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**HM Courts  
& Tribunals  
Service**

## **Leasehold Valuation Tribunal**

**Case number** BIR/00CN/LIS/2011/0054

**Property** 10 Waterford Court, Brookvale Road, Birmingham B23 7WQ

**Applicant** Executrices of R W Perkins

**Respondent** Kingsdale Group Ltd

**Date of Application** 3<sup>rd</sup> December 2011

**Type of Application** to determine payability of service charges to be incurred under section 27A(3)(c) of the Landlord and Tenant Act 1985 (The Act).

**Tribunal:** Mr R Brown FRICS (Chairman)  
Mr J H Dove Solicitor Advocate

### **DECISION**

1. The Tribunal determines that the service charge is payable in accordance with the terms of the lease.

### **REASONS FOR DECISION**

#### **The Application and Introduction**

2. The Applicant is one the executrices of Mr Ronald W Perkins deceased. The second executrix Mrs T Bourne has given her agreement to Ms West proceeding with this application.
3. The subject apartment has been void since Mr Perkins death on 24<sup>th</sup> June 2009 and the executrices have been trying to assign the lease.
4. The Applicant seeks determination in respect of the years ending 31<sup>st</sup> March 2009, 2010, 2011 and to be incurred in future years.
5. Papers submitted by the Applicant include: The Application, a handwritten undated statement received by the Tribunal on 17<sup>th</sup> February 2012 and a letter dated 2<sup>nd</sup> June 2012 responding to the Tribunal's letter of the 29<sup>th</sup> May 2012.
6. Papers submitted by the Respondent include: A statement by Mr M Bastow dated 23<sup>rd</sup> March 2012 and a bundle with enclosures (including the Lease) submitted by the Respondents' solicitors dated 16<sup>th</sup> April 2012.

#### **The Property and the Tribunal's inspection**

7. The members of the Tribunal inspected the property on the 23<sup>rd</sup> May 2011.

8. The development comprises a purpose built block providing sheltered accommodation for owners aged over 55 years.
9. There are a total of 56 1 and 2 bedroom apartments. The subject apartment is a 1 bedroom ground floor unit overlooking the inner courtyard.
10. The Tribunal found that the development was well maintained and managed.

#### **The Law**

11. The relevant law is set out in **Appendix 1** attached.

#### **The Lease**

12. The Tribunal was provided with a copy of the lease of Flat 10 dated 4<sup>th</sup> October 2002.
13. The lease is a tripartite lease between the freeholders Kingsdale Group Ltd (successor to Bovis Homes Ltd), Waterford Court Ltd and the original lessee George Ashington. Waterford Court Ltd is a company limited by guarantee without share capital and is directly responsible for the control and management of Waterford Court. Under the terms of the leases Waterford Court Ltd is obliged to provide certain services for the benefit of the development and the apartments therein. The leases specify the services which Waterford Court Ltd must and may provide.
14. Demise 1 to the lease says '.....and SECONDLY during the term a maintenance and service charge (hereinafter referred to as "the service charge" and as defined in the Third Schedule) at the times and in the manner set out in Clause 4(1) hereof'.
15. The Third Schedule details the Landlord's obligations under Clause 5 of the lease (The management company's obligations). Those obligations include (*inter alia*) 1: engage domestic assistance for the owner for the period of 1½ hours per week, 2: employ and engage such staff a) to provide meals and b) to provide additional domestic assistance, 3: to clean the outside of the windows, and 4: the maintenance of the Reserved Property.
16. The Reserved Property is defined in Recital 2 and covers all those parts of the development not defined as dwellings (apart from the housekeeper's accommodation), and is more particularly defined in the Second Schedule thereto and for the purposes of this application includes the communal gardens and (*inter alia*) lounges, dining room and kitchen.

#### **The Applicant's Case**

17. The Applicant seeks a determination as to whether or not the service charge is payable for certain items within the service charge because the deceased lessee no longer derives a benefit.
18. In her original statement she says that her brother should not be eligible to pay the following charges: 1) One hour cleaning of the apartment which is empty, 2) Upkeep of the gardens (communal), 3) the dining room, 4) lounge and lending library, 5) collection of apartment refuse.
19. The Tribunal wrote to Ms West on 29<sup>th</sup> May 2012 seeking clarification as to whether or not the application simply sought determination as to whether the service charge was payable or as to the reasonableness of the standard of service and cost thereof.
20. In her response she acknowledged that some maintenance would have to be paid for but disputed the need to clean the apartment and for the use of the

communal lounge and dining room. She submits that it is unreasonable for the Landlord to demand the full service charge for a vacant apartment.

### **The Respondents' Case**

21. The Respondent's case is set out in the statements of Mr R Bastow (solicitor) dated 23<sup>rd</sup> March 2012 and Mr W Butchart (director of the Respondent company Kingsdale Group Ltd) dated 10<sup>th</sup> April 2012.
22. In summary the authors contend that there is a continuing obligation upon all owners to pay an equal share of the service charge. The lease provides that the Applicant [the Tribunal inserts 'or his executrices'] remains contractually liable for payment of his full proportion of the service charges incurred in the management of Waterford Court and that such liability should continue to be so whether or not his apartment is occupied.

### **The Tribunal's Deliberations**

23. The Tribunal considered all the evidence presented.
24. The Tribunal noted 16.1 of Mr Bastow's statement wherein he suggests that Waterford Court Ltd should also be considered as Respondents. The Tribunal acknowledges that this should be the case. However the Tribunal also notes that Kingsdale Group Ltd acts as the managing agent and company secretary for Waterford Court Ltd. In effect therefore no prejudice has occurred and in the interests of effective case management it is considered appropriate to proceed to determination without separately notifying Waterford Court Ltd.
25. The Tribunal finds that the obligations under the lease in law pass to the lessee's estate upon his death and his executrices '*stand in the deceased's shoes*' so far as the ongoing performance of his obligations under the lease are concerned.
26. In considering an application under section 27A(1) the Tribunal applies a 3 stage test:
  - (a) Are the service charges recoverable as a matter of contract under the terms of the lease?
  - (b) Are the service charges reasonably incurred and/or are the services provided of a reasonable standard and at reasonable cost?
  - (c) Are there any other statutory limitations on recovery?
27. In this case the second two questions are not disputed by the Applicant.
28. The Tribunal has sympathy with the position of the executrices as it appears to them that they are being asked to pay for services which it is acknowledged have not been enjoyed since the death of the lessee on the 24<sup>th</sup> June 2009.
29. In answer to the first question (above) the Tribunal finds that there is an ongoing contractual obligation to pay the service charge defined in the lease irrespective of whether or not the apartment is occupied. That obligation does not end on the death of the lessee but continues to run with the land until such time as the lease is assigned to a new owner.

  
Robert Brown Chairman

Dated...5<sup>th</sup> July 2012.

## **Appendix 1- The Law**

### **Landlord and Tenant Act 1985**

#### **Section 18 Meaning of “service charge” and “relevant costs”**

- (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 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 period

#### **Section 19 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) 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