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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

DETERMINATION WITH REASONS

LANDLORD AND TENANT ACT 1985 – SECTIONS 27A & 20C

Property:	Various residential premises at Jodrell Drive, Keepers Road & Stansfield Drive, Grappenhall, Warrington, Cheshire WA4 3HA
Applicants:	Mr I Rahman Mr & Mrs A Pitalia Mr D O'Sundiya
Respondent:	Regents Square (Grappenhall) Management Company Limited
Tribunal Members:	Mr J W Holbrook LL.B (Chairman) Mr D Pritchard FRICS

DETERMINATION

- A. In respect of the service charge period which commenced on 1 January 2010 and ended on 31 December in 2010, each of the Applicants is liable to pay the Respondent a service charge in respect of each leasehold Property owned by that Applicant. The amounts payable are set out in column I of the tables in the Appendix to this determination.
- B. The costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs (within the meaning of section 18(2) of the Landlord and Tenant Act 1985) to be taken into account in determining the amount of any service charge payable by any of the tenants on the Estate.

REASONS

Background

1. Mr Imran Rahman is the leasehold owner of 6 residential apartments known as 2, 10, 18 & 20 Jodrell Drive, 17 Keepers Road and 102 Stansfield Drive, Grappenhall, Warrington, Cheshire WA4 3HA.
2. Mr & Mrs Anil Pitalia are the leasehold owners of 6 residential apartments known as 6, 8, 12 & 22 Jodrell Drive and 96 & 98 Stansfield Drive.
3. Mr Dapo O'Sundiya is the leasehold owner of a residential apartment known as 5 Keepers Road.
4. All of the above premises ("the Properties") form part of a residential development known as Regents Square, Grappenhall ("the Estate").
5. On 9 September 2010 the Tribunal received an application under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of liability to pay, and reasonableness of, service charges in relation to the 12 Properties owned by Mr Rahman and by Mr & Mrs Pitalia. The application related to the service charge periods from and including the purchase of the Properties in 2006 to the end of the then current service charge year (31 December 2010). On 4 November 2010 the Tribunal received a further application to make a similar determination in respect of the Property owned by Mr O'Sundiya. The Tribunal subsequently ordered that the applications be heard together.
6. The Applicants also applied to the Tribunal under section 20C of the 1985 Act for an order preventing the Respondent, Regents Square (Grappenhall) Management Company Limited, from recovering costs

incurred in connection with the proceedings before the Tribunal under section 27A as part of the service charge.

7. Following a hearing on 6 and 7 October 2011, the Tribunal issued a determination on 7 November 2011 (“the First Determination”). The First Determination was limited to issues arising in respect of the service charge years preceding that which commenced on 1 January 2010 and ended on 31 December 2010 (“2010”). Insufficient evidence was then available for the Tribunal to determine issues relating to 2010, and the Tribunal therefore issued further directions on 10 October 2011 with a view to determining those issues at a later date. The Tribunal also notified the parties that it proposed to make its determinations in respect of 2010 on the basis of written representations alone, without holding a further oral hearing, unless any party gave notice that they required such a hearing to be held. No such notice was received, and the Tribunal therefore determined the matter on 10 February 2012.

8. The First Determination gives a description of the Properties and the Estate, identifies the service charge machinery in the relevant Leases, and explains the relevant law. It is therefore unnecessary to repeat those matters in the present determination. Expressions which are defined in the First Determination have the same meaning here.

Service charges – Issues and findings

Expenditure claimed by the Respondent

9. In compliance with the Tribunal’s directions, the Respondent produced audited accounts for the 2010 service charge year. We noted that the aggregate service charge expenditure itemised in the accounts – which forms the basis of the Respondent’s claim to contributions from each Applicant – is £14,456.00 for Jodrell, and £19,279.00 for Stansfield. The

amount claimed in respect of each Property is found by applying the appropriate "Lessee's Proportion" specified in each Lease to the total expenditure for the relevant Block. The relevant proportions, and the amounts claimed by the Respondent, are noted in columns B and C of the tables in the Appendix hereto. Column D also shows the year-end balancing charges which form part of the service charges claimed.

10. The parties also exchanged statements of case (and comments thereon) out of which a number of issues concerning the amount of expenditure claimed under particular heads arose. It is clear that, during the course of exchanging these documents, the parties were able to narrow the issues in dispute. We focus below only on those issues where it appears to us that the parties were unable to agree the amount of the expenditure in question. We note that the final exchange of comments between the parties raised the question of whether Mr Rahman and Mr & Mrs Pitalia had paid administration charges in addition to their service charges and, if so, whether these charges were properly made. However, given that no valid application is presently before the Tribunal regarding such matters, we have not considered them further.

