RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HB/LIS/2009/0086

In the matter of: Squires Court, Bedminster Parade, Bristol, BS3 4BY

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

Between:

1. **Mr. D Rukunayake (Flat 112)**
2. **Mr. D Henderson (Flat 58)**
3. **Ms. J Spence (2 Doudney)**
4. **Ms. S St Ledger (Flat 111)**
5. **Mr. G Lewis (33 Doudney)**
6. **Mr. A Willis (42 Doudney)**
7. **Ms. L Shepherd (Flat 59)**
8. **Ms. H Whitson & Mr. J Warren (Flat 183)**
9. **Mr. M Wilberforce (Flat 156)**

Applicants

And

1. **Peverel OM Limited**
2. **Fabrevan Limited**

Respondents

Date of application: 1 October 2009
Date of hearing: 12 January 2010
Members of the Tribunal: Mr. J G Orme (lawyer chairman)
Mr. J Reichel BSc MRICS (valuer member)
Mr. M R Jenkinson (lay member)
Date of decision: 27 January 2010

Decision of the Leasehold Valuation Tribunal

For the reasons set out below, the Tribunal determines:

1. **That the relevant costs set out below and included in the service charges payable to Peverel OM Limited for Squires Court and Doudney Court, Bedminster Parade, Bristol for the years ended 30 April 2007 and 30 April 2008 were reasonably incurred:**
   2007 – Electricity £20,962.89;
   Fire equipment maintenance £4,289.15;
   Insurance £25,464.83;
   Insurance £10,997.14;
   Management fees £54,718.58.
   2008 - Lift maintenance and repair £18,033.72;
   Insurance £25,970.62;
   Insurance £11,198.50;
   Management fees £57,461.77.

2. **The parties have permission to apply for a further determination if they are not able to agree the actual service charge payable by any individual applicant for those years.**

3. **That it makes no order pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended).**

Reasons

The Application

1. On 1 October 2009 the 1st to 7th Applicants applied to the Tribunal to determine the service charges payable by them in respect of flats which they own at Squires Court and Doudney Court, Bedminster Parade, Bristol BS3 4BY ("the Property"). The application was signed by the 1st Applicant, Mr. Rukunayake but not by the 2nd to 7th Applicants. At the hearing on 12 January 2010, the Tribunal made an order deeming all the Applicants to be applicants in the application. Since the hearing, Ms. Shepherd, the 7th Applicant has notified the Tribunal that she does not wish to be an applicant. The application named Peverel OM Ltd ("Peverel") and Bellway Homes Ltd as respondents.

2. The application asked the Tribunal to determine service charges for the years 2007, 2008 and 2009. The specific items of charges which were challenged by the Applicants were listed in the schedules to the application.

3. On 9 October 2009 the Tribunal issued directions providing for notice of the application to be given to other lessees in the building by advertisement, for

the Applicants to file a written statement of case within 21 days, for the Respondents to file a written statement of case within 21 days thereafter and for the matter to be listed for hearing. Notice of the application was advertised in the Bristol Evening Post on 29 October 2009. As a result of that advertisement, the 8th and 9th Applicants asked to be joined as Applicants. The Tribunal made orders joining them as Applicants on 11 and 26 November 2009 respectively.

4. By letter dated 4 November 2009, Mr. Rukunayake applied for an order under Section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act").

5. Mr. Rukunayake filed a written statement of case on 23 November 2009 and a supplemental case on 4 January 2010. No statement of case was filed by any other Applicant.

6. Peverel filed a statement of case on 8 January 2010.

The Law

7. The statutory provisions primarily relevant to matters of this nature are to be found in Sections 18, 19 and 27A of the Act.

8. 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 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.

9. 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.

10. 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.

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

Subsections 3 to 7 of Section 27A are not relevant in this application.

11. Section 20C of the Act 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.

The Leases

12. The Tribunal was provided with a copy of the lease of flat 112 Squires Court, which is the flat owned by Mr. Rukunayake. The Tribunal was informed that the leases of the other flats at the Property are in a similar form.

13. The lease is dated 14 July 2005. It was made between Bellway Homes Ltd as lessor, John Harty and Gerrard Cosgrave as lessees and Peverel as the manager. The lease demised flat 112 for a term of 125 years from 1 January 2003 at a rent of £150 per year.

14. The relevant parts of the lease are long and, as they are not in dispute, they are not set out in full. At clause 4, the lessees covenanted with both the lessor and the manager to observe and perform the obligations set out in the

8th schedule. At clause 6, the manager covenanted with the lessor and the lessees to observe and perform the obligations set out in the 10th schedule.

