

7723.



**HM Courts
& Tribunals
Service**

LEASEHOLD VALUATION TRIBUNAL

Case No.: CAM/34UF/LSC/2011/0117

Subject Property: 613, Northampton House, Wellington Street, Northampton NN1 3NB

Applicants: Mr Mark John Cockayne

Applicant's Agent: Mrs Hazel N Harman 10 Riverdown, March, Cambridgeshire PE15 8RA

Respondent:
Landlord: Palacemews Properties Limited, Princess Park Manor, Friern Barnet Road, London N11 3FL

Date of Application: 23rd September 2011

Date of Hearing: 10th February 2012

Application: Application for a determination of the reasonableness and liability to pay service charges (Section 27A Landlord and Tenant Act 1985)

Application under section 20C of the Landlord and Tenant Act 1985 for an order limiting the service charge arising from the landlord's costs of proceedings.

Tribunal: Dr JR Morris (Lawyer Chair)
Mr GRC Petty FRICS
Mr DS Reeve

Attendance:

Applicant: Ms Hazel Harman, Applicant's Representatives
Mr Allan Calverley, Applicant's Representatives

Respondent: Mr Peter Ward, Counsel for the Respondent
Mr Robert Sheppard, Respondent's Portfolio Manager

Observers: Ms G Hare
Ms D Madigan, M & C Property Management UK Ltd

DECISION & STATEMENT OF REASONS

Decision:

- The Tribunal determined the reasonable costs for the Service Charge incurred for the financial year ending 31st March 2010 to total **£262,056.32**, as detailed and apportioned in the **Appendix**, which forms a part of these Reasons. Therefore the Tribunal determined that the appropriate proportion of those costs attributable to

the Subject Property to be payable by the Applicant to the Respondent when properly demanded.

- The Tribunal made no order under section 20C of the Landlord and Tenant Act 1985

Reasons

Application

1. This Application was made pursuant to section 27A Landlord and Tenant Act 1985 for a determination of the reasonableness and liability to pay service charges by a Leasehold Valuation Tribunal on 23rd December 2011.

Issues

2. The issue identified in the Application is the reasonableness and payability of the service charges incurred for the year ending 31st March 2010.

The Law

3. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
4. 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 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*
5. 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.

6. Section 21B Notice to accompany demands for service charges

- (1) *A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*
- (2) *The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
- (3) *A tenant may withhold payment of a service charge that has been demanded from him if subsection (1) is not complied with in relation to the demand.*
- (4) *Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.*
- (5) *Regulations under subsection (2) may make different provision for different purposes.*
- (6) *Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]*

7. 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.*

8. 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.

- (2) *The application shall be made—*
- (a) *in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;*
 - (aa) *in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;*
 - (b) *in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;*
 - (c) *in the case of proceedings before the Upper Tribunal, to the tribunal;*
 - (d) *in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.*
- (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.*

Description and Inspection of the Subject Property

9. An inspection was not made of Northampton House on this occasion for the following reasons:
- The Tribunal was comprised of the same persons as had inspected Northampton House on 2nd December 2009 and were therefore aware of the type, extent and layout of the building.
 - The matters in issue related either:
 - to the reasonableness of costs for which evidence was provided in the form of documentation e.g. invoices and written statements
 - or
 - to the reasonableness of the standard of work such as cleaning, which had been carried out in 2010, therefore could not be reliably assessed by an inspection in 2012.
10. At the previous inspection the Tribunal found that Northampton House comprised 187 flats with car parking over 11 floors plus a roof space, which the Applicant retains, and which is not part of the common parts and no access is available to the Tenants. A metal gate prevents unauthorised access to the roof. Car parking is on the lower ground floor and ground floor levels. On the ground floor there is a foyer with reception and a Leisure Centre. The Common parts comprise the foyer and Leisure Centre, the stairwells, lifts and corridors giving access to the flats and the pathways to the car parking spaces. This general description is understood to be extant.

