

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HX/LIS/2010/0026

In the matter of applications under Sections 27A and 20C of the Landlord and Tenant Act 1985 [as amended] [“the Act”] and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 [“the 2002 Act”]. Applied under the 2002 Act

Property: 117 Frobisher Drive, Walcot East, Swindon, SN3 3BY

Applicant: Mrs. Barbara Ferrari, [Lessee]

Respondent: The Swindon Borough Council, [Landlord]

Applications dated - 1st. March 2010 and 6th. May 2010

Tribunal Mr. J.S. McAllister F.R.I.C.S. [Valuer Chairman]
Mr. S. Fitton [Lay Member]

Date of Hearing - 21st June 2010

Appearances for Applicant

Mrs. Ferrari in person
Mr. N. White

Appearances for Respondent

Mr. H. Stevens of counsel
Mr. I. Burbidge [Housing and Finance Manager]
Mr. M. Szczepanek [Housing Principal Quantity Surveyor]
Ms. S. Darragh [Head of Landlord Services]

Also in attendance

Ms. R. Bone [Solicitor of Respondent]
Ms. N. Manro [Right to Buy Leasehold Officer of Respondent]

Date of Tribunal’s Decision – 5th. July 2010

DETERMINATION AND REASONS

SUMMARY DECISION

1. The Tribunal find that the service charges at issue and as detailed below are, on balance, reasonable and that it is just and equitable, in all the circumstances to make the Order requested by the Applicant in relation to the Respondent's costs in connection with these proceedings.

THE APPLICATIONS

2. On the 1st. March 2010 the Applicant applied to the Tribunal under section 27A of the Act for a determination as to the liability to pay and the reasonableness of certain service charges for the years 2009 and 2010. She also applied under Section 20C of the Act for an Order that the costs incurred by the Landlord in connection with the proceedings before the Tribunal should not be added to the service charge.

3. The Tribunal issued Directions dated 8th. March 2010 for the matter to be the subject of a Pre Trial Review hearing on the 9th. April 2010. Following the hearing on the 12th. April 2010, the Tribunal issued Directions for the matters to be heard on the 21st. June 2010.

4. On the 6th. May 2010, the Applicant applied under the 2002 Act for a determination as to the liability to pay and the reasonableness of an administration charge and a further application under Section 20C of the Act.

5. The Tribunal issued Directions dated 12th. May 2010 that all the cases should be consolidated so that they are heard by the same Tribunal at the same time.

THE LAW

6. Section 19 of the Act, as amended provides:

Limitation of service charges: reasonableness

(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.

Section 27A Liability to pay service charges: jurisdiction

(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) above 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.

Section 20C Limitation of service charges: costs of proceedings

(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 court, [residential property tribunal] or leasehold valuation tribunal, or the [Upper Tribunal], or in connection with arbitration proceedings, 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.

Relevant costs are defined in Section 18(2) of the Act as 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.

In Section 18(3) (a) costs includes overheads and in Section 18(3)(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.

INSPECTION

7. The Tribunal inspected the property before the hearing in the presence of Mr. Ferrari the husband of the Applicant and Messrs Stevens, Burbidge, Szczepanek and Mesdames Bone and Manro representing the Respondent.

8. Briefly the property comprises an end terrace first floor flat probably built around 1950-1970. It is of traditional construction with mainly brick and rendered walls under a concrete tile covered roof. The communal area shared with the ground floor

flat, [115], was a hall staircase and landing. It was built of panelled and tile hung walls under a lead covered flat roof and was attached to 117 and 115 and to 119 the adjoining terrace house. 117 also had its own area of garden fronting the flat, subject to a pedestrian right of way to 115.

THE LEASE

9. The lease is dated 15th. May 1989 and is for a term of 125 years from that date. The Lessee's liability to pay service charges is contained in clause 4 (2) in connection with the landlord's obligations contained in clause 6 (2), including its reasonable administrative and management costs and in carrying out any improvements to the building and property. The Lessee's liability also extends to paying a reasonable service charge, being the Landlord's costs in complying with its obligations under paragraph 14, Part III, of the Sixth Schedule of the Housing Act 1985.

THE HEARING

10. This was held at the Holiday Inn Express in Swindon following the inspection where the above parties attended. At the outset Mr. Stevens presented his skeleton argument for the Respondent and a bundle of documents being a numbered bundle of documents already seen by the Tribunal and Applicant. After an adjournment to study these documents Mrs. Ferrari stated that she was content for the case to proceed.

SECTION 27A APPLICATION

THE ISSUES

11. At the beginning of the hearing it was agreed that the only service charge items disputed by the Applicant were the Landlord's management and administration costs and the provision of and costs of the Landlord's Neighbourhood Warden Estate Service. It was also agreed that these items were service charges not administration charges.

APPLICANT'S EVIDENCE

12. Mrs. Ferrari, the Applicant, in accordance with the Directions, produced a written Statement dated 6th. May 2010 with various copy documents attached. In her Section 27A application she identified 3 quarterly payments of £83.26 [including £2.50 ground rent] in August and November 2009 and February 2010, and May 2010 onwards sums of £147.00 per quarter [again including £2.50 for ground rent], as being in dispute. [The ground rent is not an issue here, in any event the Tribunal does not have jurisdiction to consider the amount of ground rent payable under the lease.]