15. At paragraph 2 of the 8th schedule the lessees covenanted to pay to the manager *"the Lessee's Proportion at the times and in the manner herein provided and without deduction or set off and free from any equity or counterclaim."* The Lessee's Proportion is defined in the lease as *"the proportion of the Maintenance Expenses payable by the Lessee in accordance with the provisions of the seventh schedule."* The Maintenance Expenses are defined in the lease as *"the moneys actually expended or reserved for periodical expenditure by or on behalf of the Manager or the Lessor at all times during the term in carrying out the obligations specified in the sixth schedule."*

16. The 6th schedule sets out a list of maintenance tasks. They are widely drawn to deal with the maintenance of the common parts of the Property. They are divided into various headings namely:
Part A - estate costs;
Part B - residential block costs;
Part C - passenger lift costs;
Part D - basement car parking costs;
Part E - surface car parking costs;
Part F - insurance costs;
Part G - costs applicable to any of the previous parts of the schedule.
Paragraph 15 of Part G provides *"All other reasonable and proper expenses (if any) incurred by the manager ... 3 as to any legal or other costs reasonably and properly incurred by the manager and otherwise not recovered in taking or defending proceedings (including any arbitration) arising out of any lease of any of the dwellings ..."*

17. The 7th schedule sets out a mechanism for calculating the lessee's proportion of the maintenance expenses. The shares payable by the lessees are set out in the lease by reference to the parts listed in the 6th schedule. The 7th schedule provides for service charge accounts to be prepared to 30 April in each year and for a copy of the accounts to be served on the lessees with an accountant's certificate. The lessee's proportion of the maintenance expenses is to be paid in advance by two half yearly instalments based on an estimate of the maintenance expenses for the forthcoming year. Any shortfall is to be paid within 21 days of the service on the lessees of the accountant's certificate.

18. The 10th schedule contains a covenant by the manager to carry out the tasks specified in the 6th schedule.

The inspection

19. The Tribunal inspected the Property on 12 January 2010. The Applicants were represented by Mr. Rukunayake and Mr Warren, one of the 8th Applicants. Peverel was represented by Miss Banwell-Spencer, a solicitor employed by Peverel and by Mr. James Lang, a property manager employed by Peverel.

20. Squires Court is a modern development of 258 1, 2 and 3 bed-room flats which was built in 2004 to 2005. It consists of 2 blocks, Squires Court and Doudney Court. Squires Court is the larger block and fronts onto Bedminster Parade. It contains 183 flats arranged on 7 floors. There are 4 lifts in the block which service all flats in the block except a small number in a 3 storey part of the block. Access to the flats is by internal corridors which have minimal natural light. Doudney Court is to the rear. It contains 75 flats. Part is arranged on 3 floors and contains no lift. The remainder is arranged on 4 floors and has one lift.

21. There is a basement car parking area beneath Squires Court. Between Squires Court and Doudney Court there is a further open air car parking area with landscaped areas.

22. The Tribunal was shown the integrated fire alarm system which is connected to all flats and the chimney based open vent system for exhausting smoke from the building.

23. The Property appeared to be well maintained throughout. The Tribunal was informed that Peverel employs a caretaker and a cleaner full time on the Property to attend to cleaning and routine maintenance tasks.

The hearing and the issues

24. The hearing took place on 12 January 2010.

25. Mr. Rukunayake and Mr Warren appeared in person. Mr. Warren took no part in the hearing and left at 12.30pm. No other applicant appeared before the Tribunal. The Tribunal, having satisfied itself that notice had been given to the other Applicants, determined to proceed with the hearing in their absence.

26. Miss Banwell-Spencer appeared for Peverel. She informed the Tribunal that Bellway Homes Ltd had transferred the freehold of the Property to Fabrevan Ltd on 8 November 2006. She said that Fabrevan Ltd was a company in the same group of companies as Peverel. The Tribunal made an order substituting Fabrevan Ltd for Bellway Homes Ltd as 2nd Respondent.

27. Peverel filed and served its statement of case on 8 January 2010. It had been delivered to Mr. Rukunayake on that date. He had not had time to look at it until the weekend. Mr. Rukunayake confirmed that he was ready to proceed with the hearing notwithstanding the late delivery of the statement of case.