The Lease

11. A copy of the Lease was provided which was agreed to be the same as all the Leases Northampton House except for the description of the specific demise. The Lease is for a term of 125 years from 24th June 2000.

12. Clause 1 of the Lease defines the demise in general terms and refers to the specific definition of the demise in Schedule 2 of the Lease together with the easements and rights set out in Schedule 3 except and reserving the rights in Schedule 4 and subject to the matters set out in Schedule 5. The flats have designated parking spaces in the car parks.
13. Schedule 7 requires the Tenant to pay a Service Charge which is a fair proportion of the Service Costs which are the costs incurred by the Landlord in carrying out its obligations under the Lease including buildings insurance. The Tenant shall pay an Interim Charge in advance on the 29th September and 25th March each year. A negative balance is payable within 14 days of invoice whereas a positive balance is carried forward to the next year. The "fair proportion" for the years in issue has been calculated according to the area of each Apartment. There are four sizes of apartment as follows:
- | | | |
|-----|-------------------------------------|-------|
| 104 | flats with 2 bedrooms & 2 bathrooms | 0.58% |
| 31 | flats with 2 bedrooms & 1 bathroom | 0.53% |
| 51 | flats with 1 bedroom & 1 bathroom | 0.45% |
| 1 | flat with 1 bedroom & 1 bathroom | 0.48% |
14. The Landlord must keep a detailed account of the Service Costs and prepare a Service Charge statement for each accounting period ending 31st March. The statement must:
- State the Service Costs for each major category of expenditure
 - State the amount of the Service Charge
 - State the total of the Interim Charge paid by the tenant
 - State the negative or positive balance and
 - Be certified by a qualified accountant.
15. The Services to be provided and which shall be the subject of the Service Charge are set out in Part 2 of Schedule 7 and include:
- Repairing, replacing, renewing, maintaining, inspecting and cleaning the roof main structure outside and foundations of the Building
 - Repairing, replacing, renewing, maintaining, inspecting and cleaning the shared conduits and facilities and other matters including the road and footpaths of the Estate.
 - Decorating the outside of the Building.
 - Repairing and decorating the common parts.
 - Lighting and cleaning the common parts including the amenity areas and car park.
 - Maintaining a fire protection system and providing security arrangements
 - Maintaining, repairing, replacing, renewing, surveying, insuring, inspecting and cleaning any lifts.
 - Obtaining insurance valuations.
 - Maintaining, insuring, staffing, running, repairing and replacing the Leisure Centre
 - Paying the reasonable salaries, fees and expenses of any employees.
 - Maintaining and preparing Service Charge accounts.
 - Repairing fences, walls, hedges and other boundary structures
 - Maintaining a common facility for television reception and an entry phone system
 - Paying the reasonable and proper fees and disbursements of any managing agent.
 - Maintaining a reserve fund

Preliminary Application

16. Counsel for the Respondent applied for the Application to be dismissed on the grounds that it was vexatious. He referred to the Respondent's Representative's witness statement which made the following points:
 - The Applicant's service charge had been the subject to a previous decision of a Tribunal constituted of the same members [referred hereafter as the "Previous Decision CAM/34UF/LSC/2009/0068"] in which the estimated service charge of £263,595.00 had been determined to be reasonable and payable. The actual service charge is £273,595.10, which was submitted as being within a reasonable range of the estimated charge.
 - The Applicant's Representatives are a Director and Secretary of the Right to Manage Company, which has taken over the management of Northampton House for the year ending 31st March 2011. They therefore will be aware that the total service charge for that year is £280,480.00 and is more than that for the year in issue and therefore it is difficult to see how they can represent the Applicant's claim that the actual charge for 31st March 2010 is unreasonable.
17. Counsel submitted that the actual charge was well within an acceptable range of the estimated charge found to be reasonable and that the Applicant brings the action merely to cause difficulties for the Respondent and his Managing Agent, particularly as the evidence that can be adduced by the Respondent is limited by reason of the death of its main witness, Mr Leslie Duncan and that it was considered inappropriate to ask Mrs Sandra Duncan to make a statement as regarding any details within her knowledge regarding their employment with Britannic Service Ltd as concierge and cleaner, respectively of Northampton House.
18. Counsel stated that further or alternatively the Application should be dismissed on the grounds that it was an abuse of process. He referred to Mr Sheppard's Statement and pointed out that the Applicant was not present and that his Application is really an opportunity for the Directors of the Right to Manage Company to cast doubt upon the prior management of Northampton House. He referred to a comment in the representations made by Ms Harman that said the relationship between Mr Duncan, Northampton House Management Company Ltd and Britannic Services Ltd was a "nefarious arrangement". Such a comment was said to be at odds with an email from Ms Harman on 14th July 2009 that was provided, which stated that Mr and Mr Duncan "are held in high regard by everyone involved with Northampton house and I am sure I speak for all of us in our admiration of the service they have provided".
19. It was noted that in his statement Mr Sheppard had asked for costs on the strength of this Application.
20. The Applicant's Representatives refuted the argument of the Respondent intimating that it was a genuine application and the Applicant had appointed them as his representatives and could not attend because he had been called away on business.

