

**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00MS/LVT/2007/0003

Application under Sections 35 and 38 of the Landlord and Tenant Act 1987

**Re: West End One, West End Road, Southampton**

|  |  |                 |
|--|--|-----------------|
| Applicant                                    | Seager & Hughes Limited                                |                 |
| Respondents:                                 | Mr T Bega & others Lessees of Flats                    |                 |
| Date of Application                          | 17 <sup>th</sup> October 2007                          |                 |
| Date of Inspection                           | 17 <sup>th</sup> April 2008                            |                 |
| Date of Hearing                              | 17 <sup>th</sup> April 2008                            |                 |
| Venue  | Wells Place Centre, Eastleigh                          |                 |
| Appearances for the Applicant                | Mrs Webster and Mr Culhane                             |                 |
| Appearances for the Respondent               | Mr Kershaw, Flat 21 West End House<br>for himself only |                 |
| Members of the Leasehold Valuation Tribunal: |  |                 |
|  | M J Greenleaves  | Lawyer Chairman |
|  | D Lintott FRICS  | Valuer Member   |
|  | Miss T A Clark   | Lawyer Member   |
| Date of Tribunal's Decision:                 | 30 <sup>th</sup> April                                 | 2008            |

**Decision**

**Preliminary**

1. References to any Clause or Schedule to a lease are references to the Lease dated 24<sup>th</sup> June 2005 of Flat 4 West End House made between Kingsoak Homes Limited (1) and Thomas Bega & Peninah Njeri Nderitu (2) (hereafter referred to as the Standard Lease)
2. The following decisions apply to each flat in the blocks of flats at West End One, West End Road, Southampton known as West End House, East Side Court and Southern Heights (the three blocks) and the provisions in those flat leases equivalent to those in the Standard Lease.
3. Consequential amendments to the leases may be required.

**Determination**

4. The Tribunal determines under Section 38 of the Landlord and Tenant Act 1987 (the Act)
  - a. That the contribution to service charge for the Common Parts as defined in Schedule 2 of the Lease applicable to any flat shall be calculated on the basis that 4 points are allocated to 1 bedroom units and 5 points to 2 bedroom units so that the proportion of

service charge payable by any flat will be 4 or 5 points (as the case may be) as the numerator and the total of such points in the relevant block as the denominator.

*For example:*

West End House would have a total of 129 points  $((21 \times 5) + (6 \times 4) = 129)$

To which 1 bedroom flats will pay 4/129ths and 2 bedroom flats will pay 5 x 129ths of the service charges applicable to that block.

Southern Heights would have a total of 32 points  $((3 \times 4) + (4 \times 5) = 32)$

To which 1 bedroom flats will pay 4/32nds and 2 bedroom flats will pay 5 x 32nds of the service charges applicable to that block.

East Side Court would have a total of 75 points  $(15 \times 5 = 75)$

To which all flats pay 5 /75ths of the service charges applicable to that block.

- b. That the cost of electricity charged on the meter of East Side Court and payable as service charge in respect of Schedule 2 Common Parts shall be 50% of that cost, the remaining 50% of that cost being charged to service charge applicable to the Managed Areas as defined in Clause 3.15 of the Standard Lease.
  - c. In respect of Managed Areas and management charges:
    - i. The cost of the existing external lighting shall be paid under service charge for Schedule 2 Common Parts of the block from which that electricity is presently supplied
    - ii. The cost of the electricity supply for the entrance gates (connected to Eastside Court) being taken as 50% of the electricity supply costs to that block shall form part of the costs of the Managed Areas.
  - d. Management charges. Each unit in the three blocks shall pay an equal 1/49th part of the 49/73 part of the charges applicable to the Managed Areas and also to management charges falling within the provisions of Paragraph 2.5 and 2.6 of the RICS Management Code, except that management charges under paragraph 2.6 of the Code attributable to works in respect of Schedule 2 Common Parts of a particular block shall be apportioned between the flats in that block as referred to in Paragraph 4a above.
  - e. Paragraph 17 of the Standard Lease shall be deleted
  - f. Paragraph 1.2.3 of Schedule 5 to the Standard Lease shall be varied as follows:
    - i. In line 2, the word "areas" shall be deleted and replaced by the words "Managed Areas and Schedule 2 Common Parts"
    - ii. In line 7, the words "in that Part of this Schedule" shall be deleted and replaced by the words "in this lease"
5. In respect of apportionment and calculation of service charges, the above shall apply to accounting years from 1<sup>st</sup> January 2009 onwards.
  6. Pursuant to Section 38(8) of the Act, the Tribunal directs the parties to the leases in the three blocks to vary them in accordance with the above terms.
  7. In the event of any dispute arising in implementation of the above, the parties to the relevant lease may apply to the Tribunal, under this present application, for determination of those issues.

## Reasons

### **Introduction**

8. This is an application made by the Applicant under Section 35 of the Act for variation of the leases of the three blocks on the ground that the leases do not make satisfactory provision for the computation of service charge..
9. The application arises from the findings of the Tribunal in the Case No CHI/00MS/LSC/2007/0004 that the terms of the leases made it impossible to determine in what proportions service charges were payable.

