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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**8 Springfield House, Springfield, Stokesley, Middlesbrough TS9 5EP.**
Applicant	:	**Mr Harry Hall Thompson**
Respondent	:	**Springfield House Stokesley Management Limited**
Case number	:	**MAN/36UC/LSC/2012/0002**
Dates of Hearing	:	**11 May 2012**
Type of Application	:	**Determination of reasonableness of service charges - Section 27A Landlord and Tenant Act 1985 ("the Act").**
The Tribunal	:	**Mr S Moorhouse LL.B (chairman)** **Mr I D Jefferson MRICS** **Mr W L Brown LL.B**
Date of decision	:	**29 May 2012**

Decision

(i) The cost of £513 described by the Respondent as 'Engineering Insurance' within its service charge budget for the year ending 31 December 2012 relates to the inspection of the two lifts and as part of the maintenance programme is in accordance with the terms of the lease properly chargeable only to the leaseholders of the 8 properties served by the lifts.

(ii) The Respondent's intention to establish a separate 'lift' reserve fund, to contribute to the fund any underspend relating to the lifts in the current year and to ensure that all contributions to the fund are made by the leaseholders of the properties served by the lifts is determined by the Tribunal to be in accordance with the terms of the lease.

(iii) The Tribunal makes an order under Section 20C of the Act.

A. Background & Property

1. By an application dated 17 January 2012 (the "Application") proceedings were commenced before the Leasehold Valuation Tribunal under section 27A of the Act to determine issues concerning payability of the service charge for the Property in respect of the service charge year ending 31 December 2012. The Applicant additionally applied for an order under Section 20C of the Act that costs incurred by the Respondent should not be regarded as relevant costs to be taken into account in determining service charges.

2. Directions were made by the Tribunal on 2 February 2012.

3. The Property is a two bedroom ground floor apartment situated within a refurbished union workhouse complex (the Site'). The Site comprises a total of fifteen Apartments/Penthouses (1-12 and 14-16 Springfield House) together with twelve other residences: numbers 1-7 Springfield Mews, numbers 1-4 Springfield Lodge and the 'Gatehouse'.

B. The Inspection and Hearing

4. On 11 May 2012 the Tribunal carried out an inspection of the communal areas within the Site. As part of the inspection it was ascertained that there are two lifts within Springfield House. Each lift provides access to three first floor apartments and one second floor penthouse apartment. The properties served by the lifts are 4-7, 11, 12, 15 and 16 Springfield House (for ease of reference referred to as the 'Lift Residences').

5. A hearing was held following the inspection at The Law Courts, Russell Street, Middlesbrough. Both the inspection and the hearing were attended by the Applicant and by two representatives of the Respondent company: Mr Wilson of Kingston Property Services attended as the managing agent and Mr Foster was present as the Respondent's Chairman.

C. The Lease

6. The Applicant supplied a copy of the lease for the Property and to assist the Tribunal the Respondent supplied a clearer copy of the Springfield House standard lease. The following provisions of the lease were referred to by the parties within the hearing:

Clause 1(p) defines "the Service Charge" as follows:

' "the Service Charge" means one twenty-fifth of the Service Costs and in respect of units 19,20,21,22,23,24,25 & 26 an additional charge representing one-eighth of the cost of maintenance and repair and renewal of the lift serving such units'

It was common ground within the hearing that whilst clause 1 (p) refers to 'unit' numbers and not postal addresses the eight units referred to are the eight Lift Residences as previously defined.

Clause 8(d) contains the following agreement and declaration:

'The Management Company reserves the right to recalculate and amend the Service Charge percentage specified in Clause 1(p) hereof on an equitable basis if in its opinion it should at any time or times become necessary or equitable to do so. Where any such recalculation or amendment is made the Management Company shall notify the Lessee and the Owners of the Other Apartments of their respective Service Charge percentage and the date from which such recalculated Service Charge percentage is to apply (not being more than 6 months prior to such notification) and the recalculated Service Charge percentage appropriate to the Premises (as determined by the Management Company) shall on the date specified in the notification to the Lessee be the Service Charge percentage in substitution for that specified in Clause 1 (p) hereof or any previous percentage or substituted percentage'

D. The Law

7. The relevant law is to be found in the Act.

8. Section 18 of the Act states

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, 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.....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.

9. Section 19 of the Act states

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 as reasonable is so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise.

10. Section 27A of the Act states

Liability to pay service charges: jurisdiction

(1) An application may be made to 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 cost 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.

E. The Applicant's Case

11. The Application related to two issues which were taken in turn.

12. First, the Applicant identified within the service charge budget for the service charge year ending 31 December 2012 an item described as 'Engineering Insurance'. The cost of £513 attributed to this item was allocated equally amongst the 27 properties on the Site giving rise therefore to a charge of £19 per property.

13. The Applicant presented copies of documents relating to the allocation of costs in respect of the lifts. These included a letter dated 25 October 2011 from Mr Foster to the residents of the Lift Residences inviting comments on various issues, the minutes of a Directors Meeting of the Respondent company held on 8 November 2011 attended additionally by residents of the Lift Residences and, a letter dated 24 November 2011 from Mr Foster to all residents confirming that the budget for 2012 had been considered and approved and inviting residents to raise any questions they may have at an informal meeting to be held on 6 December.

14. The Applicant presented also copies of his correspondence with Kingston Property Services concerning the nature of the 'Engineering Insurance' and a copy of the terms of the 'Engineering Insurance' supplied directly to him by Carlton-Sturman (Insurance Brokers) Ltd.

