the Bundle);
  - 10.3 "Service Provision" means the sum computed in accordance with sub-clauses 7(3), 7(4) and 7(5) of the Lease; and,

- 10.4 "Account Year" means a year ending on the 31<sup>st</sup> March in each year.
11. Under sub-clause 7(1) of the Lease, the Leaseholder agrees to pay the Service Charge by equal payments in advance on the first day of each month. The Service Provision in respect of any Account Year shall be computed by 31<sup>st</sup> August of each Account Year.
12. Sub-clause 7(4) provides that the Service Provision shall consist of a sum comprising:
- 12.1 the estimated expenditure to be incurred in the Account Year on the items set out in sub-clause 7(5); and,
- 12.2 an appropriate amount as a reserve fund.

### The Law

13. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:
- (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, improvements 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 or later period.
14. Section 19 provides that –
- (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.
15. Section 27A provides 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 date at or by which it is payable, and
- (d) the manner in which it is payable.

- (2) Subsection (1) applies whether or not any payment has been made.
  - (3) .....
  - (4) No application under subsection (1)...may be made in respect of a matter which -
    - (a) has been agreed by the tenant.....
  - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
16. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L Inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

**The Hearing**

17. Ms. Walsh for the Applicant briefly explained the background to this matter which had led to the Application for a determination of reasonableness of the service charge and liability to pay being made. She also referred the Tribunal to Tab 12 at page 234 of the Bundle which was a breakdown of actual costs for the service charge years 2005/6, 2006/7, 2008/9, 2009/10, 2010/11 and 2012/13, and the Specified Proportion which, for the years 2005/6 – 2008/9 ( inclusive) was 0.89%, and for the following years was 0.95%.The budget for the service charge year 2012/13 is set out at page 184 of the Bundle. The Respondent confirmed that he was happy for the Tribunal to proceed on the basis of the actual costs as set out in Tab12. Ms.Walsh also referred the Tribunal to the witness statement of Ms.S.Nelson ( Tab 17 pages 264-362 of the Bundle).
18. Both parties then made their submissions on the items of service charge identified as at issue by the Respondent as follows:
- 18.1 as a preliminary point, Ms.Walsh confirmed that, in her opinion, none of the agreements with contractors constituted qualifying long term agreements as although some had lasted for more than a year, they were subject to annual review;
- 18.2 window cleaning: the actual costs/budgeted costs and the Specified Proportions for the relevant years are as follows:

	£	£
2005/6:	1529.50	13.61
2006/7:	3972.00	35.55
2007/8:	2044.00	21.75
2008/9:	3646.50	32.45
2009/10:	2996.50	28.47
2010/11:	3685.50	35.01
2011/12:	3734.00	35.47
2012/13 (budget):	3704.83	35.19

The Tribunal was referred to paragraph 7 of Ms.Nelson's witness statement, ( page 265-6 of the Bundle). They queried the reason for the variation in costs between 2005/6, 2006/7 and 2007/8.

The Respondent stated that he regarded the window on the 1<sup>st</sup> floor of the staircase in his Block as a "gauge" as to how much cleaning was actually done;

on the admittedly limited occasions when he had been at the Property when the window cleaners had attended, he had not been aware of them cleaning that window, and he submitted that it had not been cleaned for the last 3 months. Ms.Nelson explained that, during the summer, there had been scaffolding on the blocks and she had instructed the window cleaners not to try to clean around it; she added that there would be an adjustment in the cost to reflect this. The Respondent submitted that window cleaning had been an issue since 2006, not just recently. He referred to the Window Cleaning Specification at page 293 of the Bundle and, in particular, to clause 2.1 which specifies that "...all traces of dirt are to be removed";

18.3 landscape maintenance: the actual costs/budgeted costs and the Specified Proportions for the relevant years are as follows:

	£	£
2005/6:	5994.57	53.35
2006/7:	6218.16	55.34
2007/8:	6461.33	57.51
2008/9:	6416.63	57.12
2009/10:	4162.50	39.54
2010/11:	4252.50	40.40
2011/12:	4425.00	42.04
2012/13 (budget):	4763.70	45.26

The Tribunal was again referred to Ms.Nelson's witness statement at paragraph 8, ( page 266 of the Bundle). Again they queried the reason for the apparently significant reduction in costs as between the years 2005/6 – 2008/9 (inclusive) and 2009/10 – 2012/13 (inclusive).

