S 536

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

| | |
|---|---|
| **Subject Property:** | Flats 7 & 19 Ramsey Road, St Ives, Cambridgeshire PE27 5RF |
| **Applicant:** | Mr KJ Hart & Mrs S Waldron, 2 Green End Barns, St Ives, Cambridgeshire PE27 5RH |
| **Respondent: Landlord & Freeholder:** | Sandhill Homes Limited, Unit 5 Chalton Mead Lane, Hoddesdon, Hertfordshire EN11 0DJ |
| **Respondent's Managing Agent:** | Management Company Services Limited, Unit 2 Netherfield Lane, Stanstead Abbotts, Hertfordshire SG2 8HE |
| **Case number:** | CAM/12UE/LSC/2010/0091 |
| **Date of Application:** | 13th July 2010 |
| **Application:** | Application for a determination of the reasonableness and liability to pay Service charges (Section 27A Landlord and Tenant Act 1985)<br><br>Application under section 20C of the Landlord and Tenant Act 1985 for the limitation of service charge arising from the landlord's costs of proceedings |
| **Tribunal** | Mr JR Morris LLB LLM PhD (Chair)<br>Mr R Thomas MRICS<br>Mr P Tunley |
| **Date of Hearing:** | 16th October 2010 |
| **Attendance: Applicant:** | Mr KJ Hart and Mrs S Waldron |
| **Respondent:** | Mr N Cooper representing Sandhill Home Limited (Landlord)<br>Mr D Hockley from Management Company Services (Managing Agents) |

**Decision**

- The Tribunal determined that it was reasonable for the Applicants to pay 1/16th of the actual Service Charge costs for each of the Flats that they owned i.e. the Subject Properties. The Tribunal determined that, in accordance with Paragraph 12 of the Sixth Schedule of the Lease, the period for which they are liable in respect of the financial year ending 31st December 2008, is the period from the date of Completion of the purchase of each Lease to the 31st December 2008, calculated on a daily basis. Any sums paid in advance, such as those paid at the date of Completion, are to be taken into account. Any amounts paid by the Applicants in excess of the Service Charge determined to be payable shall be credited to future Service Charge demands in accordance with Paragraph 11 of the Fourth Schedule of the Lease

- The Tribunal determines that the proportions paid by the Applicants for each of their flats should remain at 1/16th.

- The Tribunal determines the Electricity charges to be reasonable for consumption. However the VAT charges and Climate Change Levy for the years in issue shall not be reasonable and payable to the Respondent by the Applicant until copies of the confirmation from Eon and Southern Electricity Companies of the eligibility of the Block to any reduced rate and exemption and copies of any amended charges have been sent to the Applicant.

- The Tribunal makes no Order under section 20C nor an order for reimbursement of fees

**Reasons**

**The Application**

1. The Applicant applied to the Tribunal on the 13th July 2010 under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to the reasonableness and payability of the service charges incurred for the financial years 31st December 2008 and 31st December 2009 and to be incurred for 2010. The matters identified as being in issue were the proportion of the service charge payable by the Applicant to the Respondent and the cost of electricity for the year ending 31st December 2009.

**The Law**

2. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

3. Section 18

*(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, improvement 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 of 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 period*

4. Section 19

(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.*

5. Section 27A

(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.*

(2) *Subsection (1) applies whether or not any payment has been made.*

(3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*

*(a) the person by whom it would be payable,*
*(b) the person to whom it would be payable,*
*(c) the amount which would be payable,*
*(d) the date at or by which it would be payable, and*
*(e) the manner in which it would be payable.*

**Description and Inspection of the Subject Property**

7. The Tribunal inspected the Block containing the Subject Properties in the presence of one of the Applicants, Mr Hart, and the Respondent's Representative, Mr Hockley.