Decision relating to the Preliminary Matter

21. The Tribunal appreciated that the discrepancy was not great between the estimated charge found to be reasonable and the actual costs, nevertheless, a tenant is entitled to apply to a tribunal where it is considered that the costs are unreasonable irrespective of their amount. The Tribunal also noted that the Applicant had not attended in person but had appointed two representatives. However, the Tribunal was

of the opinion that it had sufficient information provided by the Respondent in the form of the accounts, invoices and statement of case and by the Applicant in the form of the written representations of the Applicant's Representatives to make a determination. The Tribunal would disregard any comment that was not based upon evidence.

22. The Tribunal therefore decided that the Application was not vexatious or an abuse of process. It therefore followed that subject to matter arising in the course of the hearing the tribunal did not consider that an award of costs should be made. The Tribunal re-visited the point subsequent to the hearing and confirmed this decision.

Evidence

23. The narrative of the Applicant's Statement of Case comprised of two statements by Ms Hazel Harman, dated 29th November 2011 and 5th January 2012 made on behalf of the Applicant. The Respondent also provided two witness statements by Mr Robert Sheppard Portfolio Manager of the Respondent, replying to the issues raised in the Applicant's statement. In addition the Respondent produced a Statement of Account for the Service Charges for the year in issue and a list of invoices grouped under each Service Charge item corresponding to a file of invoices provided.
24. The Statement of Account set out the costs for each Service Charge Item as follows:

Service Charge for the year ending 31st March 2012	
Item	Actual Cost
Insurance	£37,587.18
Repairs	£10,602.41
Electricity	£26,930.30
Pool & Gym Running Costs	£ 378.81
Security Contract – Concierge	£69,575.67
Installations – Contract	£30,790.62
Cleaning	£26,154.67
Fire Protection	£4,780.44
Health & Safety	£1,881.34
Lift Maintenance	£18,888.20
Water rates	£12,629.83
Bank charges & Legal and professional fees	£2,225.63
Accountancy	£600.00
Management Fees	£20,570.00
Reserve Fund	£ 10,000.00
Total	£273,595.10

25. The service charge is apportioned as follows:
 2 Bed, 2 Bath 0.58%
 2 Bed, 1 Bath 0.53%
 1 Bed, 1 Bath 0.45%
 1 Bed, 1 Bath 0.48%
26. Each item of the Service Charge Account was considered. The order that the items were dealt with at the Hearing corresponded to the list of invoices provided by the Respondent for ease of reference. For the purposes of these reasons the order of the Statement of Account for the Service Charge is followed.

Insurance

27. Insurance premium of £37,587.18 was not in issue. However, it was stated at the hearing that actual figure for insurance was £46,120.21 but this had not been demanded.