The Respondent stated that there was litter in the bushes and also said that there was clover, moss and dandelions in the grassed areas contrary to paragraph 2.3 of the Landscape and Car-Park Maintenance Specification ( page 309 of the Bundle). In his opinion, this justified a 10% reduction in the costs. He confirmed that the contractors do attend as required but that sometimes they leave grass cuttings.

In response to a question from the Tribunal, Ms.Nelson confirmed that it was the responsibility of the cleaners, and not the gardeners, to pick up litter from around the bin areas. The gardeners were responsible for picking up litter from the grass, borders and paths.

18.4 Internal cleaning of communal areas: the actual costs/budgeted costs and the Specified Proportions for the relevant years are as follows:

	£	£
2005/6:	9264.87	82.46
2006/7:	9439.92	84.01
2007/8:	9723.12	86.54
2008/9:	9654.14	85.92
2009/10:	9567.87	90.89
2010/11:	9774.84	92.86
2011/12:	9067.50	86.14
2012/13 (budget):	6512.40	61.87

Ms.Nelson explained that, following the tendering process in 2008, they had not selected the lowest-cost contractor: the cost differential across the development as a whole was £600, which they did not regard as significant, and there had been no complaints about the contractor.

The current Internal Cleaning Specification is at pages 331-334 of the Bundle, and Ms. Nelson confirmed that 2 cleaners attend once week for 3-4 hours. In addition to the cleaning, they put the bins out onto the roadside and return to replace in the bin stores; wherever possible, they try to "redistribute" household waste into empty bins; they also collect the fly-tipped articles to a central area for separate collection which are costing c£60-95 per fortnight: where known, this cost is re-charged to the relevant individual leaseholder but there are real difficulties in establishing who they are. In addition, at present, there is a particular problem with the Respondent's block.

The Respondent stated that windows were wiped over with a dirty rag leaving a residue. He said that the internal cleaning has become worse in recent months although he was aware of the problems in his block. He confirmed that items were left about once a month and that, in the past, he had requested the Council to come and collect items which they were prepared to do free of charge. Ms.Nelson confirmed that the Council will not do it free of charge where the Applicant requests it but other residents have been prepared to request collection in the past, thus avoiding a charge.

18.5 insurance: the actual costs/budgeted costs and the Specified Proportions for the relevant years are as follows:

	£	£
2005/6:	11,918.40	106.07
2006/7:	11,918.40	106.07
2007/8:	13,418.60	119.48
2008/9:	15,789.80	140.53
2009/10:	15,073.82	143.20
2010/11:	13,082.14	124.28
2011/12:	12,676.50	120.43
2012/13 (budget):	13,568.05	128.90

The Applicant confirmed that the insurance was a block policy and no commission was payable to the Applicant. They had not re-marketed on an individual development basis. The Applicant confirmed that the increase in the premium will have been a reflection of the claims' history but that they had no information of this as all claims were dealt with centrally. The insurance certificate was issued to residents annually.

Whilst the Respondent confirmed that he was satisfied with the apportionment of the premium and recognized that there may be economies of scale available through a block policy, he did not accept the other evidence regarding the insurance;

18.6 management charges:the actual costs/budgeted costs and the Specified Proportions for the relevant years are as follows:

	£	£
2005/6:	14,352.00	127.73
2006/7:	14,762.04	131.38
2007/8:	15,215.28	135.42
2008/9:	15,222.60	135.51
2009/10	15,682.16	148.98
2010/11:	16,152.24	153.45
2011/12:	16,636.88	158.05
2012/13 (budget):	16,636.88	158.05

The Applicant confirmed that, since 1 January 2012, they have reduced their routine visits to bi-monthly but are still required to make additional visits to deal with particular issues. Arcus Consulting are engaged to do assessments for eg major works but are not involved in any day-to-day maintenance.