28. The application stated that the Applicants were challenging the service charge for 2009. It did not give details of the items which were being challenged. In Mr. Rukunayake's written statement of case he specified that he was challenging the estimated costs of electricity, cleaners, passenger lifts and management fees for 2009. With that document he served a copy of the estimated service charge account for the year ended the 30 April 2010. At the hearing, Mr. Rukunayake explained that he was challenging the estimated service charge for the year ending 30 April 2010 and not 2009. Peverel had prepared its case on the basis that the Applicants were challenging the estimated service charge for the year ended 30 April 2009.

29. The Tribunal determined that it would not be fair to proceed with the application in relation to that part of the dispute without giving Peverel an opportunity to prepare its case in relation to 2010. The Tribunal gave a direction for that part of the application to be adjourned generally with liberty to restore. That direction has been issued to the parties separately.

30. The Tribunal proceeded to determine the disputed service charges for the years 2007 and 2008. The following items were in dispute:
Electricity – the block costs for Squires Court for 2007 (£20,962.89).
Fire equipment maintenance – the block costs for Squires Court for 2007 (£4, 289.15).
Insurance charges for both Squires Court and Doudney Court for 2007 (£36,461.97) and 2008 (£37,169.12).
Management fees – for 2007 (£54,718.58) and 2008 (£57,461.77).
Lift maintenance and repair – for 2008 (£18,033.72).

The Evidence

31. Mr. Lang gave evidence on behalf of Peverel. He had filed a witness statement and gave further oral evidence. Mr. Rukunayake gave evidence on his own behalf. It was agreed that the Tribunal would deal with each item of service charge in turn, hearing the evidence of Peverel and Mr. Rukunayake in turn. That format is followed here.

32. **Electricity:** The Applicants challenged the charge of £20,962.89 for electricity under schedule 2A in the 2007 accounts. Mr. Lang produced a schedule showing the breakdown of electricity costs charged under that heading. The schedule was accompanied by copies of the relevant invoices received from the electricity supplier. The charge was for electricity costs for

the communal parts of the Squires Court block. There are five separate meters in Squires Court, one for each of the five risers.

33. 2007 was the first year in which the development was fully occupied. The accounts for the year ended 30 April 2006 had been based on estimated meter readings rather than actual readings. The accounts for the year ended 30 April 2007 were based on actual meter readings taken at the end of the financial year. Mr Lang said that there was an element of catch up in the 2007 accounts. For the majority of the year ended 30 April 2007, electricity had been charged at the business standard tariff charged by EDF Energy. That was as a result of the contract entered into by the developer. Early in 2007 Peverel employed Maks consultancy to review suppliers to source cheaper rates for electricity.

34. There had been a problem with the meter on riser number one. It appeared that the meter had stuck as the reading was the same on 30 April 2007 and 6 September 2007. To take account of electricity which had been used but not billed as a result of that fault, Peverel made an accrual of £4,179.11 in the 2007 accounts. Mr Lang said that the electricity supplier had not sought to make any further charge and that that sum would be credited back in the 2009 accounts.

35. The charge for electricity included the cost of replacement light bulbs. Peverel provided copies of the invoices for light bulbs. Mr Lang accepted that the electricity costs appeared high but said that the lights in the corridors were switched on at all times due to the lack of natural lighting. Peverel was now looking at reducing the cost by changing the lighting system.

36. Mr. Rukunayake produced no evidence to show that the quantity of electricity used or the price charged was unreasonable. He thought that the electricity costs were excessive. He had never lived in a block where the lights were kept on at all hours.

37. **Fire equipment maintenance:** The Applicants challenged the charge for £4,289.15 for fire equipment maintenance under schedule 2A in the 2007 accounts. Mr Lang said that this charge covered the cost of maintaining the fire alarm system, the automatic opening vent system, and emergency lighting system in Squires Court together with any necessary repairs. Mr Lang produced a schedule listing the costs incurred together with copies of the relevant invoices and fire inspection certificates. He said that there was a contract for servicing the systems in line with health and safety legislation but callouts and repairs had to be paid for in addition to the routine maintenance.

38. Mr. Rukunayake understood that fire prevention is important. He accepted that the costs were reasonable.

39. **Insurance:** The Applicants challenged the total charge of £36,461.97 for insurance in the 2007 accounts and the total charge of £37,169.12 for insurance in the 2008 accounts. Mr Lang said that the insurance had been placed originally by the developers, Bellway Homes Ltd. That company sold the freehold on 8 November 2006. From that date the insurance was arranged by Peverel, using insurance brokers, Tysers, who were instructed to advise on the best policy bearing in mind both level of cover and price. There were separate policies for Squires Court and Doudney Court. The cover included terrorism risks. Mr. Lang produced a schedule showing how the premiums were calculated. He did not produce any competitive quotations. He said that the level of premiums was increased due to a substantial claims history in 2006 and 2007.