8. The Subject Properties are in a Block of 16 purpose-built flats, 10 of which are two-bed flats and 6 are one-bed flats. The Block is a brick building of between two and three storeys under a pitched tile roof. The third floor has dormer windows. All windows are upvc with double glazed units and the rainwater goods are also upvc. At the rear of the Block on the ground floor each flat has a patio door, which opens onto a communal patio area whereas the upper floors have Juliet doors in lieu of patio doors. The Block has three entrances to a lobby with stairs rising to the upper floor landings off which are the flats. There is a door entry system. Communal areas around the Block are laid to grass at the front and there is a patio and grassed area at the rear. There is a car park at lower ground floor level, which includes what appears to be a double garage for Flat 11, which the Applicants claim to be two flats converted into one. There is a vehicular door entry system.

9. The Block as a new building is in good condition and is generally well maintained internally and externally including the communal grass and patio areas.

10. The Tribunal noted the layout of the Block taking account of the plan, which set out the original intended configuration of 16 one and two bedroom flats. From this plan Flat 11 appeared to be comprised of adjacent one bedroom and a two bedroom flats.

**The Lease**

11. A draft Lease was provided for flat 5, which was agreed to be the standard form of Lease for all the flats. The Leases are for a term of 999 years from 1st January 2007.

12. The Lease had provision for the Service Charge to be divided into four proportions identified as part A, B, Parking and Water. It was apparent from the inspection and the accounts provided, and confirmed by the parties, that this apportionment was not appropriate for the Block. The Respondents had instead pragmatically prepared a Service Charge account setting out a single list of all the items with one apportionment for each flat and their related costs, which the Tribunal found to be a sensible interpretation of the Lease.

13. The Lease did not specify a specific proportion to be paid by the Tenants but defined in Clause 1(a) the proportion payable to be:

> *such fair and reasonable proportion the Landlord shall from time to time determine (acting reasonably)*

14. Paragraph 1(a) of the Fourth Schedule to the Lease contains the Tenant's Covenants with the Landlord and includes the obligation:

> *To pay forthwith on demand a fair and reasonable proportion (to be determined conclusively by the Landlord) of any outgoings expenses or assessments which may be attributable to or imposed or assessed on the Flat*

15. Paragraph 10(a), (b), (c) and (d) of the Fourth Schedule to the Lease contains the Tenant's Covenants with the Landlord and includes the obligation:

> *To pay and keep the Landlord indemnified against* [each of the four groups of the] *Service Charge Proportion*

Which has been interpreted to mean simply the Service Charge Proportion.

16. The Sixth Schedule sets out the Landlord's Covenants which include to keep accounts, to insure the Block, to repair the structure and exterior and the Common Parts of the Block and the grounds and to keep the Common Parts neat and tidy and adequately lighted.

17. Clause 9 (a) enables the Landlord to employ a managing agent and under Clause 9 (j):

> *The Landlord is entitled to and authorise to (but is not obliged to) refer any service charge demands or the certification provided for in the Sixth Schedule to the lands tribunal or any other relevant tribunal or other court for the purposes of assessing reasonableness ...an the costs charges and expenses incurred by the Landlord in connection therewith shall be deemed to be an expense incurred by the Landlord in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fourth Schedule hereto*

18. Paragraph 12 of the Sixth Schedule states that the Landlord shall:

*Until the grant of Leases on sale of the flats in the Block remaining unsold at the date hereof have been completed to observe and perform in relation to such flats such of the covenants and conditions corresponding to hose contained in 56his Lease on the part of the Tenant as shall be applicable to unsle flat which relate to the payment of service charges thereunder and the repair thereof and breach of which would adversely affect the Flat*

**Issues**

19. The Applicant stated in the Application form as follows:
    1. The Respondent had not contributed to the Service Charge for the unsold homes for the financial year ending 31st December 2008.
    2. The electricity charge of £3,917 for the financial year ending 31st December 2008 is excessive for lighting only and it was believed that the developer was using the electricity for construction work during this period and charging it to the Service Charge.
    3. The Service Charges for the financial years ending 31st December 2008 and 2009 were based on an equal proportion from 16 units whereas this has been changed for the financial year ending 31st December 2010 as an equal proportion from 15 units. This is submitted not to be a fair and reasonable proportion because the changed apportionment is based upon two of the units having been converted to one flat.