15. It was the Applicant's contention that, notwithstanding the terminology used within the service charge budget, the cost of £513 related not to an insurance item but to the mandatory inspection of the lifts. This was therefore part of a routine cyclical maintenance regime for the lifts and should be charged only to the residents of the Lift Residences in accordance with Clause 1(p) of the lease. The Applicant contended also that there would be no scope for the Respondent to rely upon clause 8(d) of the lease in order to change the basis of allocation of this cost. Clause 8

(d) had allowed for items such as grass cutting to be allocated between 27 rather than 25 properties as the number of units in management had increased, but could not be used in contravention of the specific provision at clause 1(p) requiring the residents of the Lift Residences to share between them the cost of the lifts.

16. The second issue to which the Application related concerned the item described in the service charge budget for 2012 as the 'sinking fund / reserve fund'. This was described in the budget as a 'fund to cover replacement of capital items and future major works'. The Applicant contended that the service charge schedule as worded would allow charges made into the sinking fund to be used for repairs and renewal of the lifts, whereas the lease made specific provision for these items to be allocated only to the Lift Residences.

F. The Respondent's Case

17. On the first issue, that of the 'Engineering Insurance', the Respondent contended that the 'insurance' was a mandatory requirement taken out for the protection of all of the leaseholders. Since all of the leaseholders owned the equipment they should split the cost of the mandatory inspections. As such the cost of £513 was properly treated within the service charge budget as being a cost to be allocated equally to all leaseholders.

18. Mr Wilson confirmed for the Respondents that clause 8(d) of the lease had not been exercised in order to allocate the cost of the 'Engineering Insurance' across all 27 properties, rather this allocation had been based upon the Respondent's interpretation of clause 1(p). However it was the Respondent's view that clause 8(d) could be exercised if need be in order to achieve the same outcome which, in the opinion of the Respondent, was a fair and equitable one.

19. Mr Foster made a number of comments on the fairness of the allocation, contending that other heads of service charge were split evenly regardless of benefit and that ground floor residents benefited from the lifts if they visited the Lift Residences.

20. On the second issue, that of the sinking fund, Mr Wilson confirmed that any costs of renewal of the lifts would be allocated only to the residents of the Lift Residences.

21. At the hearing the Tribunal made reference to Part 9 ('Reserve Funds') of the Royal Institution of Chartered Surveyors Service Charge Residential Management Code, paragraph 9.8 of which reads 'If tenants are

contributing towards different costs (e.g. one group of tenants contributes towards the lift, whilst another group contributes towards gardening), the funds should be differentiated....' The Respondent indicated that the particular guidance had not been taken into account in its apportionment of the 'Engineering Insurance'.

22. Having heard the Applicant's case Mr Wilson set out the Respondent's intention to establish a separate reserve fund for the lifts. The Respondent's intentions in this respect are recorded below as part of the Tribunal's findings and decision.

G. The Tribunal's Findings and Decision on the Section 27A Application

23. On the first issue, the allocation of the cost of the item described by the Respondent as 'Engineering Insurance' the Tribunal made the following findings.

24. The cost of £513 appearing in the service charge budget for the year 2012 related to a contract (number HAY157730) entered into between the Respondent and HSB Engineering Insurance Services Limited, a copy of which was supplied to the Tribunal by the Applicant. The services to be provided pursuant to such contract relate to the examination and inspection of the two passenger lifts at Springfield House and the provision of the related reports.

25. The cost is reasonably incurred as a necessary part of the maintenance programme for the two lifts. As such it is chargeable specifically to the leaseholders of the Lift Residences pursuant to the service charge definition set out within clause 1(p) of the lease.

26. On the second issue, the issue of reserve funds, the Tribunal finds the service charge schedule for the year ending 31 December 2012 to be ambiguous with regard to the renewal of the lifts.

27. Having heard the Applicant's case the Respondent has confirmed that it will put in place both a general reserve fund and a separate reserve fund relating to the lifts. The Respondent went on to confirm that any underspend in the current year in relation to the contributions made by the leaseholders of the Lift Residences towards the lifts would be allocated to the separate reserve fund for the lifts. The Respondent further confirmed that future contributions to such fund would be made exclusively by the leaseholders of the Lift Residences.

28. The Tribunal determines that the intention expressed by the Respondent in paragraph 27 above is in accordance with the terms of the lease.

29. The Tribunal went on to consider the potential application of clause 8 (d) of the lease. The Tribunal noted that this clause had enabled the service charges percentages to be changed in the past on a fair and equitable basis to accommodate an increase in the number of units to be leased on the Site from 25 to 26 and then, with the development of the Gatehouse, to 27.

30. The Tribunal considered the Respondent's comment that clause 8(d) could be exercised if need be in order to spread the cost of the lift inspection contract across all 27 units. The Tribunal determined that clause 8(d) could not be exercised in order to allocate a particular component of the service charge costs in a way which would contravene the specific provisions set out within clause 1(p) of the lease.

H. As to costs

31. No representations were made regarding costs save that the Applicant, who had indicated that he would seek the reimbursement of his travelling costs, confirmed that this was no longer the case given the proximity of the hearing venue to the Property.

32. In relation to the application under section 20C of the Act, the Respondent indicated that there would be no charges incurred in respect of the proceedings. In the circumstances the Tribunal makes an Order under section 20C of the Act that in the event that any costs are incurred by the Respondent in respect of these proceedings these should not be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the applicant for the current year or any future year.

S Moorhouse
Chairman

Date: 29 May 2012