

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case Number: CHI/23UB/LSC/2009/0050

Re: Flat 1, 42 London Road, Cheltenham, GL52 6DY

In the matter of an application under Sections 27A and 20C of the Landlord and Tenant Act 1985 (as amended) for a determination of liability to pay service charges.

Between:

ANTHONY GEORGE WHATMORE Applicant

and

CHELTENHAM BOROUGH COUNCIL Respondent

Date of application: 27 May 2009

Date of hearing: 16 October 2009

Members of the Tribunal: Mr. J. G. Orme (Lawyer Chairman)

Mr. J. S. McAllister FRICS (Chartered Surveyor
member)

Mr. D. Wills (Lay member)

Date of decision: 26 October 2009

Decision of the Leasehold Valuation Tribunal

For the reasons set out below, the Tribunal determines that no service charge is payable by Anthony George Whatmore to Cheltenham Borough Council for cleaning of communal areas at 42 London Road, Cheltenham GL52 6DY for the year from 1 April 2008 to 31 March 2009.

Further, the Tribunal makes an order pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended) that all costs incurred by Cheltenham Borough Council in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Anthony George Whatmore.

Reasons

The Application

1. On 27 May 2009, Anthony George Whatmore ("the Applicant") applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") to determine whether the service charge levied by Cheltenham Borough Council ("the Respondent") for cleaning the communal areas at 42 London Road, Cheltenham ("the Property") for the year ended 31 March 2009 was reasonable. The Applicant described the questions which he wished the Tribunal to decide as:
 - 1) Where the residents have for a number of years cleaned their own property, are they entitled to opt out of the cleaning service provided by the Respondent on the basis of custom and practice?
 - 2) To adjudicate on the cleaning charges;
 - 3) To clarify the wording of paragraph (n) of Schedule C to his lease.

The Applicant also applied for an order under Section 20C of the Act that any costs incurred by the Respondent in connection with the application should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by him.

2. A pre-trial review was held on 30 June 2009 following which the Tribunal issued directions providing for both parties to prepare written statements of case. Both parties have lodged statements in accordance with the directions.

The Law

3. The statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19 and 27A of the Act.
4. Section 18 provides:
 - 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, or a superior 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.

5. Section 19 provides:-

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

6. Section 27A provides:-

- 1) *An application may be made to a 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.*

Subsections 2 to 7 of section 27A are not relevant in this application.

7. Section 20C provides:-

- 1) *A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a ...leasehold valuation tribunal, ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.*
- 2) *...*
- 3) *The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

8. As the lease was created pursuant to the right to buy provisions set out in Part V of the Housing Act 1985, it is necessary to refer to certain provisions of that Act. Section 139 provides that a grant of a lease executed in pursuance to the right to buy shall conform with Parts I and III of Schedule 6 to that Act. The following extracts from that Schedule are relevant:

13. Where the dwelling-house is a flat and the tenant enjoyed, during the secure tenancy, the use in common with others of

premises, facilities or services, the lease shall include rights to the like enjoyment, so far as the landlord is capable of granting them, unless otherwise agreed between the landlord and the tenant.

14(2) There are implied covenants by the landlord ... (c) to ensure, so far as practicable, that services which are to be provided by the landlord and to which the tenant is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services.

16A (1) The lease may require the tenant to bear a reasonable part of the costs incurred by the landlord (a) in discharging or insuring against the obligations imposed by the covenants implied by virtue of paragraph 14(2) (repairs, making good structural defects, provisions of services, etc.) or ...