40. Mr. Rukunayake had obtained a quotation for insuring Squires Court for a premium of £14,292.02. He had obtained that quotation on 23 December 2009. The quotation was for a policy provided by Axa insurance, the same company which provided Peverel's policy. Miss Banwell-Spencer drew attention to a number of differences in the cover provided by the Peverel policy and that suggested by Mr. Rukunayake. She submitted that Peverel was not under a duty to obtain the cheapest insurance but to obtain reasonable cover at a reasonable price.

41. **Maintenance:** The Applicants challenged the charge of £54,718.58 for management fees in the 2007 accounts and the charge of £57,461.77 for management fees in the 2008 accounts. Mr Lang said that Peverel charged £180.50 plus VAT per unit in 2007 and £189.55 plus VAT per unit in 2008. He said that the fee included the services of the property manager visiting and inspecting the scheme on a regular basis, supervision of directly employed staff, budget and financial management, the provision of customer services, credit control, purchase ledger, sales ledger, personnel and corresponding with lessees and contractors. He said that Peverel manage the scheme in accordance with the terms of the leases and the RICS Service Charge Residential Management Code. He said that the charges were in line with industry standards. He said that the development is an extensive scheme which takes up a large amount of management time. He said that there were no additional charges except for the cost of auditing accounts, charges for consents for alterations etc. and a project management fee for any capital expenditure.

42. Mr. Rukunayake produced a letter from AdamChurch, a management company in Bristol, in which they say that they would charge £75 per unit per year to include company secretarial duties. The letter did not provide full details of the service which that company would provide. Miss Banwell-Spencer questioned whether that company would be able to cope with a

development of this size and said that the proposed charge was unrealistic. Mr. Rukunayake also complained about the service received from Peverel saying that customer service was poor and that the lessees had difficulty contacting Mr Lang by telephone.

43. **Lift maintenance and repair:** The Applicants challenged the charge of £18,033.72 for lift maintenance and repair in the 2008 accounts. Mr Lang said that there are 5 lifts at the Property, 4 in Squires Court and 1in Doudney Court. The cost of maintenance is shared between all the flats except those flats in Squires Court and Doudney Court which do not benefit from the services of a lift. Mr Lang said that the lifts had been installed by KONE and that the developers had entered into maintenance contracts with KONE. It was necessary for the lifts to be serviced on a regular basis. Mr Lang produced a schedule showing the breakdown of the charge supported by copies of the relevant invoices and copies of the maintenance contracts. He said that the charge included the cost of lift insurance, inspections, repair and maintenance and charges for the lift telephones. He said that in 2008 there had been no competitive tendering for maintenance. At that time it was a closed market due to the difficulty of changing over telephone systems. Since 2008 the market had opened up considerably and Peverel had now entered into a contract with PIP Lift Service Ltd at a considerably reduced rate.

44. Mr. Rukunayake had obtained a quotation from KONE for maintaining the lifts for 2010. He was not given permission to put that quotation in evidence as it was produced too late but it appeared that the charge was very similar to that which Peverel had managed to obtain from PIP for 2009. Mr. Rukunayake was unable to produce any evidence of comparable costs for 2008.

45. **Section 20C:** Mr. Rukunayake said that the Applicants were obliged by the leases to pay the service charges and felt that the charge was increasing dramatically and was out of their control. He said that it would not be fair to allow Peverel to increase the service charge by adding their costs.

46. Miss Banwell-Spencer relied on paragraph 15.3 of the 6th schedule as giving Peverel power to add its costs of defending the application to the service charge. She said that it would be oppressive to make an order against Peverel. The application was initiated by Mr. Rukunayake when Peverel started debt collection procedures against him. Mr. Rukunayake did not raise his complaints with Peverel's customer services department or Mr Lang. There was one e-mail from Mr. Rukunayake in November 2009 but otherwise no letters complaining about the charges or raising his concerns. She said that it was reasonable for Peverel to defend the proceedings and its costs had been reasonably incurred.

Conclusions:

47. The Applicants did not challenge the right of Peverel to recover the charges under the terms of the lease. Having inspected a copy of the lease, the Tribunal is satisfied that the terms of the lease allow Peverel to recover the charges. The only question is whether the charges are reasonable. The Tribunal will deal with each heading in turn.

