

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

4 SILVER HILL GARDENS, CHATHAM, KENT ME4 5RG

Applicant: (1) Mr M Hunter
(2) Mr S Ellis
(3) Mr S Kambairi
(4) Ms R Cioffi
(5) Ms N Draper

Respondent: PSG Investments Group Ltd (landlord)

Date of application: 2 January 2009

Members of the Leasehold Valuation Tribunal:

MA Loveday BA Hons MCI Arb

Mr CC Harbridge FRICS

Mr TJ Wakelin

1. This matter concerns liability for service charges in respect of 4 Silver Hill Gardens, Chatham, Kent ME4 5RG.
2. By an application dated 2 January 2009, the lessee of Flat 4 (Mr Hunter) sought a determination under LTA 1985 s.27A(1) in relation to service charges over a number of years. The application named the respondent as Parkfield Marketing Group Ltd which was described as the "Managing Company".
3. Directions were given on 7 January 2009 and a number of other lessees were joined as applicant. No representations were received from Parkfield Marketing Group Ltd.
4. A Tribunal convened for a hearing on 23 March 2009 and inspected the property before the hearing. The applicants attended the hearing but Parkfield did not attend. At this hearing, the Tribunal established that Parkfield Marketing Ltd had no interest in the property and that the freehold owners were PSG Investments Group Ltd. It appeared that the Tribunal had no jurisdiction to make a determination: see **Barton and others v. Accent Property Solutions** (2008) Lands Tribunal (Unreported) LRX/22/2008. The Tribunal therefore allowed the applicants to substitute PSG Investments Group Ltd as respondents and treated the hearing as a pre-trial review. They gave directions clarifying the issues in dispute, directed that the application (and the directions) should be served on PSG Investments Group Ltd and determined that the matter should then proceed on the paper track. It also invited written submissions from the landlord by 23 April 2009. In the event, no submissions were received from the landlord by that date. The decision below is made without a hearing in accordance with those directions.

THE ISSUES

5. The disputed service charges for each flat (as set out in the directions) are as follows:

01.07.04	£190.63	Estimated service charge
06.12.04	£106.88	Insurance

01.01.05	£190.63	Estimated service charge
01.07.05	£190.63	Estimated service charge
06.12.05	£114.71	Insurance
01.01.06	£190.63	Estimated service charge
01.07.06	£190.63	Estimated service charge
06.12.06	£117.50	Insurance
01.01.07	£200.00	Estimated service charge
01.07.07	£200.00	Estimated service charge
06.12.07	£123.45	Insurance
01.01.08	£200.00	Estimated service charge
01.07.08	£200.00	Estimated service charge
06.12.08	£133.45	Insurance
01.01.09	£200.00	Estimated service charge

6. The issues set out in the directions are:
- a. Whether the disputed sums are payable under the terms of the lease of each of the applicants' flats.
 - b. Whether the relevant costs are reasonably incurred under Landlord and Tenant Act 1985 s.19.

THE EVIDENCE

7. The property comprises two blocks in Chatham each containing four flats. A copy of the lease of Flat 4 is attached to the application, and it appears to be the case that the leases of the other flats are in similar form. The following are the material provisions of the lease:

"1(b) There shall also be paid by way of further or additional rent such yearly sum or sums (hereinafter called "the Maintenance Charge") in respect of each year ending 31st December to be assessed in manner referred to in this clause as shall be a just and fair proportion of the amount which the Landlord may from time to

time expend and as may reasonably be required an account of anticipated expenditure:-

(i) In performing the Landlord's obligations as to repair maintenance and insurance hereinafter contained.

(ii) In payment of the proper fees of the surveyor or agent appointed by the Landlord in connection with the carrying out or prospective carrying out of any repairs and maintenance herein referred to and the apportionment of the cost of such repairs maintenance and collection between the several parties liable to reimburse the Landlord for the same and such fees for collection of the rents hereby reserved and the other payments to be paid by the Tenant under this clause.

...

(iv) In providing such services facilities and amenities or in carrying out works or otherwise incurring expenditure as the Landlord shall in the Landlord's absolute discretion deem necessary for the general benefit of the Building and its tenants whether or not the Landlord has covenanted to incur such expenditure or provide such services facilities and amenities or carry out such works.

(v) In complying with any of the covenants entered into by the Landlord or with any obligations imposed by operation of law which are not covered by the preceding sub-clauses.

PROVIDED THAT all such sums shall from time to time be assessed by the surveyor or agent for the time being of the Landlord and such sums shall be paid by the Tenant:-

(a) by the payment on account of the sum conclusively estimated by the Landlord as being the likely Maintenance Charge for the year in question by two payments of £50.00 each on the 1st January and 1st July in that year; and

(b) the balance (if any) within seven days of the service on Tenant of certificate of the Landlords auditors as to the total referred to in paragraph (a) above in respect of the preceding year of the term ..."