The Lease

9. The Applicant holds Flat 1 at the Property under the terms of a lease dated 17 July 2006 granted under the right to buy scheme set out in Part V of the Housing Act 1985. The Respondent is the lessor and the Applicant is the lessee. The lease is for a term of 125 years from 17 July 2006 at an annual rent of £10.
10. By clause 8 of the lease, the Respondent covenanted with the Applicant pursuant to paragraph 14 of Schedule 6 to the Housing Act 1985, to keep the structure and exterior of the Property in repair, to rebuild in the event of destruction and, at sub-clause (c) *“to ensure so far as practicable that services are to be provided by the Council and to which the Purchaser is entitled (whether by himself or in common with others) as specified in Schedule A hereof are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services.”*
11. Schedule A to the lease sets out the rights granted to the Applicant including rights of way, support, light, passage of water, gas, sewage, electricity, telephone and wireless transmissions and, at sub-paragraph (iii) *“A right in accordance with paragraph 13 of Schedule 6 of the Act in common with the Council and all others now entitled or becoming entitled to use any premises facilities or services provided by the Council for the use and benefit of the occupiers of the Entire Property and in particular:-*
 - (a) A right in common with the Council and all others now entitled or becoming entitled to use any lift provided by the Council for use only by occupiers of the Entire Property*
 - (b) A right in common with the Council and all others now entitled or becoming entitled to use any waste disposal chutes provided by the Council for use by the occupiers of the Entire Property and to use that part of the Entire Property from time to time designated by the Council for the keeping of refuse bins*
 - (c) A right in common with the Council and all others now entitled or becoming entitled to use those areas of the Entire Property which*

may from time to time be designated by the Council for the drying of washing

(d) A right in common with the Council and all others now entitled or becoming entitled to use any laundry room provided by the Council."

12. By clause 4 of the lease the Applicant covenanted with the Respondent to perform and observe the provisions and stipulations set forth in Schedule C to the lease.

13. The following provisions of Schedule C are relevant to this application:

"(f) In accordance with paragraph 16A of Part III of Schedule 6 of the Act to pay to the Council on demand a reasonable part of the costs (including costs of management and administration) incurred by the Council in the provision and maintenance at a reasonable level of any services provided by the Council and to which the Purchaser is entitled (whether by himself or in common with others) including (i) any caretaker cleaner or warden employed by the Council for the benefit of the occupiers of the Entire Property (ii) ...such reasonable part of the costs being calculated by reference to an annual period ending on the thirty-first day of March of each year and being proportionate to the number of dwellings having the benefit of such services.

(k) To indemnify and keep indemnified the Council from and against all actions claims costs proceedings and demands whatsoever arising out of the use of the Demised Premises or any part of parts thereof.

(n) To keep as far as practicable any landing or other common part of the Entire Property which lies immediately adjacent to the Demised Premises including any staircase serving the Demised Premises and any windows in a clean and tidy condition.

14. Clause 10(c) of the lease contains a covenant by the Respondent *"Where any such flat is not let on the same terms (mutatis mutandis) as this lease to procure the observance (by its own act or that of the occupier(s) for the time being thereof as may be appropriate for the said occupier(s) and the Council (inter se)) of the terms of the covenants set out in the said Schedules C and D hereof in relation to each such flat."* The reference to "such flat" is a reference to any other flat upon the Property.

15. The lease defines "the Entire Property" as the land and building forming 42 London Road and the plan annexed to the lease shows that it includes the garden and the car parking area at the rear of the garden.

Inspection

16. The Tribunal carried out an inspection of the Property prior to the hearing on 16 October 2009 in the presence of the Applicant and

Mr. Campbell, a legal assistant employed in the legal services department of the Respondent.

17. The Property is part of a regency terrace which is listed Grade II. It has been divided into 4 flats, one each at basement, ground, first floor and second floor levels.
18. The basement flat has a separate access direct from the street. Access to the other 3 flats is through the front door of the Property which is at the top of a short flight of steps from street level. The front door opens into a hallway giving access to a staircase, a rear door and the entrance to flat 1. Flats 2 and 3 are accessed from the staircase.
19. The Applicant is the leasehold owner of flat 1 which is on the ground floor. The Tribunal was told that flats 2 and 3 are occupied by tenants of the Respondent on secure tenancies.
20. The floor of the hall and stairs are covered with thermoplastic tiles. The walls are painted. The staircase has a wooden banister rail supported on metal banisters. There are 2 windows on the staircase at the half-landing levels. There are panes of glass at the top of the front door and in the rear door.
21. The hallway and stairs are equipped with fire extinguishers. A fire alarm system is fitted. There is electric lighting in the hall and on the stairs together with an emergency lighting system.
22. The rear door gives access to a garden area at the rear of the Property. Immediately outside the rear door is an area where rubbish bins are kept. An area of the garden is paved and is occupied by a rotating washing line. There is a paved path running the length of the garden from the rear door to a parking area which is available for use by the occupiers of the Property. There is a block containing 3 sheds which are allocated for use by the occupiers.