**Applicant's Case**

***Respondent's Contribution to Service Charge for Unsold Flats***

20. The Applicants Statement of Case made in writing and confirmed at the hearing was as follows:

21. The Service Charge for 2008 was £796.44 per flat. The total income for 16 flats would result in a total of 16 x £796.44 = £12,743.04. In the accounts for the financial year ending 31st December 2008 the Service Charges Receivable are said to be £8,588. However this would only account for payment from 11 flats. It was submitted that the Respondent should contribute £4,155.04 for the 5 unsold flats. The Applicants justified this by reference to Paragraph 12 of the Sixth Schedule, which required the Landlord to pay the Service Charge relating to the unsold flats.

22. The Tribunal noted that the Applicants' calculations were based upon the estimated Service Charge. The Tribunal stated that it would make its determination with regard to the Service Charge based upon the actual costs as set out in the Service Charge accounts for the financial year ending 31st December 2008.

***Applicant's Proportion of Service Charge***

23. In relation to the increased 1/15th proportion of the Service Charge which the Applicants have been required to pay for the financial year ending 31st December 2010 the Applicants referred to the Planning Permission number 0401912FUL and dated 20th October 2004 and the sales information from Sharman Quinney which referred to the Block comprising 16 flats. The Applicants submitted that the Block was built and sold as 16 units and the Service Charges for the financial years ending 31st December 2008 and 2009 were based on each of 16 units paying equally. The Respondent sold two units together, which were converted into a single unit. The proportion payable for the Estimated Service Charge for the financial year ending

2010 is based on 15 units paying equally. It was submitted that under the Lease a fair and reasonable proportion for the Subject Property should remain as a 16th.

***Electricity Charge***

24. The Electricity Charge item of the Service Charge for the financial year ending 2008 was £3,917. This appears to be for lighting only. It is submitted that this charge is excessive and the contractors who were still constructing the Block during this period were using the communal electricity supply and therefore the Respondent, as the developer and Landlord should pay a proportionate part of the cost.

***Application under Section 20C Landlord and Tenant Act 1985 & Fee Reimbursement***

25. The Applicants applied for an order under Section 20C of the Landlord and Tenant Act 1985 that the Landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Leaseholders of the Subject Property.

26. In addition the Applicants applied for an Order against the Respondent for reimbursement of fees pursuant to Regulation 9(1) of Leasehold Valuation (Fees) (England) Regulations 2003 (SI 2003/2098).

27. In support of these Applications the Applicants stated that they had raised these issues through their solicitors with the Respondent's Managing Agent since the 18th August 2009. A formal response was made on 16th September but it was said that this did not answer the questions asked regarding the issues. The Applicants stated that they sent two letters dated 1st October 2009 and 12th March 2010 to the Respondent's Managing Agent. The issues were set out in an email, following telephone conversations between the Applicants and the Respondent's Agent and Representative, but the Applicants received no reply. The Applicants therefore applied to the Tribunal. (Copies of the correspondence and the email were provided.) The Applicants submitted that the proceedings would have been unnecessary if the Respondent had replied and answered the questions of the Applicants.

**Respondent's Case**

***Respondent's Contribution to Service Charge for Unsold Flats***

28. The Respondent produced a written Statement of Case, which stated that the first completions took place on 26th November 2007 and the Respondent maintained the Block until May 2008 when the Managing Agent was appointed. It was stated that the Respondent paid for the insurance and electricity well into 2008. Reference was made to a Spreadsheet and a Reconciliation Account.

29. The Spreadsheet appeared to show that the Respondent had paid invoices amounting to £7,267.74 prior to the Managing Agent taking over. Of these invoices £2,547.88 was attributable to costs incurred prior to the financial year ending 31st December 2008 and therefore the Respondent was solely responsible for these costs. The Spreadsheet identified a sum of £4,719.86 which was attributable to costs incurred during the financial year ending 31st December 2008 and was therefore allocated to the Service Charge and so would be payable by the Tenants of the flats.