8. Attached to the application are a number of service charge invoices from Parkfield Marketing Ltd (or in one case UK Homes Ltd), who state they are agents for the landlord. The invoice dated 24 November 2008 is typical of these invoices. It seeks two payments of £200 on 1 July 2008 and 1 January 2009 for estimated service charges. The invoice gives the landlord's address for service as 1 Millbridge Hertford, Herts – which is the agent's address. Attached to this invoice is a formal estimate of the charge for the 2009 calendar year which sets out relevant costs of £300 for "garden maintenance", £1,750 for "administration – Accounting/Legals" and £400 for "surveying". The first two sums are divided by eight to produce "estate services" of £350 per flat and the last figure is divided by six to produce "building services" of £50. These two figures added together then form the estimated on account charge per flat

of £400. There are similar invoices dated 1 June 2004 (£190.63), 23 May 2005 (£190.63), 1 December 2005 (£190.63), 1 June 2006 (£190.63), 1 December 2006 (£200), 14 February 2008 (£400) and 24 November 2008 (two payments of £200). In each year one of the invoices is accompanied by statements in similar form to the one described above. Also attached to the application are a number of demands for insurance rent from Parkfield Marketing Ltd. The invoice dated 1 December 2004 is typical. It requires payment of £114.71 for "*Annual Insurance Premium to cover period 1st December 2004 To 30th November 2005*". There are similar demands dated 1 December 2005 (£106.88), 1 November 2006 (£117.50), 9 November 2007 (£123.45) and 24 November 2008 (£133.45).

9. The applicants also produced a single set of end of year accounts for the year ended 31 December 2005. These accounts set out relevant costs of £855.05 for insurance, £30 for bank charges, £1,600 for managing agents' fees, £822.70 for general repairs and £250 for "*Managing Agents Preparation of Accounts*". Total expenditure apparently exceeded the sums paid on account in the 2005 service charge year and the excess was transferred to a sinking fund. The 2005 accounts were purportedly certified by the agents on 30 May 2005 (i.e. before the end of the service charge year they relate to).

SUBMISSIONS

10. The application raises a number of specific complaints about the service charges in the relevant years, but the substance of these complaints was clarified at the hearing on 23 March 2009. The resultant statement of issues was served on the landlord at the address given in the service charge demands.
11. The landlord has not responded to the allegations made by the lessees that the charges are not recoverable under the terms of the leases and that the sums claimed are not reasonably incurred by reason of LTA 1985 s.19.

DISCUSSION

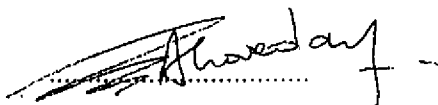
12. The first question is whether the charges set out above are recoverable under the terms of the leases.
13. Every sum demanded above (whether Maintenance Charge contribution or insurance rent) is a sum *"on account of the sum conclusively estimated by the Landlord as being the likely Maintenance Charge"*. The sums in issue all therefore fall within proviso (a) to clause 1 of the lease. This proviso fixes the sum payable on account of service charges as *"two payments of £50.00 each on 1st January and 1st July in each year"*. The lessees were only obliged to pay on account charges of £50.00 every six months – rather than the higher sums estimated by the landlord's agents from time to time.
14. Furthermore, the lease includes no separate provision for payment of an insurance rent. Clause 1(b)(i) provides expressly that insurance costs form part of the Maintenance Charge expenditure. It follows that insurance costs are also covered by proviso (a) to clause 1 of the lease. No separate charge may be made on account of anticipated insurance costs.
15. It follows from the above that the landlord was only entitled to recover a sum of £50 on 1 January and 1 July in each of the relevant service charge years.
16. The second issue is whether the relevant costs were reasonable under LTA s.19. Since the sums in dispute all relate to *"a service charge ... payable before the relevant costs are incurred"* the statutory test under s.19(2) is whether the sums claimed by the landlord are *"greater than is reasonable"*.
17. In this instance, the lessees state that no services have been provided. Although their submissions are not challenged by the landlord, there is no independent evidence to this effect. However, the Tribunal considers that evidence of whether services were in fact provided by the landlord is not relevant to questions under s.19(2). Such evidence may well concern liability for 'end of year' Maintenance Charges under s.19(1) - once

those costs have been incurred – but it is of little assistance before the relevant costs have actually been incurred.

18. In any event, the nature of the fixed payments of £50 laid down by the lease allows little scope for an examination of the reasonableness of those charges. It is clear from the formal estimates given in each year that a sum of £100 per annum per flat is less than the landlord estimated would be incurred in each year, and that £100 per annum is also far below the actual expenditure incurred in the 2005 service charge year. The Tribunal does not consider that a modest sum of £100 per annum can be said to be "*greater than is reasonable*" within the meaning of LTA 1985 s.19(2).

CONCLUSIONS

19. For the reasons given above, the Tribunal determines under LTA s.27A(1)(c) and (d) that the amount payable by each applicant was £50 on 1 January and 1 July in each of the service charge years from 2003 to 2009. Insofar as the landlord has purported to demand any balancing charges in these service charge years, those relevant costs are not matters which fall for determination by this Tribunal.



Mark Loveday BA(Hons) MCI Arb
Chairman
13 May 2009