

IN THE MATTER OF

**IN THE MATTER OF FLATS 2-8, 10-24A AND 25-30 CLAYDON ROAD, 49-63A
EASTBURY WAY AND 27 FENTON AVENUE AND 28-78 WILLINGTON ROAD,
SWINDON WILTSHIRE, SN25 2HB**

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

CASE NO: CHI/OOHX/LIS/2009/0099

AND

**THE MATTER OF AN APPLICATION UNDER SECTION 27A OF THE
LANDLORD & TENANT ACT 1985 AS AMENDED ("THE 1985 ACT")**

DECISION

Applicant/Landlord:	Bovis Homes Limited
Respondent/Lessee:	Mr P A Magee Miss C L Rogers Mr R Navarrete
Premises:	68 Willington Road and Others Swindon Wiltshire SN25 2HB 40 Willington Road Swindon Wiltshire SN5 2HB 5 Orchid Close Swindon Wiltshire SN25 3ST
Date of Application:	3 November 2009
Date of Provisional Directions:	16 November 2009
Date of Inspection and Hearing of Application:	26 May 2010

Date of Reconvened Tribunal 22 June 2010
Venue of Hearing: The Holiday Inn Express
Bridge Street
Swindon
SN1 1BT

Members of the Leasehold Valuation Panel Tribunal: Mr A D McC Gregg, Chairman
Mr M J Ayres, FRICS
Mr S Fitton

Clerk: Charlotte Osborne

Persons Present at the Hearing: (For the Applicant): Mrs Karen Gray (Managing Agent for Labyrinth Properties)
Miss Shelly Heaney (Observer)

Persons Present at the Hearing (For the Respondent): None

1. Inspection of the Premises

- 1.1 On the 26th of May 2010 prior to the hearing the Tribunal inspected the external areas of the premises at 68 Willington Road, Swindon, Wiltshire, SN25 2HB.
- 1.2 It was not possible to inspect the interior of the premises due to the fact that the Respondent, Mr P A Magee, was suffering from the effects of a car accident and was not fit enough to attend the inspection. He had, nonetheless, written to the Tribunal requesting that an external inspection of the premises and the hearing of the application should proceed in his absence and notwithstanding his ill health.

2. The Issues

- 2.1 The issues to be determined by the Tribunal relate to the service charges payable by the Respondent and other leaseholders for the years 1st January 2007 to 31st December 2007, 1st January 2008 to 31st December 2008, 1st January 2009 to 31st December 2009.

3. Relevant Liabilities under the Lease

- 3.1 The Respondent's liabilities (covenants) are set out in his lease which is dated the 22nd December 2006 and which forms Pages 52-81 of the Applicant's bundle.
- 3.2 Specifically, the Respondent (tenant) in Clause 3.1.1. covenants "to observe and perform the obligations on the part of the tenant set out in the fourth and seventh schedules" (see Page 61).

- 3.3 The fourth schedule contains the details of the covenants by the Respondent/tenant (see Page 66).
- 3.4 The seventh schedule (Page 73) specifies the covenants on the part of the management company (the Applicant) and the tenant (the Respondent) in respect of the service charge.

4. The Law

- 4.1 Section 27a of the Landlord & Tenant Act 1985 ("the Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and if it is, determine

- (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
 - (e) the manner in which is payable.
- 4.2 For the purposes of the Act a service charge is defined in Section 18(1) as "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 (including overheads).
- 4.3 "Relevant costs" are defined as costs or estimated costs incurred or to be incurred by or on behalf of a landlord or superior landlord in connection with the matters for which the service charge is payable.
- 4.4 Section 19(1) of The Act deals with the test of reasonableness and the only costs that shall be taken into account in determining the amount of the service charge are those that are
- (a) reasonably incurred and
 - (b) where they are incurred on the provision of services or carrying out of works if those services or works are of a reasonable standard.