30. The Reconciliation Account set out the income received in the form of the amount paid by the Tenants on completion of their purchase, which was £7,000, and the

contribution to the Service Charge paid by the Respondent in respect of the 8 unsold flats, which was £2,831.78. This totalled an income of £9,831.78 paid by the Tenants. The Respondent held these sums. The Account then showed the sum of £4,719.86, which was the amount that the Respondent had paid in respect of invoices that were attributable to the Service Charge for the financial year ending 31st December 2008.

31. The Reconciliation Account showed the deduction of the £4,719.86 from the £9,831.78 and identified a sum of £5,111.92 which was payable by the Respondent in the Service Charge account towards other costs in respect of which the Managing Agent would be invoiced and would pay on behalf of the Tenants.

32. The Tribunal pointed out that the Spreadsheet and the Reconciliation Account only identified the sums of money which went to pay the costs of the Service Charge i.e. that the Tenants who had purchased their Lease had paid £7,000 towards the costs and that the Respondent had paid £2,831.78 towards the costs in respect of the 8 flats which were unsold during the financial year ending 31st December 2008. Whereas the issue for the Tribunal to determine was what proportion the Applicants should pay of the actual costs of the Service Charge the financial year ending 31st December 2008.

33. The Respondent submitted that not all the flats had been constructed by 26th November 2007, the date of the first Completion, and therefore the apportionment should be between the flats that were completed. In particular it was said that the two-storey section of the Block containing four flats was still being built in the first year. However the Respondent was not able to give precise dates for completion of this part of the Block. It was not clear whether the flats were not constructed or whether they were not completed because they were not sold and so were left unfinished to allow for the Tenants to make their own specifications.

***Applicant's Proportion***

34. The Respondent's Representatives stated that the two units were sold as one and the Respondent decided as it is entitled under the Lease to apportion the Service Charge per unit and that this was a fair and reasonable proportion.

***Electricity Charge***

35. The Respondent's Representatives referred to the Electricity Invoices that were provided in the Bundle together with a Schedule of Expenditure for the period 31st December 2008. They said that there was a separate meter for the Common Parts.

36. It was acknowledged that contractors were undertaking work during 2008 as flats were sold and finished to individual Tenant's specifications however the contractors should have used the supply for the individual flats. It was agreed that it was conceivable that contractors might have used a communal electricity socket but it was suggested that this would not have caused a significant increase in cost.

37. It was stated that the supply to the Common Parts was not only for lighting but included the door entry system, the water pump and the communal garage door to the lower ground floor garage. It was noted that Flat 11 had an electric garage door over its designated parking area. It was accepted by the parties that this door was connected to the flat's own supply and not to the supply for the Common Parts. It was also stated that the financial year for the Service Charge accounts for 2008 was 13 months as it went from the date of the first completion, which was 26th November 2007 to the end of the accounting year of 31st December 2008. It was further

commented that the lights in the communal garage are on 24 hours a days 7 days a week.

38. The Respondent's Representatives agreed that notwithstanding the number of appliances, the extended period and the time the garage lights were on the cost of the electricity for 2008 was very high at £3,916.82 whereas the cost for 2009 was £1,042. It was said that the high cost had led to the Managing Agent changing the supplier to the Southern Electricity Company who were much cheaper.

39. At the instigation of the Tribunal the Respondent's Representatives undertook an analysis of the relative costs. In order to compare like with like the electricity readings and the relative cost of electricity form Eon and from Southern were compared as follows:

Eon

| | | |
|---|---|---|
| Actual reading: | May 2008 | 20471 |
| Actual Reading: | February 2009 | 40100 |
| | Units used | 19629 |

Average cost = 00.14 pence per unit x 19629 £2,748.06 over 9 months

Southern Electric

| | | |
|---|---|---|
| Actual reading: | February 2009 | 40100 |
| Actual Reading: | November 2009 | 58234 |
| | Units used | 18134 |

Average cost = 00.08 pence per unit x 18134 £1,450.72 over 9 months

40. It was therefore submitted that although there was a reduction in the consumption of electricity of 1,000 units the Southern Electric charges were considerably lower than those of Eon and accounted for the difference in cost between 2008 and 2009. It was said that the difference in consumption was relatively low and could have been due to a number of factors. Overall it was submitted on behalf of the Respondent that the high Service Charge cost of the electricity for 2008 was due to the higher unit charge by the supplier rather than a higher consumption.