She spoke to her statement and said she had hoped to reach a compromise with the Respondent. She claimed the high increases in service charges generally did not tally with inflation and she proposed 5 possible solutions to the dispute. The only relevant one in these proceedings relates to the reasonableness of service charges, in particular, as agreed, 2 specific items of service charge i.e. the Neighbourhood Warden Estate

Service [“the Service”] and the administrative and management costs levied by the Landlord.

With regard to the Service, she stated that she did not require it because she owned her flat, she should not have to finance the whole estate and the Service is not part of her lease. She contended that the Service was not properly carried out, that 53 leaseholders voted against it at a recent meeting and that leaseholders should be treated differently from council tenants. She thought it should be an optional service. She stated that, prior to 2006 the Service was carried out by voluntary street wardens.

In reply to questions the Applicant accepted that there have been occasions when the wardens have had to remove unwanted items. She also accepted that the Respondent had a health and safety obligation in this regard but felt that the Service should be financed from council tax.

With regard to the council’s administration and management costs she claimed the Respondent was making a profit at the expense of leaseholders and that they should not have to fund the “council’s bureaucracy”. In reply to questions she considered the increase proposed to be “unethical”. She accepted in principle that the council had formerly undercharged but that was their mistake, and that costs have in general risen but that they should be capped. In summary she felt that a fair increase would be from £56.63 to about £60 per quarter.

The Tribunal noted that Mr. White was fully supportive of Mrs. Ferrari’s case

RESPONDENT’S EVIDENCE

13. The Respondent produced several documents or witness statements at the hearing. These were Mr. Stevens’ skeleton argument [undated] and bundle referred to above. The Tribunal had earlier been provided with the Respondent’s Statement of Case by Mr. Stephen Taylor Director of Law and Democratic Service, a Statement with appendices by Mr. Burbidge, a Statement with appendices by Mr. Szczepanek and a Statement again with appendices by Sylvia Darragh. All these Statements were dated 8th. June 2010.

Mr. Stevens relied on his skeleton argument and the witness Statements and developed the Respondent’s case in oral submissions to the Tribunal and by oral questions of the producers of these witness Statements.

14. With regard to the Service, Mr. Stevens stated that the cost has not significantly increased since 2008. The grant aid for the Service ceased in 2006, and the leaseholders were fully consulted over its implementation and continued use. He said that 70.6% of respondents were in favour of the Service continuing in 2007. The costs of the Service were, per leaseholder, £122.72 in 2006/07, £71.76 in 2007.08, £74.78 in 2008/09 and £79.04 in 2009/10. The estimated cost for the period 1st. April 2010 to 31st. March 2011 is £99.84. He stated that, too date, the cost had been undercharged in the period 2008 to 2011 and that the latter sum is the full cost chargeable to leasehold properties.

In reply to a question from the Tribunal Mr. Stevens contended that the legal authority for the provision of the Service by the Respondent in this case was contained in the Housing Act 1985, Schedule 6, Part III, paragraph 14, in particular 14 (2) (c). [The Flat was acquired from the Thamesdown Borough Council in 1989 under the "Right to Buy" provisions of the Housing Act 1985 and transferred to the Applicant on the 10th. July 1998]. At this point in time the Respondent produced for the Applicant and the Tribunal copies of a 4 page document which quoted, without comment, paragraphs 14, 16A, 16B, and 16C [Covenant by tenant] of this Act. After a short adjournment to study this document the Applicant stated that she was content to proceed.

Paragraph 14 (2) (c) states, being implied covenants by the Landlord where the dwelling is a flat-

(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.

Mr. Stevens was of the opinion that the definition of services in this clause included the Service especially as it was provided in common with other leaseholders and tenants for their benefit.

15. With regard to the Respondent's administration and management charges Mr. Stevens stated that the estimated cost for 2010/2011 was £206.96. This sum was passed by the council's cabinet. The corresponding sum for 2009/10 was £153.92 and for 2008/09 was £81.12. One reason for the increase was that it was discovered that the 462 leasehold dwellings had, for some time, been subsidised by the rented properties. If the actual cost in 2010/11 is less than £206.96 there will be a rebate due if it is more the increase will not be passed on to the leaseholders. The Respondent does not profit from service charges, the Housing Department has its own ring fenced budget, it is cheaper to use an "in house team". As a result the service charges are the true or actual costs, to the council for each leasehold property.

SECTION 20C APPLICATION

16. Mr. Stevens for the Respondent informed the Tribunal that the Landlord would not include its costs in connection with these proceedings when determining future service charges. The Tribunal was not addressed on whether there was a provision in the lease which might entitle the Landlord to recover its costs incurred before the Tribunal as part of the service charge. Mrs. Ferrari stated that she agreed with the landlord's response to her application.