The Hearing and the Issues

23. The hearing took place at the Thistle Hotel, Cheltenham on 16 October 2009. The Applicant appeared in person. The Respondent was represented by Mr. Campbell. He was accompanied by: Mrs. Sara Bennett, employed by Cheltenham Borough Homes Ltd ("CBH") as head of neighbourhood services; Mr. Matthew Ward employed by CBH as housing revenues manager; Mr. Steven Barthorpe, employed by CBH as the estates services team leader; and Mrs. Ann Walsh, employed by CBH as leasehold officer. Mr. Griffin, the chairman of the Cheltenham leaseholders forum was present as an observer.

24. At the outset of the hearing, the Tribunal informed the parties that it had jurisdiction to determine only the issue of liability to pay and reasonableness of the service charge and not to make declarations in respect of the other issues raised by the Applicant. The Tribunal pointed out that in determining the liability to pay and reasonableness of the service charge, it was necessary for the Tribunal to examine the terms of the lease to establish if the Applicant was liable to pay for cleaning services and then to determine whether the cost was reasonable and whether the service had been provided to a reasonable standard. The Tribunal referred the parties to the terms of the lease which are set out above.

The Evidence

25. Mrs. Bennett had filed a written statement in which she explained how the provision of the estate cleaning service for all of the tenants and leaseholders of the Respondent was transferred from the Respondent to CBH with effect from 1 April 2008. She set out the consultation process which was undertaken and the referred to correspondence with the leaseholders forum in which it was stated that leaseholders could not opt out of the service despite having previously been allowed to do so by the Respondent. She also gives evidence about an incident in April 2008 when the Applicant asked the cleaners to leave the Property. She said that the Property was contracted to receive a minimum of 70 minutes cleaning each month normally delivered by 2 cleaners working together for 35 minutes. The work to be done is set out in the "estate cleaning promise". In addition there were to be 2 deep cleans each year, each involving 140 minutes work. Mrs. Bennett's evidence was that the cleaners spent their requisite standard cleaning time at the Property during the year ended 31 March 2009. She said that there had been no deep clean during that year but the cleaners had spent at least an extra 280 minutes of time at the Property.

26. In her oral evidence to the Tribunal, Mrs. Bennett said that the standard cleaning work carried out at the Property involved sweeping or washing the hall and stairs, wiping the woodwork, window cills, cupboard doors and banisters and cleaning and disinfecting the bin area. She said that the cleaners are scheduled to attend each month but may make additional visits. No log is kept of time or length of visits. She was unable to give any detail of the cost of providing the service except to say that CBH employs its own cleaners and the cost covers the cost of cleaning staff, vans, cleaning materials, a waste management fee and a proportion of the team leader's cost. She did not know if any service charge demands had been sent to the Applicant. She did not know why the cleaners had spent an extra 280 minutes at the Property nor what work had been done during that time. As no deep clean had been

carried out in the year, she said that any rebate due to the Applicant would be £12.71.