Window cleaning

11. The total amounts claimed for window cleaning were £894.00 for Jodrell and £1,108.00 for Stansfield. The Applicants accepted that the window cleaning service was of a satisfactory standard, but argued that the amount of expenditure incurred was unreasonably high when compared with quotes for window cleaning they had obtained themselves. The Respondent pointed to certain aspects of these quotes which made it difficult to make a like-for-like comparison. It also contended that the overall cost incurred (equivalent to £74.50 for each Jodrell apartment, and £74.00 for each Stansfield apartment) was reasonable. We agree. A

landlord has a discretion as to the manner in which services are provided – it is not obliged to procure services at the cheapest possible price, provided that the price it does pay is a reasonable one for the services in question. As regards window cleaning services in 2010, the Respondent has, in our view, procured those services at a reasonable price.

Communal cleaning

12. The total amounts claimed for communal cleaning were £1,145.00 for Jodrell and £2,955.00 for Stansfield. However, it should be noted that the Stansfield cost includes an amount of £1,680.00 to correct an erroneous credit allocation in the 2008 service charge accounts. The Applicants complained that the expenditure on communal cleaning was unnecessarily high on account of the fact that the common parts were cleaned on a weekly basis whereas, in their view, it would be sufficient for the common parts to be cleaned once every two weeks. They pointed to the fact that a previous managing agent had agreed to this. The Respondent argued that the expenditure was reasonable, and that it is a matter for the Respondent (and its current managing agents) to determine how often cleaning should take place. The Respondent also pointed to the fact that less frequent cleans are likely to take longer, reducing the amount of any saving, and that there may be detrimental consequences in terms of more rapid deterioration of carpets and decoration.
13. We again agree with the Respondent's argument. The Applicants seek to interfere with the Respondent's discretion as to the manner in which the Blocks are managed. Provided the Respondent's management decisions are reasonable ones, and provided the resulting costs are reasonably incurred, it is not open to the Applicants to insist on an alternative management strategy. In the present case, we find that weekly cleaning of

the common parts is in line with good management practice, and that the overall costs incurred on communal cleaning for 2010 are reasonable.

Management fees

14. Although the Applicants did not raise a general objection to the overall level of management fees for 2010, they did seek an explanation of the difference in the level of such fees as between the two Blocks, and of the application of a charge marked "single charge" in the Respondent's ledgers. The Respondent replied to the effect that the difference in the level of fees between the Blocks was due to the correction of a credit for earlier years being incorrectly applied to Stansfield in the 2008 accounts. The "single charge" notation was explained as the narrative used by the Respondent's managing agent's system when billing a management fee for part periods either at the start or end of a management contract. As it is unclear to us whether the Applicants have accepted this explanation, for the avoidance of doubt we find that the management fees claimed for 2010 are reasonable.

Miscellaneous invoices

15. The Applicants raised queries in relation to seven particular invoices for goods or services the cost of which the Respondent sought to recover in the 2010 service charge. By the time of the Tribunal's consideration of the matter, the disputed items had been reduced to three. Of these, one (for the supply of a fire box to Jodrell for £67.49) was acknowledged by the Respondent to have been an accounting error, and it undertook to make an appropriate allowance in the 2011 service charge. We consider this to be an acceptable solution.

16. The second invoice related to the supply of a grit bin, grit, a shovel and a high visibility jacket for £275.94. The Applicants contended that this was unreasonably expensive. However, we have no reason to doubt that the Respondent paid other than a commercial market rate for these items, which we therefore allow.

17. Thirdly, however, the Applicants challenged the fact that the Respondent sought to recover the cost of replacing all the locks in the two Blocks. This cost amounted to £206.47 for Jodrell and £309.70 for Stansfield. The Respondent explained that, when RMG took over the management of the Estate in early 2010, they were given very few keys by the outgoing managing agents. The locks were changed because of this. Whilst we understand why this was done, we find that it is inappropriate for the Respondent to pass on the resulting costs to the tenants, because those costs result from a failing in the proper management of the Estate. We disallow in their entirety the cost of the locks replacement, and the resulting deductions in the service charges for each Property are shown in column E of the tables in the Appendix.

Common parts electricity

18. The amounts claimed for common parts electricity were £1,557.00 for Jodrell (which included a credit of £193.24 relating to 2009) and £1,500.00 for Stansfield. The Applicants contended that some of the expenditure in question appeared to relate to electricity consumed during 2006, before the service charge came into operation. From the Tribunal's own inspection of the copy electricity bills provided, we do not find evidence of this.

19. However, the Applicants also asked the Tribunal to determine whether some of the electricity charges in question are now irrecoverable by

means of the service charge by virtue of section 20B of the Landlord and Tenant Act 1985. Section 20B provides:

- (1) *If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*
- (2) *Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.*

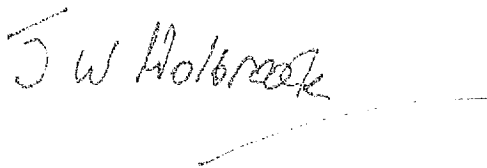
- 20. It is apparent from the copy correspondence provided to us that the 2010 service charge accounts were sent to the Applicants on 20 October 2011. On that date the Applicants were also sent service charge certificates in respect of each Property, showing the total amount claimed by way of service charge for that Property; the total amount previously demanded on account; and the resulting balancing charge. We saw no evidence that electricity charges had been demanded or notified on any earlier date, and it follows that such charges are only recoverable to the extent that they were incurred after 21 April 2010.
- 21. The Respondent incurred the electricity charges on the date it received the relevant bill from its utility supplier, irrespective of when the electricity concerned was consumed. The relevant dates are discernable from the date stamps applied to the electricity bills upon receipt by the Respondent, and it is apparent that the electricity charges detailed in the table below were incurred prior to 21 April 2010. Where the amount specified is less than the total for the invoice in question, the amount specified represents the amount the Respondent has attributed to Jodrell or Stansfield for 2010.