CONSIDERATION AND DECISION

SECTION 27A APPLICATION

17. Neighbourhood Warden Estate Service.

The Tribunal carefully considered all the written and verbal evidence submitted by the parties. They noted that they were asked to determine the actual sum for 2009/2010, £79.04 and the estimated cost for 2010/2011 of £99.84. They also noted that both these sums are somewhat lower than the cost in 2006/2007 - £122.72. They had no reason to doubt the Respondent's contention that this Service enables the Applicant's flat and surroundings to be kept in good order so that she benefits from the quiet enjoyment of her property as far as is reasonably practicable. The Service aims to discourage anti social behaviour, graffiti, fly tipping etc and includes regular inspections of the property. The Respondent has given a full written description of the implementation of the Service, including the consultations with the Leaseholders. The Applicant, quite understandably, has stated her honest opinion that, to her, the Service is not required. However she has not demonstrated as to how, if at all, the Service can reasonably or more cheaply be tailored to suit either just council tenants or only some of the Leaseholders. Furthermore and again quite understandably Mrs. Ferrari has not been able to challenge the Respondent's contention that the Service has been lawfully or legally provided by virtue of the relevant provisions of the lease and the Housing Act 1985.

Accordingly the Tribunal find that the provision of the Service in principle is reasonable on the basis of all the evidence submitted to it.

With regard to the costs of the service the Tribunal find that in the absence of evidence to the contrary and having regard to their own knowledge and experience, the cost of £79.04 in 2009/2010 was reasonably incurred. In respect of the estimated sum for 2010/2011 the Tribunal note that this represents an increase of 26.32% over the previous years cost. On the face of it this appears high but again the Applicant has not been able to produce any comparison costs of any similar Services to indicate that this sum is unreasonable. Accordingly the Tribunal find that, on balance, £99.84 is a reasonable estimated maximum cost for this Service for the period 31st. March 2010 to 1st. April 2011 as detailed in the Respondent's Service Charge Estimate.

18 Administrative and management costs.

The figures in dispute are for 2009/10, £153.92 and the estimated sum for 2010/2011 £206.96. These costs amount to 55.36% and 38.45% respectively of the total cost of the service charges, excluding ground rent, for these 2 years. [In 2008/09 the corresponding proportion was 24.55%]. These sums represent increases of 89.74% from 2008/09 to 2009/10 and 34.45% from 2009/10 to 2010/11. These appear to be very high proportions and increases especially when compared with management cost in the private sector. [? Refer here to normal costs of about £100-£150 per flat per annum]. The Tribunal consider it difficult for both it and the Applicant to be in a position to question the costings of a Borough council's housing department notwithstanding the evidence presented. This information is mainly contained in Mr. Burbidge's statement. The breakdown of costs is carefully set out, being under 11 headings. The 2 most expensive of which are the "Leasehold team" [41.73% of the total for 2009/10] and the "Finance team" [22.67% of the total for 2009/10]. However Mr. Burbidge goes on to explain that the cost per leaseholder for 2009/10 is £76.80 as opposed to the actual cost of £198.87 per property. With regard to the total costs for performance management, general office, and corporate support costs, Mr.

Burbidge referred to them being reduced to 25% of the actual costs. This adjustment is made to reflect the fact that there are considerably more tenanted than leasehold properties. What is not clear to the Tribunal is why this deduction has only been applied to relatively small costs i.e. £8248 out of a total of £91880 in 2009/10. Even though Mr. Burbidge has described each of the 11 cost headings in his statement, the Tribunal fully understands Mrs. Ferrari's concerns and suspicions as to the level of increases and sympathises with her in not being able to produce evidence that these charges may be excessive.

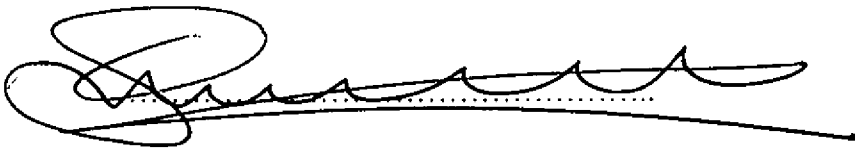
The Tribunal also noted, with some surprise, that the Respondent appeared to be unaware of the R.I.C.S. Service Charge Residential Management Code [2nd Edition], even though it does not apply to public sector authority landlords. This approved code applies to properties where a variable service charge is payable. It is regarded, by the government etc. as providing a guide as to best practice in respect of the management of residential properties.

However having carefully considered all the evidence the Tribunal concluded that, somewhat reluctantly, the respective costs here of £153.92 are reasonable and the estimated costs, £206.92 are a reasonable maximum sum.

[The Tribunal have noted that the Respondent will only charge £76.80 for 2009/2010 i.e. will not implement the increase to £153.92.]

SECTION 20C APPLICATION

19. Having considered the Respondent's proposal in this regard the Tribunal has decided that, in the circumstances, it is just and equitable to make an Order that prevents the Respondent from recovering its costs incurred in connection with these proceedings as part of the service charge.

A handwritten signature in black ink, appearing to read 'J.S. McAllister', written over a horizontal dotted line. The signature is stylized and extends across the width of the page.

J.S. McAllister F.R.I.C.S.
Chairman
Dated – 5th. July 2010