48. **Electricity**: The Tribunal is satisfied that the charge is a reasonable one. It may be that, in the future, electricity charges could be reduced by obtaining electricity from an alternative supplier and by incorporating some energy saving devices. However, the Tribunal notes that Peverel took over management of the Property on 1 April 2006 when there was already in place a contract for the supply of electricity. The Tribunal accepts Peverel's evidence that it reviewed suppliers resulting in a significant reduction in electricity charges towards the end of 2007. Peverel produced invoices to justify the amounts charged. The Applicants produced no evidence to show that the amount charged was unreasonable.

49. **Fire equipment maintenance**: The Tribunal is satisfied that the charge is a reasonable one. Having heard Peverel's explanations, Mr. Rukunayake accepted that the charge was reasonable. Peverel produced a full breakdown of the charge together with invoices to justify the charge.

50. **Insurance:** The Tribunal is satisfied that the quotation obtained by Mr. Rukunayake was not on a like for like basis with the insurance provided by Peverel. Also, it related to a different year when insurance rates may have been different. The Tribunal notes that Peverel did not produce any alternative quotations for insurance. It is surprised that its brokers did not provide alternative quotations for consideration. However, there is no evidence to show that the amount charged by Peverel was unreasonable. In the absence of any other evidence, the Tribunal is satisfied that the charges are reasonable.

51. **Lift maintenance and repair:** The Tribunal accepts the evidence of Mr. Lang that the market was expensive in 2008 and that it has improved since then. The Applicants have produced no evidence to show that the service could have been provided at a lower cost in 2008. Peverel provided a full breakdown of the charge with supporting invoices to justify the charge. The Tribunal is satisfied that the charge is reasonable.

52. **Management:** The Tribunal is not persuaded that the quotation obtained by the Applicants from AdamChurch is a realistic one. There is no evidence as to what services would be included in the proposed fee of £75 per unit. The Tribunal takes into account that the Property is a large development and that

it appears to be well maintained. The Tribunal has seen evidence of some complaints by lessees about various matters including the standard of maintenance of lifts and the fire doors but the Tribunal is not persuaded that that is a major issue. The Tribunal agrees with Mr. Lang that the management charges are in line with industry standards. The Tribunal considers that Peverel's charges are on the high side but that they are within an acceptable range and that they are reasonable.

53. **Section 20C**: The Tribunal notes Peverel's submission that it is entitled to recover its costs through the service charge under the provisions of the 6th schedule of the lease. The Tribunal is not required to determine, in this application, whether or not that is the case. It has to determine whether or not to make an order under Section 20C of the Act.

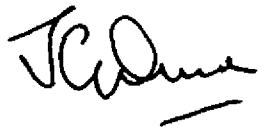
54. The documents lodged with the application suggest that the application was made by the Applicants as a result of frustration at not being able to communicate with Peverel. However, there is no clear evidence that the Applicants tried to discuss with Peverel the specific concerns raised in this application. Indeed, it appears that the only written complaint about the service charges was made by Mr. Rukunayake in his e-mail dated 16 November 2009, after the application was issued.

55. The Applicants ought to have raised their concerns with Peverel before making the application. That would have given Peverel the opportunity to explain and justify the charges. If Peverel had refused to do so, then there are procedures under section 22 of the Act which allow the Applicants to inspect invoices to support the accounts. Having made their application, the Applicants have not produced appropriate evidence to justify their challenges.

56. Peverel had no alternative than to deal with the application. In the event, they have been successful on all of the issues. In the circumstances, the Tribunal does not consider that it is just and equitable to make such an order in this matter and it declines to do so.

57. **General:** The Tribunal has determined that the sums claimed in the accounts which have been challenged by the Applicants are reasonable and are recoverable under the service charge provisions. The Tribunal is unable to make a determination as to the precise amount of service charge payable by any individual Applicant as it does not have details of the dates on which the Applicants became lessees of their respective properties and therefore became liable to pay service charges; it does not have details of the share of the charge which each individual Applicant has to pay; and it does not have a statement of account for each individual Applicant. The Tribunal hopes that, having made its determination on the main issues, the parties will be able to resolve any issues concerning apportionment of the service charges. If not, it

will be necessary for the parties to apply to the Tribunal for a further determination and the tribunal gives permission for that to be done.



J G Orme
Chairman

Dated 27 January 2010.