### **Inspection**

10. The Tribunal inspected the premises in the presence of Mr Culhane and Mrs Webster, representatives of the Applicant.
11. The entire development comprises, in addition to the three blocks, a group of eight houses and a further block of 16 flats known as Midanbury Court. Including the 49 flats in the three blocks, there are therefore a total of 73 units on the development which share the use of the Managed Areas comprising entry gates, access roads, parking areas and amenity gardens.
12. Midanbury Court is freehold and is owned by Atlantic Housing Association. It has a right of access over the access ways forming part of the Managed Areas.
13. Each flat of the three blocks has its own single car parking space.
14. The whole development is maintained to a good standard for its age and character. The estate is managed by Belgarum Property Management Limited.

### **Hearing**

15. The hearing was attended by Mr Culhane and Mrs Webster for the Applicant and by Mr Kershaw for himself only. The Tribunal also received written representations from Mr Bega (Flat 4 West End House) dated 27<sup>th</sup> December 2007 and from Mr and Mrs Gibson (Flat 1 West End House) dated 18<sup>th</sup> February 2008. In their letter, Mr & Mrs Gibson had requested an adjournment as they would be away on 17<sup>th</sup> April 2008. However, the Tribunal had fixed that hearing date having given directions on 22<sup>nd</sup> January 2008 that parties should notify any inconvenient hearing dates by 45<sup>th</sup> February. Bearing in mind also that Mr & Mrs Gibson appeared to have put their case fully in their letter and enclosures of 22<sup>nd</sup> February, the Tribunal decided that they would not be prejudiced and the hearing should continue on 17<sup>th</sup> April 2008.

### **Evidence and Submissions**

- a. Apportionment of Schedule 2 Common Parts service charges.
  - i. The Applicant had found that the existing terms of various leases were unworkable as, for instance, at the hearing of the previous case they had informed the Tribunal that within West End House there are 5 different apportionments of all charges: 1.68%, 1.48%, 1/57<sup>th</sup>, 1/27<sup>th</sup> while the lease of Flat 2 has no provision stated at all.
  - ii. The Applicant suggested that a straight fraction apportionment was easiest regardless of flat size but the other two possibilities were apportionment by floor areas or taking into account Clause 17 of the standard Lease, an uplift of 25% for two bedroom flats. They had obtained the schedule of floor areas from successors of the original developers. The Applicant's preference was to use floor areas. They noted the arguments concerning ground floor flats in West End House not using the lift but felt that should not be taken into account in the apportionment.
  - iii. Mr Kershaw said that he owned a one bedroom flat on the second floor of West End House. He submitted the apportionment should take into account the Clause 17 25% uplift for two bedroom flats, but it would make little difference to

him if that or floor area apportionment was adopted; two bedroom flats were likely to cause more wear and tear to common parts so should pay more. He also produced a Kingsoak price list which suggested that ground floor flats not using a lift might pay less, but considered that the lift should be paid for by all flats in West End House.

- iv. Mr Bega's case was that the apportionment should be on the basis of a 25% uplift for two bedroom flats and that ground floor flats should not contribute to the lift.
- v. Mr & Mrs Gibson submitted that a floor area basis should be used if accurate measurements were available but otherwise the 25% uplift basis should be used but with ground floor flats not contributing to the lift costs as they did not benefit from them.

b. Apportionment of Managed Areas service charges.

- i. The Applicant said that they had hitherto divided these costs equally between the 73 units and that this should continue. They said that the freeholders of Midanbury Court were entitled to access over the access areas but there was no specific apportionment as to their contribution to costs. They had however discussed this with Atlantic Housing Association and as a result they were paying 16/73rds of the costs. Likewise the houses were paying 8/73rds of the costs leaving the three blocks to pay the remaining 49 parts. They proposed this should continue but were prepared for the three blocks to have their charge limited to just 49/73rds of these costs.
- ii. Mr Kershaw agreed. Mr Bega and Mr & Mrs Gibson suggested the 1/73 apportionments should continue

c. Entry gates

- i. The Applicant said that the electricity supply came through the Eastside Court meter so that block was paying all those costs. Alternatives were either a sub-meter for the gates or to allocate a proportion of the East Side Court electricity costs to the gates to be paid as part of the Managed Areas service charge. They ascertained that a sub-meter would cost about £1,000 which is expensive. A rough calculation of the cost of electricity for the gates suggested about £116 per year compared with the figure of £3000 budgeted in 2007. That figure of £116 seemed low so they proposed 50% as a reasonable estimate.
- ii. Mr Kershaw was not very concerned about this aspect and there were no submissions from Mr Bega or Mr & Mrs Gibson.

- d. Schedule 7. The Applicant suggested that the words "of the areas referred to in that part of this schedule" should be deleted. Mr Kershaw did not express a view. Mr Bega considered the present drafting to be satisfactory, but referred to issues concerning reserve funds. Mr & Mrs Gibson did not express views.

