

London Leasehold Valuation Tribunal File Ref No.

LON/00BG/LSC/2007/0317

## Leasehold Valuation Tribunal: reasons

### Landlord and Tenant Act 1985 section 27A

#### Address of Premises

132 Rounton Road,  
Bow  
London E3 4EX

#### The Committee members were

Mr Adrian Jack  
Mr Frank Coffey FRICS  
Mr Eric Goss

**The Landlord:** Poplar Housing and Regeneration Community Association

**The Tenant:** Mr Conor McStravick

#### Procedural

1. By an application dated 2<sup>nd</sup> August 2007 received by the Tribunal on 15<sup>th</sup> August 2007 the tenant sought the determination of the final service charge account claimed by the landlord in the service charge year 2005-06 and the estimated service charge account claimed by the landlord in the service charge year 2006-07. The service charge year runs to 31<sup>st</sup> March.
2. On 17<sup>th</sup> August 2007 the Tribunal gave directions for the landlord to send its detailed case (including documents) to the tenant by 7<sup>th</sup> September 2007. The tenant was given until 21<sup>st</sup> September 2007 to make a supplemental statement. Provision was made for the tenant to make bundles for the hearing. The hearing was listed for 15<sup>th</sup> October 2007. The directions warned the parties that:

“Non-compliance with the Tribunal’s directions may result in prejudice to a party’s case. In particular, failure to provide evidence as directed may result in the Tribunal deciding to debar the defaulter from relying on such evidence at the full hearing. In the case of the Applicant non-compliance could result in dismissal of the application in accordance with regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.”

“I write to confirm that I received a soft copy of the respondent’s case this morning. I am happy for the case to proceed, although I would like to point out my dissatisfaction at receiving the respondent’s case so late and hope this is taken into consideration on the outcome.”

11. The Tribunal considered that this was a bad case of a landlord ignoring the Tribunal’s directions. Even on the landlord’s own case, it was only in late August that the difficulties with preparation commenced. There was no reason why the landlord could not have prepared its case shortly after the 17<sup>th</sup> August directions were given. The landlord is a major organisation. It had full knowledge of the warning in the directions that “failure to provide evidence as directed may result in the Tribunal deciding to debar the defaulter from relying on such evidence.”
12. Even when it applied for the hearing on 15<sup>th</sup> October to be postponed, it failed to ask for directions which would have lead to a proper adjusted timetable being given. The tenant was hopelessly prejudiced, if the landlord was entitled to adduce this evidence, since he was completely unable to answer it.
13. In the Tribunal’s judgment the landlord’s behaviour was unacceptable. If this was not a case for debarring the landlord from relying on its late statement of case, there would never be a case for making such an order. The Tribunal took into account Mr Brayshaw’s apologies for the landlord’s failure. Actions, however, speak louder than words: the prejudice caused by landlord’s failures cannot be displaced by glib statements of contrition.
14. The Tribunal accordingly debarred the landlord from relying on its statement of case or on the evidence in the appendices to the statement of case, but in accordance with the tenant’s wishes continued with the hearing.
15. Mr Brayshaw indicated in the course of making his application for an adjournment that the landlord would wish to appeal any refusal of his application. We deal with this application for permission to appeal below.

#### **The law on service charges**

16. Section 19(1) of the Landlord and Tenant Act 1985 provides:

“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

Building: caretaking block	£158.22	263.78
Communal TV aerial	1.67	nil
Door entry system maintenance	4.01	128.75
Communal repairs: block	85.00	136.64
Maintenance admin	27.20	79.62
Estate: caretaking estate	26.54	25.89
Horticultural maintenance	21.70	27.85
Insurance	106.08	148.51
Management and admin	119.62	107.97
Ground rent	10.00	10.00
Refuse container hire & maint	nil	8.50
Communal energy	nil	19.49
Communal heating fuel	nil	643.44
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	£560.04	£1,600.44

#### **Communal energy and heating fuel**

22. It can readily be seen that the biggest increase is in the figures for communal energy and heating fuel. Mr Tull explained that the figure for communal energy was the electricity used in the common parts of the block. The communal heating and fuel by contrast were the costs of a central boiler system in Campbell Road which provided unlimited hot water and from October to April heating. This boiler system was still operated by Tower Hamlets London Borough Council. All the landlord could do was pass on the amounts demanded by Tower Hamlets to the leaseholders.
23. Because the boiler was not operated by the landlord, Mr Tull could not speak from personal knowledge of how the costs were fixed, but he was aware that the gas used came from Eon after a competitive tender by Tower Hamlets. He was aware (and indeed it is within the Tribunal's knowledge) that gas prices increased significantly over this period, hence the increase to £643.44 from the earlier estimate given for 2005-06 of £490.71.
24. The landlord had only taken over the estate comparatively recently. Previously there had been a tenant management organisation. In the course of the handover the need to bill tenants with long leases for communal energy and heating was overlooked. Once the error was noticed, the long leaseholders were informed that there would have to be a prospective increase.

Management and administration was allocated between flat-owners on a unit basis, whilst maintenance administration was allocated on the basis of the amount of repairs charged to a particular block. In other words, a block which required a lot of repair also bore a larger proportion of the administrative overheads associated with repairs.

32. The tenant did not attack this method of allocation of costs, which in any event the Tribunal considers to be reasonable (if complicated). The sums claimed under both heads are reasonable. There is no complaint of poor management. In these circumstances, the Tribunal disallows nothing.

#### **Horticultural maintenance**

33. This item is more commonly known as gardening. Mr Tull explained that the amount simply reflected the cost. The Tribunal accepts this evidence and disallows nothing.

#### **Insurance**

34. Mr Tull explained that the landlord insured with Axa from year to year. Axa insured the entire portfolio of the landlord. The rates had increased steadily in line with claims, so the landlord had recently gone into the market for alternative quotes. The landlord had now, from May 2007, entered a three year contract with Brit UK and cost of insurance would drop in the current year to about £40 per flat per annum.
35. The Tribunal considered carefully whether the drop in premiums which the landlord has been able to obtain shows that the landlord failed to obtain competitive insurance in 2005-06. A landlord is under a duty periodically to review its insurance arrangements. A landlord is not, however, in the Tribunal's judgment obliged to carry out a full testing of the market every year, nor is it obliged necessarily to accept the lowest quote obtainable. In particular there can be advantages in keeping the same insurer, because the claims handling can be facilitated and issues as to disclosure are kept in a minimum.
36. The Tribunal also bore in mind that the three year contract with Brit UK may well be on especially generous terms. Axa is one of the biggest (if not the biggest) insurers in the world, whilst Brit UK is somewhat smaller and less well known. It would be readily understandable, if Brit UK was willing to offer a much keener quotation than the market in general to get a new customer.
37. In the Tribunal's judgment, the amount charged by Axa in 2005-06 was reasonable. The mere fact that a cheaper quote might have been obtained

### DETERMINATION

**The Tribunal disallows nothing in the final service charge account for the service charge year 1<sup>st</sup> April 2005 to 31<sup>st</sup> March 2006 and nothing in the estimated service charge account for the service charge year 1<sup>st</sup> April 2006 to 31<sup>st</sup> March 2007. The Tribunal makes no order in respect of costs. The landlord is refused permission to appeal.**



Adrian Jack, Chairman

7 November 2007