27. Mr. Barthorpe had filed a written statement in which he explained how he manages the cleaning service on a day to day basis including training the cleaners and monitoring their work. He also dealt with the incident in April 2008 when the Applicant asked the cleaners to leave, a subsequent incident in March 2009 and with meetings held with the Applicant to discuss the provision of cleaning services. He gave no further oral evidence.
28. Mr. Ward gave oral evidence to the Tribunal. He said that the annual charge for cleaning services supplied to the Property was £356.61 which, split between 4 flats, resulted in a charge to the Applicant of £89.15 per year or £1.86 per week (spread over 48 weeks). He was unable to produce a copy of the demand served on the Applicant but said that the charge was raised annually in arrears. He gave no explanation as to how the charge was calculated. He confirmed that the Applicant had not been charged for cleaning services prior to 1 April 2008 as the occupiers of the Property had opted out of the previous cleaning service operated directly by the Respondent.
29. The Respondent also put in evidence witness statements from June Palmer and David Doxsey who are both cleaners employed by CBH who clean at the Property. They describe the work done at the Property and the incidents when the Applicant asked them to leave in April 2008 and March 2009.
30. The Applicant had filed a written statement in which he explained how, since he moved into the Property in August 1999, the occupiers agreed with their housing manager at the time that they should be responsible for their own communal cleaning. They opted out of the cleaning service provided by the Respondent. When CBH took over responsibility for cleaning in April 2008, they were not allowed to opt out. He says that the occupiers continue to clean the communal areas. He washes the floor of the hall as and when it is necessary and cleans the windows in the front and rear doors. He and Mrs. Lane clean the landing windows, put out the refuse bins and clean the bin area. In oral evidence, he said that they also keep the path, the drying area and the parking area clean. This work is shared between the occupiers of flats 1, 2 and 3 with the occupier of the basement flat keeping his own area clean. Consequently, he says that when the cleaners arrive there is nothing for them to do and they spend between 5 and 10 minutes at the Property. On one occasion the cleaners arrived when he had just washed the floor and proceeded to wash it again.
31. In oral evidence he said that the cleaners attend on a fortnightly basis. One cleaner would polish the stair rail and flick a duster

around while the other would either sweep or mop the floor. He said that the cleaners have never cleaned the bin area. He had not had cause to complain that the cleaning was not provided to an adequate standard for the simple reason that the occupiers keep the Property clean.

32. The Applicant said that he had contacted 3 outside cleaning contractors whom he had found through yellow pages and asked them to quote for cleaning the stairs, landing and hallway. He did not ask them to include windows, cobwebs or the bin area. He was told that there would be a minimum charge of £10 per visit plus VAT. He accepted that on the basis of a fortnightly visit, that amounted to £260 plus VAT for the whole property. He said that such contractors would provide a satisfaction note. He agreed that that would result in a weekly charge to him of £1.56 based on a 48 week year. He did not consider that the service provided by CBH at £1.86 per week was reasonable and he would prefer to use an outside cleaner at a lesser charge.

33. The Applicant relied on written statements from:

- 1) Miss Lane who lives in Flat 3 who supports the Applicant's evidence that the cleaners never stay longer than 10 minutes and that she cleans the stairs to her flat;
- 2) Miss Cresswell who lives in Flat 2 who says that the standard of cleaning is not good and that the cleaners do not stay long enough to do a proper clean;
- 3) Mr. Green who lives in the basement flat who says that the cleaners never came to the basement during the year ended 30 March 2009;
- 4) Miss Allen of Flat 2, 38 London Road who says that the standard of cleaning is not good;
- 5) Miss Tandy of Flat 3, 40 London Road who says that the cleaners did not stay longer than 10 minutes.

The Applicant's submissions

34. The Applicant submitted that as the occupiers of the Property had been allowed to opt out of cleaning services until 31 March 2008, they should be allowed to continue to do so on the basis of "custom and practice". He considers that paragraph (n) of Schedule C of the lease imposes an obligation on him to clean the communal hallway to his ground floor flat. He says that the cleaning service is not carried out to a reasonable standard and that the amount charged for it is not reasonable. He says that the cleaners are not able to prove how long they spend at the Property as they do not keep log sheets and he says that they spend no more than 5 to 10 minutes on each visit.