5. The Applicant's Case

- 5.1 The Applicant's case was set out in their application whereby the Applicant sought a declaration and confirmation that the service charges for the years 1st January 2007 to 31st December 2007
1st January 2008 to 31st December 2008
1st January 2009 to 31st December 2009
were reasonable and payable by the Respondent pursuant to Clause 3.1.1. and Schedules 4 and 7 of the Respondent's lease dated the 22nd December 2006.
- 5.2 The details of the service charges payable for each year are somewhat complex since they are made up by adding together the totals of the schedules, there are 6 schedules in all, 4 of which are applicable to the property.
- 5.3 In this case the schedules applicable to the Respondent's property are:-
Schedule 1 – Estate
Schedule 3 – Flats over Garages
Schedule 5 – Garages
Schedule 6 – Parking Courts
- 5.4 Details of the schedules and the expenditure concerned are found in the bundle that accompanied the application (Pages 1-88) and the supplemental bundles in support (Pages 1-858).
- 5.5 Mrs Gray, for the Applicant, took the Tribunal through the various schedules and explained how the figures were arrived at.
- 5.6 Following a preliminary determination on 26 May the Tribunal prepared a schedule based on the certified service charge accounts and these were sent to both parties for their comments.
- 5.7 The applicant responded by letter dated 3 June setting out the figures that they believed to be correct and making the comment that the calculation of the percentage should include the value of the reserve transfers.
- 5.8 The Tribunal accepted this argument and that this should be included.

6. The Respondent's Case

- 6.1 The Respondent's case was set out on Page 7 of his response which raised 6 areas of concern, namely:-
- (i) A determination that the estate charge should not apply to his properties. (The Respondent is the owner of 2 of the properties, namely No 68 Willington Road comprising the ground floor of those premises, a garage in the middle of an adjoining block of 3 garages and a parking space in the front of the garage. He is also the owner of No 68a which is the accommodation above that of No 68 and which includes a dedicated parking area on the development.) Furthermore the Respondent asked if he had been given credit for those charges that had been levied for both properties.

- (ii) A reduction in the management fees and other administrative charges which he believed to be excessive.
- (iii) Removal of costs that had already been allocated to his service charge account or letters written in contemplation of recovery/breach of covenant.
- (iv) That the Applicants should not be able to recover the cost of the application (£350) from the Respondent.
- (v) That he should receive the sum of £250 towards his own costs and expenses.
- (vi) That the Tribunal would recommend that the Applicants should offer a facility for lessees to pay by monthly instalments with a single payment instead of multiple payments with separate direct debits for each of the schedules involved.
- (vii) In addition the Respondent had written to the Tribunal on the 14th of May and raised issues with regard to:-
 - (a) The cutting of the grass in the communal area in front of Nos 68 and 68a Willington Road and
 - (b) The lack of repair to the railing on the right of the front entrance to the property.

6.2 On 11 June 2010 the respondent wrote to the Tribunal stating that he had no comments to make with regards to the schedule that had been sent to him as he did not understand them.

7. The Decision

7.1 The Tribunal considered the terms of the leases in respect of Nos 68 and 68a (in similar terms) and concluded that the estate charge should apply to both properties and that some of the service charges were properly due and payable.

7.2 However in taking into account the percentage of the management fees in relation to the total service costs the Tribunal concluded that they were, in all the circumstances excessive and that the normal and acceptable percentage should be 15% and the management charges that have been levied should therefore be reduced accordingly to 15% of the total.

The applicant should therefore recalculate all of the services charges on the basis of 15% of the annual costs and that is the figure that the respondent should be required to pay.

7.3 The Tribunal considered the costs that had been allocated to the Respondent's service charge (see Page 22) of the Applicant's case papers and concluded that they were, in all the circumstances excessive and that the appropriate figures were as follows:-

16th January 2009 – Administrative charge final reminder - £25

- 25th June 2009 – LP charge re breach of covenant - £25
- 10th July 2009 – LLS letter before action - £25
- 8th September 2009 – Administration charge re letter to mortgage company - £25

The sums charged will be reduced accordingly.