41. The Tribunal noted that the electricity charges appear to be unreasonably high in that VAT is charged at the standard rate as if the premises were commercial rather than a reduced rate for residential premises. In addition a climate change levy is being charged from which the Block should be exempt. The Respondent's Agent agreed that an application for a reduced VAT rate and exemption should be sought.

***Application under Section 20C Landlord and Tenant Act 1985 & Fee Reimbursement***

41. In response to the Applicants' application for an order under Section 20C of the Landlord and Tenant Act 1985 the Respondent's Representatives stated that they had made a formal reply to the issues which were raised in the Managing Agent's letter dated 16th September 2009. It was claimed that the Respondent was entitled to claim the cost of the proceedings under the Lease.

**Determination**

***Respondent's Contribution to Service Charge for Unsold Flats***

42. The Application was phrased in such as way as to appear to be an application for a determination as to how much the *Respondents'* contribution should be to the

Service Charge for the financial year ending 31st December 2008. However, the Tribunal was of the view that what the Application actually required was a determination as to what the *Applicants'* contribution should be for the year in question. The reason for the initial phrasing was because the Applicants believed that due to several flats remaining unsold the Respondent was dividing the Service Charge between those Tenants who had purchased a Lease rather than the total number of flats in the Block. The Applicants therefore believed they were paying a higher contribution than they should under the Lease, bearing in mind Paragraph 12 of the Sixth Schedule, which required the Landlord to pay the Service Charge relating to the unsold flats.

43. The Tribunal found that there were two apportionments in the first year. One apportionment relates to the number of flats, which should contribute to the total Service Charge for that year. It is the reasonableness of this apportionment that the Tribunal has been asked to determine.

44. The other apportionment relates to the period from the date of an individual completion to the 31st December 2008 for which an individual Tenant is liable. This apportionment is provided for in the Lease under Paragraph 12 of the Sixth Schedule. This provision states that the Landlord is liable for the Service Charge on an unsold flat until the Lease is granted. With regard to subsequent assignments of that Lease the apportionment of the Service Charge is matter between the assignor and the assignee

45. In determining the reasonableness and payability of the Applicant's proportion of the Service Charge for the financial year ending 31st December 2008 the Tribunal considered the evidence submitted, namely the Service Charge Accounts for the year and the Spreadsheet and Reconciliation Account. The Tribunal found that the Spreadsheet and Reconciliation Account provided by the Respondent was not helpful. The Spreadsheet showed what invoices had been paid by the Respondent in the months immediately preceding and in the first months of, the financial year ending 31st December 2008 and how much of that expenditure was to be apportioned to the Service Charge. The Reconciliation Account showed how much income had been received from the Tenants on Completion and the Landlord's contribution for unsold flats against the expenditure to be apportioned to the Service Charge. It did not show how the total expenditure of 2008 was to be apportioned between all the Flats, sold or unsold. It was the reasonableness of this apportionment that the Tribunal was required to determine.

46. The Tribunal noted that the first Completions took place from 26th November 2007 and that the Service Charge Accounts for the first year commenced on that date. The Tribunal noted the evidence of the Respondent that a portion of the Block was not complete. However, there was no evidence in the Lease or other information provided that the development of the Block was to have been phased and the Service Charge apportioned accordingly. The Lease is drafted so generally that it is not possible to identify the demises or the extent of the Block. The Tribunal therefore referred to the planning permission, the sales information, which included a plan, which the Applicants said, corresponded to a plan annexed to their Lease, and the Estimated Service Charge. All these documents depicted the Block as an entity of 16 flats. The Tribunal found that the Block was sufficiently complete for a Service Charge to be levied against all flats during 2008 had Leases been granted for each of the Flats. Therefore it was reasonable for the Service Charge to be apportioned to each flat by 1/16th for the financial year ending 31st December 2008. This apportionment would be payable by the Tenants for the period from the date of Completion to the 31st December 2008 and by the Respondent as Landlord by

reason of Paragraph 12 of the Sixth Schedule of the Lease for any period that a flat remained unsold.