The Respondent's submissions

35. The Respondent submitted a skeleton argument in which it dealt with the 3 questions raised by the Applicant in his application as set out at paragraph 1 above. The skeleton argument does not address the issue of whether or not the Respondent is entitled under the terms of the lease to charge the Applicant for cleaning services. It considers the most important question to be that of opting out and says that opting out is not permitted for the reasons set out at paragraph 2.8 of the skeleton, which relate mainly to consistency of approach across the estate and health and safety issues. It submits that the Tribunal should not deal with the reasonableness of the service charge as that can be dealt with under the Respondent's complaints procedure. In relation to paragraph (n) of Schedule C, it submits that the paragraph means that *"there is still a duty on the leaseholder above and beyond the cleaning undertaken by CBH to clear up any rubbish or minor spills caused, for example, by a spillage from an accidentally dropped milk carton in the immediate vicinity of his property. This is minor work that does not justify calling out an emergency cleaning team and equally cannot be left until the next scheduled clean due to health and safety risks to other occupiers and visitors."*
36. At the hearing the Tribunal pressed Mr. Campbell to say which provision in the lease the Respondent relied upon to say that it was entitled to charge for cleaning services. Mr. Campbell submitted that a combination of paragraph (f) of Schedule C and paragraph (iii) of Schedule A mean that the Applicant is entitled to ask the Respondent to clean the communal areas and that the Respondent is entitled to charge for that service.
37. Mr. Campbell accepted that cleaning of the windows in the communal areas at the Property is not undertaken by CBH and that it is not part of the cleaning promise.

Conclusions

38. The Tribunal is concerned by the way in which the Respondent's legal department has dealt with this application. The application form is clearly headed *"Section 27A of the Landlord and Tenant Act 1985 Application for a determination of liability to pay and reasonableness of service charges"* and yet the Respondent's skeleton argument did not even address that issue. Further, Mr. Campbell was not able to produce at the hearing a complete and properly coloured copy of the lease nor service charge demands and invoices relating to cleaning.
39. The Tribunal determines that, on a proper construction of the lease, there is no obligation on the Applicant to pay for cleaning of the communal areas of the Property. In making that determination, it takes into account the following matters:

- 1) Paragraph (f) of Schedule C obliges the Applicant to pay for *“any services provided by the Council and to which the Purchaser is entitled.”* It is necessary to ask what services the Applicant is “entitled” to receive. Clause 8(c) says that the services to be provided by the Council and to which the Purchaser is entitled are specified in Schedule A.
- 2) Paragraph (iii) of Schedule A gives the Applicant the right to use any *“premises facilities or services provided by the Council for the use and benefit of the occupiers of the entire property and in particular:-“*The paragraph then sets out particular facilities which the Applicant is entitled to use such as lifts, waste disposal chutes, bin areas, drying areas and laundry rooms. The words *“premises facilities or services”* are found in paragraph 13 of Schedule 6 to the Housing Act 1985 and the Tribunal is of the opinion that the provisions of paragraph (iii) are designed to fulfill the Respondent’s obligations under that Act.
- 3) There is no suggestion in Schedule 6 to the Housing Act 1985 that in granting a lease under the right to buy scheme, the landlord has to provide cleaning services or other services of a like nature. What paragraph 13 appears to be seeking to achieve is that when granting a lease of a flat under the scheme, the landlord must grant rights to use the premises, facilities and services which naturally go with that flat. In the case of the Property, that would include lighting of the communal areas, use of the fire alarm and emergency lighting, use of the bin area and drying areas and use of the car park. It is those services that the Applicant is entitled to use and which the Respondent is obliged to maintain under clause 8 of the lease. The Tribunal considers that “services” must be construed in that context and that it does not mean a service such as cleaning, window cleaning etc. The Tribunal notes the use of the word “use” in paragraph 13. A cleaning service is a service that is supplied rather than used.
- 4) When construing the lease, it is necessary to look at the natural meaning of the words used in their context. The lease does not include a specific obligation on the Respondent to clean the communal parts of the Property nor does it include a specific obligation on the Applicant to pay for such a service. Looking at the covenants as a whole and reading them in the context of Schedule 6 to the Housing Act, the ordinary meaning of the words used does not suggest that there is any such obligation on either the Respondent or the Applicant. If there is any ambiguity, then the ambiguity will be resolved against the landlord.
- 5) The Tribunal’s view is reinforced by the fact that paragraph (n) of Schedule C imposes an express covenant on the Applicant to clean those parts of the communal areas, including the windows, which are immediately adjacent to his flat. The Tribunal does not accept the Respondent’s submission as to the meaning of that paragraph. The wording of the paragraph is

clear and it does not mean what the Respondent suggests. Even though flats 2 and 3 are presently let on short term tenancies, the Applicant is entitled, by virtue of clause 10(c) of the lease, to require the Respondent to ensure that the parts of the communal areas which are adjacent to those flats are cleaned either by its own contractors or by the tenants but he is not obliged to pay for that cleaning.