## Consideration

16. The Tribunal considered all the case papers, the evidence and submissions received including those received from Mr Bega and Mr & Mrs Gibson.

## The Law

17. Under Section 35 of the Act, a party to a long lease may apply to the Tribunal for an order varying the lease on the ground that the lease fails to make satisfactory provision with respect to..(inter alia).... The computation of a service payable under the lease.
18. The leases of flats in the three blocks are plainly defective and make it impossible at present to compute service charge. Not only are there differing proportions for different flats; it is impossible to ascertain that the service charges payable do not add up to more or less than 100% of the charges incurred. Further the leases do not provide for different proportions for

charges relating to an individual block and for external common parts or management costs. The Tribunal was entirely satisfied that the grounds for the application were satisfied.

#### 19. West End House lift

- a. The Tribunal is aware from its own experience that it is a common issue whether ground floor flats should contribute to the costs of a lift. The Tribunal notes that there is no specific reference to the lift in the Standard Lease so there seems to have been no expectation in the lease that there should be some differentiation. The Tribunal noted the Kingsoak price list produced by Mr Kershaw which suggests that a 2 bedroom flat with lift would pay more service charge than a 2 bedroom flat without a lift. That price list does not necessarily relate only to West End House so it could be taken to have meant that 2 bedroom flats in blocks without a lift would pay less than those in a block with a lift. Whatever the position about that, the Tribunal was more inclined to consider the leases and the views expressed that upper floors only should pay towards the lift.
- b. The Tribunal also took into account that differentiation was also possible for other items of service charge. For instance, as a top floor flat gains more benefit from the roof protection, perhaps they should pay more towards that expense? Should the lift expense be paid in different proportions depending on which floor one's flat was situated and therefore used by the flat occupier?
- c. The Tribunal's powers under Section 35 are only to remedy a lease where it fails to make satisfactory provision. The apportionment of lift costs between all flats in the block may be simplistic and may not be ideal. But the Tribunal found nothing in the lease to suggest that any purchaser of a lease should not have expected to contribute to the lift; the Tribunal is not aware of any leases in other blocks elsewhere where such differentiation is made. The Tribunal could not find that the present position about contribution to the lift was unsatisfactory within the meaning of Section 35 so did not take it into account in coming to its decision.

#### 20. Apportionment of block service charge.

- a. The Tribunal did not consider it to be fair, reasonable or satisfactory that Eastside Court should suffer all the cost of the electricity for the gates. The gates are part of the Managed Areas and as such the cost should be shared by all 73 units. To do that accurately would require installation of a sub-meter the cost of which would be payable as service charge and, in the Tribunal's view, would be disproportionate. The Tribunal felt that a reasonable solution to this problem was to make a reasonable apportionment of the Eastside Court electricity bill and attribute 50% of that to the gates.
- b. Of the resulting charges for each block, the Tribunal felt there was some merit in using floor areas, but it was unsure whether the existing measurements provided by the Applicant were sufficiently accurate. Re-measurement would be required and that would be expensive.
- c. On the other hand the Tribunal noted the provisions of Clause 17 of the Standard lease. These had not been implemented and this had largely led to the problems faced by all parties. However, the Tribunal considered that on the basis of that Clause there would probably have been an expectation on the part of any purchaser that apportionment would finally be made on that basis, although clause 17.4 leaves the situation open to some extent. So provided a satisfactory solution could be found, it should broadly follow the expressed intentions of the lease.
- d. The Tribunal considered that a satisfactory solution would be for 2 bedroom flats to pay 25% more than one bedroom flats, that being broadly in accordance with the Standard Lease, straightforward and not causing expense in measurement. The formula set out in the decision provides the appropriate calculation.

#### 21. Service charge for Managed Areas & management expenses. This is presently carried out on a 1/73 basis. The Tribunal considered this to be satisfactory but on the basis that 24/73 should be "ring-fenced" to Midanbury Court and the houses, so that the flats in these three blocks pay

1/49<sup>th</sup> each of the remaining balance save that management expenses under Paragraph 2.6 of the Code attributable to works relating to a particular block should be apportioned on the same basis as other service charges for that block.

22. Reserve funds. The Tribunal did not consider that the Standard Lease did not make satisfactory provision within the meaning of Section 35 of the Act. The law and the RICS Management Code (which is approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993) make detailed provision for management standards with which managing agents should comply in relation to reserve funds and all other management standards. Compliance or otherwise with those matters does not fall within the ambit of the Tribunal's powers under Section 35 and 38 of the Act, so the Tribunal made no decision about that.
23. The Tribunal made its decisions accordingly.
24. While these variations will, as a matter of law, apply to charges from 1<sup>st</sup> January 2009 onwards, it is to be hoped that they may be regarded as a way forward to resolving service charge apportionment issues which are still arising now.
25. As an observation, the Tribunal finds it very surprising that the original drafting of these leases was evidently defective but that it seems that its deficiencies were not dealt with by lawyers who have subsequently acted on purchases of flats.

(signed)

M J Greenleaves

Chairman

A member of the Southern  
Leasehold Valuation Tribunal  
appointed by the Lord Chancellor