- 7.4 That the Applicant should not be able to recover the cost (£350) of the application against the Respondent alone since the issues that the Respondent has raised relate to the entire development and it is therefore appropriate that those costs be offset against the overall management charges for the entire estate.
- 7.5 That the Respondent should receive £250 towards his own costs and expenses in losing working time. The Tribunal concluded that it did not have the power to order the reimbursement of this sum and, in any event, no details had been provided with regard to its make up this item was therefore disallowed.
- 7.6 With regard to the payment of the service charges, details are set out in the Respondent's leases. The Applicant did however indicate to the Tribunal that they would be happy to offer a facility for payment by monthly instalments by way of a single payment in respect of all schedules that make up the overall service charge.
- 7.7 At the inspection the Tribunal noted that the grass area in front of Nos 68 and 68a had recently been mown and the communal areas were, on the whole, well tended and managed.
- 7.8 The Tribunal did however note the loose railing that had been referred to by the Respondent in his letter of the 14th May and it appeared that this had been caused by a vehicle colliding with it and breaking the retaining stones. The Applicant noted the defect and assured the Tribunal that it would be rectified.

Signed: 

Andrew Duncan McCallum Gregg (Chairman)

Dated 24 June 2010

**IN THE MATTER OF FLATS 2-8, 10-24A AND 25-30 CLAYDON ROAD, 49-63A
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SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

CASE NO: CHI/OOHX/LIS/2009/0099

AND

**THE MATTER OF AN APPEAL OF AN APPLICATION UNDER SECTION 27A OF
THE LANDLORD & TENANT ACT 1985 AS AMENDED ("THE 1985 ACT")**

**BOVIS HOMES LIMITED
(Kelston Rise Management Company Limited)**

-v-

**Mr P A Magee
68 and 68A Willington Road, Swindon, SN25 2HB**


**Mr R Navarret
5 Orchid Close, Swindon, SN2 38T**

**Ms C Rogers
40 Willington Road, Redhouse, Swindon SN25 2HB**

DECISION

1. The Applicants have, by a notice under the cover of a letter dated 16th July 2010 that was received by the Southern Rent Assessment Panel & Leasehold Valuation Tribunal on the 19th of July 2010 sought permission to appeal against the decision of the Tribunal dated the 24th of June 2010. The appeal relates to the level of management fees, which the Tribunal felt was reasonable to charge.
2. The Tribunal have considered that application.
3. In coming to its decision dated the 24th of June 2010 the Tribunal took into account the test of reasonableness of the service charges and in particular Section 19(1) of The Landlord & Tenant Act 1985 (see Paragraph 4.4).
4. The application for permission to appeal would appear to be based on grounds that the Tribunal, in coming to its decision based the decision on the percentage of the management fees in relation to the total service costs (see Paragraph 7.2 of the decision) which goes against recommendations in the RICS Service Charge Residential Management Code published 6 April 2009.

5. The Applicants case is that the management fees were based on a rate per unit and this is what should have been adopted by the committee. No evidence or justification that the charges were reasonable was presented in the original application and the appeal is based solely on RICS recommendation on the method of charging.
6. For these reasons the Tribunal considers that the Applicant has no prospect of success in an appeal and there are no other compelling reasons why the Applicant should be given permission to appeal. The Tribunal refuses permission to appeal.
7. The Applicant may make a further application for permission to appeal to the Upper Tribunal under section 231 of the Housing Act 2004. The Lands Tribunal Rules 1996 (SI 1996 No 1022) (as amended) set out the procedure for making such an application. Any such application must be made to the Upper Tribunal within 14 days of the date on which this decision is sent to the Applicant. The address of the Upper Tribunal (Lands Chamber) is: 43-45 Bedford Square, London WC1B 3AS

Signed: 

Andrew Duncan McCallum Gregg (Chairman)

Dated: 22 July 2010