6) Mr. Campbell placed reliance on the word "cleaner" in paragraph (f)(i) of Schedule C. The Tribunal does not consider that that reference imposes any obligation on the Applicant to pay for cleaning the communal areas. What it does do, as an example, is to entitle the Respondent to charge the Applicant for the cost of cleaning the bin area or the drying area to a reasonable standard. That is not what the Respondent is trying to do.

40. In case the Tribunal is wrong about the construction of the lease, it went on to consider whether the cleaning service provided by the Respondent is provided to a reasonable standard and at a reasonable cost.

41. The Tribunal finds that the Respondent's own evidence as to the cost of providing the service was not adequate to satisfy the Tribunal that it was reasonable. However, the Applicant's evidence was that a contractor would charge a minimum of £10 plus VAT per visit which, for fortnightly visits, would amount to £299 for the year for the Property. The contractor would clean the stairs, landings and hallway but did not include the bin area. That cost compares to £356.61 charged by the Respondent for a greater amount of work. The work done by the Respondent is set out in the estate cleaning promise and includes cleaning the bin area and deep cleans twice a year. The Tribunal finds that, on the basis of the Applicant's own evidence, the cost charged by the Respondent was reasonable subject to a rebate to allow for the fact that no deep cleans were carried out in the year. Mrs. Bennett identified that cost at £12.71 for the Applicant. Therefore the Tribunal finds that a reasonable cost to charge the Applicant for the cleaning service for the year ended 31 March 2009 would be £89.15 less £12.71 making £76.44.

42. The Tribunal finds that the Applicant has produced no evidence to show that the cleaning work was not done to a satisfactory standard. To the contrary, his evidence was that he had not had cause to complain that the cleaning was not provided to an adequate standard for the simple reason that the occupiers keep the Property clean.

43. The Tribunal concludes that if it is wrong about the construction of the lease, the Respondent is entitled to recover from the Applicant £76.44 for cleaning services provided in the year ended 31 March 2009.

44. Turning to the application under Section 20C, the Tribunal is satisfied that it is just and equitable to make such an order. As already indicated, it appears to the Tribunal that the Respondent failed to consider the legal nature of the application and all its submissions were misconceived. Had it addressed the issue in a constructive manner, it is quite possible that the application and the hearing which followed would not have been necessary and any costs incurred could have been avoided.

Signed

Mr. J G Orme

Chairman

Dated 26 October 2009

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SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

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Re: Flat 1, 42 London Road, Cheltenham, GL52 6DY

In the matter of an application under Sections 27A and 20C of the Landlord and Tenant Act 1985 (as amended) for a determination of liability to pay service charges.

Between:

ANTHONY GEORGE WHATMORE Applicant

and

CHELTENHAM BOROUGH COUNCIL Respondent

Date of substantive decision: 26 October 2009

Date of application for permission to appeal: 13 November 2009

Members of the Tribunal: Mr. J. G. Orme (Lawyer Chairman)

Mr. J. S. McAllister FRICS (Chartered Surveyor
member)

Mr. D. Wills (Lay member)

Date of grant of permission to appeal: 24 November 2009

Decision of the Leasehold Valuation Tribunal

On considering the Respondent's application for permission to appeal to the Lands Tribunal against the decision of this Tribunal dated 26 October 2009, the Tribunal grants permission to appeal limited to the issue set out in paragraph C(i) of the Respondent's application, namely whether on a proper construction of the Lease there was no obligation on the Applicant to pay for the cleaning of the communal areas of No.42 London Road, Cheltenham GL52 6DY.

Signed

Mr. J G Orme

Chairman

Dated 24 November 2009