Account/invoice number	Amount	
	Jodrell	Stansfield
241993	12.35	
241991		7.16
241992		12.91
41904	1,168.93	
41904	39.00	
50999		4.84
51000		412.14
51001	182.06	
51002	348.55	
50932		144.68
TOTALS	1,750.89	581.73

22. In computing the resulting deductions which must be made in respect of the service charge for each Property, it is not possible simply to apply the relevant Lessee's Proportion to the relevant total shown above. To do so would be to overlook the fact that the majority of the 2010 service charge was demanded on account, well inside the 18 month period permitted by section 20B. Section 20B is only of relevance to the 'balancing' element of the service charge, as that was not demanded within the 18 month period. It is therefore to compare the amount which would be produced by applying the relevant Lessee's Proportion for each Property to the relevant total shown above, with the amount of the balancing charge claimed by the Respondent. The appropriate deduction cannot exceed the amount of that balancing charge. In addition, the fact that the balancing charge is reduced because we have disallowed locks replacement costs must also be taken into account. In other words, the maximum deduction under section 20B for each Property is the amount shown in column F of the tables in the Appendix. The actual deductions are shown in column G.

Application under section 20C of the Landlord and Tenant Act 1985

23. The First Determination included an order under section 20C of the 1985 Act relating to costs. The deductions in the service charges for earlier years which the Applicants secured by virtue of that determination bore a greater proportion to the amount claimed by the Respondent than do the deductions made in respect of 2010. It might therefore be argued that the Applicants have been less successful on this occasion. Nevertheless, we are mindful of the fact that elements of the 2010 service charge have been found to be unreasonable, or irrecoverable for other reasons, and that the background to both sets of proceedings is essentially the same. We therefore consider it to be just and equitable to make an order under section 20C in the same terms as the order made in the First Determination.



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Jonathan Holbrook
Chairman

12 March 2012

APPENDIX – 2010 SERVICE CHARGES

Mr Rahman

A	B	C	D	E	F	G	H	I
Property	Lessee's Proportion	Amount claimed (inc. Balancing charge)	Balancing charge claimed	Deduction for locks replacement	Reduced Balancing charge (D – E)	Deduction for electricity	Final Balancing charge (F – G)	Total amount payable (C – E – G)
2 Jodrell Drive	8.4320%	1,218.93	87.81	17.41	70.40	70.40	-	£1,131.12
10 Jodrell Drive	8.7100%	1,259.12	109.92	17.98	91.94	91.94	-	£1,149.20
18 Jodrell Drive	8.4320%	1,218.93	87.81	17.41	70.40	70.40	-	£1,131.12
20 Jodrell Drive	8.0940%	1,170.07	60.89	16.71	44.18	44.18	-	£1,109.18
102 Stansfield Drive	6.9302%	1,336.07	221.12	21.46	199.66	40.32	159.34	£1,274.29
17 Keepers Road	6.9085%	1,331.89	218.77	21.40	197.37	40.19	157.18	£1,270.30

Mr & Mrs Pitalia

A	B	C	D	E	F	G	H	I
Property	Lessee's Proportion	Amount claimed (inc. Balancing charge)	Balancing charge claimed	Deduction for locks replacement	Reduced Balancing charge (D – E)	Deduction for electricity	Final Balancing charge (F – G)	Total amount payable (C – E – G)
6 Jodrell Drive	9.0370%	1,306.39	135.89	18.66	117.23	117.23	-	£1,170.50
8 Jodrell Drive	8.0940%	1,170.07	60.89	16.71	44.18	44.18	-	£1,109.18
12 Jodrell Drive	7.9360%	1,147.23	48.38	16.39	31.99	31.99	-	£1,098.85
22 Jodrell Drive	8.7100%	1,259.12	109.92	17.98	91.94	91.94	-	£1,149.20
96 Stansfield Drive	6.9085%	1,331.89	218.77	21.40	197.37	40.19	157.18	£1,270.30
98 Stansfield Drive	6.4966%	1,252.48	174.17	20.12	154.05	37.79	116.26	£1,194.57

Mr O'Sundiya

A	B	C	D	E	F	G	H	I
Property	Lessee's Proportion	Amount claimed (inc. Balancing charge)	Balancing charge claimed	Deduction for locks replacement	Reduced Balancing charge (D – E)	Deduction for electricity	Final Balancing charge (F – G)	Total amount payable (C – E – G)
5 Keepers Road	6.3665%	1,227.40	160.09	19.72	140.37	37.04	103.33	£1,170.64