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LON/00BG/LSC/2006/0077

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S27A OF THE LANDLORD AND TENANT ACT 1985

Property: **Unit 48, Omega Works, London E3 2PA**

Applicants: Mr Mark Hutchison and Ms Angela Brenke (tenants)

Respondent: London Green Limited (landlord)

Determination without a hearing under Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

Tribunal: Lady Wilson

Date of decision: 21 June 2006

Background

1. This is an application by the long leaseholders ("the tenants") of Unit 48, Omega Works, London E3 under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine their liability to pay service charges for the year 2006. The landlord is the respondent. Both the tenants and the landlord have agreed that the determination should be made under regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, on consideration of the papers and without an oral hearing, and I am satisfied that the matter can be so determined. The determination is made by a single tribunal member under regulation 13(5).

2. Omega Works is a new development of 57 flats in a six storey block, all held on long leases. The single issue for determination is the proportion of the total service charges which should be attributed to Unit 48 for the year 2006.

3. As the determination is likely to affect the other leaseholders it was appropriate that they should be made aware of the proceedings and asked whether they wished to make representations. Accordingly the landlord was asked to notify all the leaseholders of the proceedings and of their right to be joined, and, according to a letter from the landlord to the tribunal dated 2 June 2006, they were so notified by letters dated 31 May 2006. Although a number of them subsequently telephoned the tribunal, none has made any representations or asked to be joined as a party to the application.

4. The tenants' lease is dated 26 March 2004. By clause 2.1, the landlord lets the property to the tenants on the tenants agreeing to pay a 'basic rent' of £100 a year and, as 'service rent', the tenants' "*reasonable and proper proportion of the service costs as defined in the third schedule*". By clause 3.2, the tenants covenant to pay the service charge calculated in

accordance with the third schedule. Paragraph 1 of the third schedule defines the tenants' proportion as meaning, in relation to the services in the fourth schedule -

(a) services to be provided to all units - 1.37%

(b) services to be provided to units on the first to fourth floors inclusive - 1.74%

subject to variation in accordance with the principles of good estate management.

5. The proportion at (a) is for the service charge excluding the lift, and is based on the proportion which the floor area of the flat bears to the combined floor areas of all the flats in the block. The proportion at (b) is for the lift, and is based on the proportion which the floor area of the flat bears to the floor areas of all the flats on the upper floors. The flat is on the fourth floor. Attached to the tenants' statement of case is a schedule showing the apportionment of the service charges to all 57 flats, all based on floor area and showing percentages ranging from 1.37% to 2.75% for the charges falling within (a) and from 1.74% to 3.51% for those falling within (b). Although the tenants' lease provides that the lift service charge is payable by the tenants of flats on the first to fourth floors inclusive, the schedule shows that there is a fifth floor, the tenants of flats on which pay, as one would expect, a proportion of the lift charge. The proportions payable by all the leaseholders aggregate to 100% of the total charge in each category.

6. The managing agents first appointed to manage the development calculated the service charge proportions of all the leaseholders in accordance with the floor areas of their flats, and the proportion paid by the applicant tenants from the grant of their lease until 31 December 2005 was accordingly as set out in the lease (or was intended to be: it appears that the previous managing agents erroneously apportioned 1.47% instead of 1.74% for the lift service charge).

7. The landlord has now taken over the management of the block from the managing agents and proposes to collect service charges from each leaseholder on an equal basis, to which the applicant tenants object. They calculate that the proposed arrangements will result in an overall increase of 28% in the service charges payable by them.

The tenant's case

8. The tenants say that a service charge is payable only to the extent that it is fair or reasonable, and the proposed change is neither, whereas the existing arrangement is fair, since some of the units are substantially larger than others - they give as an example Unit 5, which has a floor area of 209.9 sq m as against Unit 48, their own flat, with a floor area of 73.6 sq m. They say that estate can be well managed under the system of apportionment based on floor area and the apportionment does not require variation to accord with good estate management. They do not challenge the overall amount of the service charge.