The Respondent said that he had requested an explanation of the calculation of management charges but that was not satisfied that the breakdown sent to him ( page 235 of the Bundle) provided that explanation.

Ms.Nelson confirmed that there is a standard management fee applied to all properties within their management, and that there was a unit cost which was, as at April 2011, £155.97. There is no set fee for administration/management;

18.7 cyclical decoration:

Ms.Nelson confirmed that the internal and external decoration of the communal parts was carried out every 4 years, most recently in July/August 2012, in accordance with clause 5(B)(3)(i) of the lease. They are still awaiting "sign-off" on these works. The budgeted costs are £79,000 for the external works and £68,500 for the internal works but these are yet to be invoiced. In 2008, the invoiced costs were £51,097.66 for the external works and £37,115.88 for the internal works.

Ms.Nelson confirmed that a consultation process had been carried out in connection with these works.

The Respondent commented that he believed the internal re-decoration had last been carried out in 2006 but this was refuted by Ms.Nelson.

19. In conclusion, the Respondent stated that the budget for 2012/13 showed an increase of between 2 and 3% on the previous year's budget. The problems in the services provided had been exacerbated by the Applicant's failures to provide information to the Respondent as requested.

In response, Ms.Walsh said that the Applicant considered each item in the service charge individually and set the budget accordingly. It was pointed out that the Respondent has never paid any service charge, that there is a cost in making the Application; the Applicant believes that the service charge costs are reasonable and it is not appropriate for them to "bank roll" non-payers.

### The Tribunal's Determination

20. The Tribunal must apply a three stage test to the application under section 27A:
- 20.1 Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction and interpretation of the lease.
- 20.2 Are the service charges reasonably incurred and/or services of a reasonable standard under section 19 of the 1985 Act?
- 20.3 Are there other statutory limitations on recoverability, for example consultation requirements of the 1985 Act as amended?
21. The Tribunal determined as follows:
- 21.1 window cleaning: notwithstanding that there was some evidence of windows being overlooked in the Respondent's block, the window cleaning costs ( actual and budgeted) are reasonable ( subject to the Applicant ensuring that credits are received for any services not provided because external works being carried out in July/August 2012);
- 21.2 landscape maintenance: the actual costs charged in the service charge years 2005/6 – 2008/9 (inclusive) are reduced to the following amounts:
- |         | £       |
|---------|---------|
| 2005/6: | 4200.00 |
| 2006/7: | 4350.00 |
| 2007/8: | 4500.00 |
| 2008/9: | 4500.00 |
- The costs (actual and budgeted) for the service charge years 2009/10 – 2012/13 ( inclusive) are reasonable;
- 21.3 internal cleaning of communal areas: the actual costs charged in the service charge years 2009/10 – 2011/12 are reduced to the following amounts:
- |          | £       |
|----------|---------|
| 2009/10: | 9017.72 |
| 2010/11: | 9212.79 |
| 2011/12: | 8546.12 |
- 21.4 refuse removal: the costs ( actual and budgeted) are reasonable;
- 21.5 insurance: although the Tribunal determines that the insurance costs are reasonable they suggest that the Applicant might like to consider the periodic market-testing of the premiums payable under a block and an individual policy for the development to ensure that economies of scale are being achieved;
- 21.6 management fee: in accordance with the recommendation of the RICS Residential Service Charge Code, the Tribunal determined that a reasonable unit fee for the Property is as follows:
- |  | £ |
|--|---|
|--|---|

2005/6:	105.00
2006/7:	105.00
2007/8:	115.00
2008/9:	115.00
2009/10:	115.00
2010/11:	125.00
2011/12:	125.00
2012/13:	125.00

- 21.7 cyclical fund: the Applicant confirmed to the Tribunal that it had followed a consultation process in accordance with section 20 of the Act in relation to the works carried out in 2012, and the Tribunal assumes that this was also so in respect of the works carried out in 2008. However, no evidence was made available of this to the Tribunal, and, subject to the right of the Applicant to make application for dispensation under s20ZA of the Act, if this is not the case, then any service charge charged in respect of the costs of such works is limited accordingly.

*Catherine Wood.*

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Catherine Wood  
Chair  
Dated 8 November 2012