47. The Tribunal therefore determined that it was reasonable for the Applicants to pay 1/16th of the actual Service Charge costs for each of the Flats that they owned i.e. the Subject Properties. The Tribunal determined that, in accordance with Paragraph 12 of the Sixth Schedule of the Lease, the period for which they are liable in respect of the financial year ending 31st December 2008, is the period from the date of Completion of the purchase of each Lease to the 31st December 2008, calculated on a daily basis. Any sums paid in advance, such as those paid at the date of Completion, are to be taken into account. Any amounts paid by the Applicants in excess of the Service Charge determined to be payable shall be credited to future Service Charge demands in accordance with Paragraph 11 of the Fourth Schedule of the Lease

***Applicant's Proportion***

48. In relation to the increased 1/15th proportion of the Service Charge which the Applicants have been required to pay for the financial year ending 31st December 2010 the Tribunal firstly considered the Lease. The Lease required the Landlord to charge Clause 1(a) of the Lease stated that the Service Charge should be: *such fair and reasonable proportion the Landlord shall from time to time determine (acting reasonably)*

49. The Tribunal found that the Landlord had originally determined 1/16th to be a fair and reasonable proportion. The Tribunal found from its inspection and the plan provided that the one and two bedroom flats were similar in size and any difference in respect the services provided under the Service Charge was *de minimis*. There had been no alteration in the Lease, the size of the Block, the flats that the Applicants Leased or the services provided. The reason given for the change by the Respondent that two flats having been made reduced the number of units and so justified a 1/15th apportionment created an anomaly in that the Applicants owned two flats, which if adjacent could be joined and might lead to a further modification of the apportionment to 1/14th.

50. The Tribunal found that the Landlord's variation of the proportions was arbitrary and anomalous and therefore the proportion was not fair and reasonable and the Landlord had not acted reasonably in making the determination. The Tribunal therefore determined that the proportions paid by the Applicants for each of their flats should remain at 1/16th.

***Electricity Charge***

51. The Tribunal found the analysis of the Respondent's Representatives persuasive. The Tribunal accepted that the high cost was due to the relatively high charges of the supplier and not excessive consumption resulting from a lack of care on behalf of the Respondent or its Agent. The Managing Agent had acted properly in changing the supplier on finding that the electricity charge was high. The Tribunal however determined that the electricity charges appear to be unreasonably high in that VAT is charged at the standard rate as if the premises were commercial rather than a reduced rate for residential premises. In addition a climate change levy is being charged from which the Block should be exempt. Therefore the Tribunal determines the Electricity charges to be reasonable for consumption. However the VAT charges and Climate Change Levy for the years in issue shall not be reasonable and payable

to the Respondent by the Applicant until copies of the confirmation from Eon and Southern Electricity Companies of the eligibility of the Block to any reduced rate and exemption and copies of any amended charges have been sent to the Applicant.

52. The Tribunal observes that the Respondent's Agent should consider the installing of motion detection devices for activating the lights with a view to reducing the cost of lighting consumption in the communal garage area.

***Application under Section 20C Landlord and Tenant Act 1985 & Fee Reimbursement***

53. The Tribunal found that under Clause 9(j) of the Lease it was open to the Respondent to apply for a determination of the Tribunal in respect of what was a fair and reasonable proportion of the Service Charge for the Applicants to pay pursuant to Clause 1(a) of the Lease under the Tribunals jurisdiction as to payability set out in Section 27A of the Landlord and Tenant Act 1985. The Tribunal also found that under the same provision the Respondent could claim its costs for such application through the Service Charge. Although the determination of this Tribunal is that the Respondent's proposed apportionment is unreasonable the Tribunal found that it would have been appropriate to make such application. Therefore, notwithstanding that the application was in fact made by the Applicants, as the Respondent could have properly made the application and charged the cost to the Service Charge, the Tribunal make no Order under section 20C nor an order for reimbursement of fees.

J R Morris (Chair)

Date: 15th December 2010