The landlord's case

9. For the landlord, Ms Caroline Coleman, Property Manager, says that the decision to divide the service charge equally was taken:

i. because to do so was considered fair and reasonable in the context of how the units were occupied;

ii. in order to bring the apportionment in line with other developments managed by the landlord, and thus to allow a simple and uniform management system; and

iii. to achieve economies of scale by combining the service charge budgets of Omega 3 (the block in which Unit 48 is situated, which is the first phase of the development) and Omega 4, the second phase of the development, comprising an additional 69 units, the two together forming one development of 126 units known as Omega Works.

10. Miss Coleman says that the leases of the units in Omega 4 provide that service charges will be apportioned equally, an arrangement to which none of the leaseholders has objected. She says that none of the other leaseholders in any of the 300 units managed by the landlord has objected to apportioning service charges on the basis of equality. She says that all the units in Omega 3 have two bedrooms, and that the "vast majority" are occupied by two people. The landlord believes, she says, that it is more equitable in these circumstances to apportion service charges equally and that whether one leaseholder has a slightly bigger unit than another was irrelevant to the apportionment of, for example, the costs of the water treatment service or emergency light testing.

11. She says that since the completion of the additional 69 units in the second phase of the development the leaseholders of the 57 units in Phase 1 have received additional services which were previously considered too expensive when they were met only by the leaseholders of Phase 1. This is, she says possible only by treating Phases 1 and 2 as one development, allowing the cost of common services to be shared equally.

Decision

12. The first question to be answered is whether the tribunal has the power to determine the appropriate apportionment, or whether any variation from the basis of apportionment in the

third schedule to the lease is at the discretion of the landlord. I am satisfied that this question is within the tribunal's jurisdiction. Clause 2.1 of the lease requires that the service charge proportion should be "reasonable and proper", and the third schedule provides that any variation from the specified percentages must be "in accordance with the principles of good estate management". By section 27A of the Act, the tribunal is given the power to decide whether a service charge is payable, and in my view the tribunal thus has jurisdiction to decide whether the proposed apportionment is "reasonable and proper" and "in accordance with the principles of good estate management" as a first step to deciding whether a service charge derived from it is payable.

13. The next question, then, is whether the proposed apportionment is reasonable and proper and whether the proposed variation is in accordance with the principles of good estate management. In my view it is for the landlord to establish that the proposed apportionment satisfies both of these criteria, and I am not persuaded that it has done so. I do not consider that the obvious ease and convenience of an equal division of the service charge ought to be a significant factor in the decision of the landlord or of the tribunal. No doubt it would be a little simpler to divide the charges equally, but a division according to floor area is relatively straightforward and very common. I do not understand the landlord's argument about economies of scale, because the global service charges will remain the same however they are divided between the leaseholders. Nor, as it seems to me, is it particularly relevant that the leaseholders of the flats in Phase 2 of the development have leases the service charges of which are divided equally, regardless of floor area. They presumably bought their leases on the basis that that would be the arrangement, whereas the position of the leaseholders of flats in Phase 1 is different. I do not regard it as relevant that, according to the landlord, leaseholders other than the applicants have not complained about the proposed basis of apportionment. Those adversely affected may yet do so when the bills come along.

14. I am not persuaded that the proposed arrangements will be reasonable and proper. Division according to floor area (or, in older developments, rateable value) is in my experience the most commonly encountered basis of allocating service charges, and is generally the fairest. Larger flats tend to have more occupants and visitors and to make greater use of services. Where flats in a block are of very similar but not identical size, equality may well be the fairest basis for division of the service charge; but it is clear that, at any rate in Phase 1 of the development, the flats, though they may each have the same number of bedrooms, differ significantly in floor area.

15. Accordingly I am not persuaded that the principles of good management require this variation, or that the proposed basis of apportionment is reasonable and proper.

Section 20C

16. The tenants have been successful in this application, and in my view the landlord's stance has been unreasonable. Applying the principles stated by the Lands Tribunal in *The Tenants of Langford Court v Doren* (LRX/37/2000), I conclude that it would not be just and equitable in the circumstances for the landlord's costs in connection with these proceedings to be regarded as relevant costs to be taken into account in determining the service charges of any of the leaseholders.

TRIBUNAL:.....

DATE: 21 June 2006