Repairs and Maintenance

28. The item of Repairs and Maintenance comprised:
- | | |
|--|-----------------|
| Mechanical and Electrical (Electrical Maintenance) | £1,465.95 |
| Fabric Repairs (External Maintenance) | £1,271.99 |
| Fabric Repairs (Plumbing and Drainage) | £1,378.38 |
| Fabric Repairs (Internal Maintenance) | £2,934.18 |
| Fabric Repairs (Drainage & Guttering Clearance) | £3,371.10 |
| Missing Invoice | <u>£ 180.81</u> |
| Total | £10,602.41 |
29. Under the general heading Mechanical and Electrical (Electrical Maintenance) the Applicant identified an invoice for £517.00 dated 5th December 2008 payable to Britannic Services Limited and addressed to Opus Property Consultancy Ltd, which had been the Landlord's Agent in 2008. The invoice was for the:
- Supply and fitting of various bulbs,
 - Repairs to the gym door and 2 car park doors,
 - Replacing ceiling tiles
 - Repositioning of exit switch to the lift motor room
 - Supplying and fitting a bolt to the lift room door
30. No evidence or explanation was produced as to why the invoice was included in the 2010 accounts. The Applicant's Representatives did not argue that the work had not been done but submitted that the invoice was out of line with other invoices by reason of its date and concern was expressed that it may well have been paid in a previous year.
31. Under the same general heading the Applicant also identified an invoice for £350.00 for the setting up of a web site by Paula Jones Web Design. The Applicant's Representatives stated that no web site for Northampton House had ever been activated. The Respondent's Representative stated that it may have been an abortive enterprise started in response to the criticism that communication between the Landlord's Agent and the Leaseholders needed to be improved.
32. Under the general heading Fabric Repairs (Drainage & Guttering Clearance) the Applicant identified the following invoices payable to GJ Hyde (descriptions are a précis):
- | | |
|--|---------|
| Works carried out to apartments to access a soil pipe to leaks | £960.00 |
| Decoration of a ceiling following a leak | £150.00 |
| Remove and refit water damaged flooring to hallway | £330.00 |
| Tracing a leak, accessing a soil pipe and making good | £185.00 |
| Tracing a leak, accessing a soil pipe and making good | £390.00 |
33. The Applicant's Representatives said that these works were carried out to Leaseholder's apartments and should have formed part of an insurance claim or at least have been met by the Leaseholders. In particular it was said that the invoice was known to be part of an insurance claim since the payment was inadvertently sent in the first instance to the newly formed Right to Manage Company in April 2010 and

was re-directed to Northampton House Management Company Limited, the Landlord's Agent at that time.

34. The Applicant's Representatives asserted that GJ Hyde did not carry out the work, was not paid for it and did not produce the invoice for £150.00. It was pointed out that the invoice was hand written unlike the other invoices that were typed.
35. The remaining invoices identified were said to be all for insurance claims and arose in the previous year. It was said that it was the practice of Opus Management who were the Landlord's Agents when the work was carried out in 2008, to wait until they received monies from the insurers before they paid Mr Hyde. It was asserted that Mr Hyde had never been paid for these invoices.
36. The Respondent's Counsel and Representative agreed that the invoices probably related to work that was associated with insurance claims. However, it was stated that insurance claims take some time to be processed and payments are made when the work is completed and this would account for the invoices being raised during the year ending 31st March 2009 but being paid in the year 31st March 2010. It was added that although these invoices may be for works associated with insurance claims they do not appear to have been covered by them. It was said that enabling works are usually excluded from the policy and the invoices for £960.00, £185.00 and £390.00 specifically refer to tracing and accessing pipes as a result of leaks. In addition it was said that where the cost of the work could be claimed it may well be within the amount of the excess which it was understood was in the region of £250.00.
37. The Applicant's Representatives acknowledged that the soil pipes had been prone to leaking due to the way the conversion works had been undertaken. However, it was hoped that all defective elements had by now been replaced.

Electricity

38. The Electricity for the Common Parts of the Building was stated in the Accounts to be £26,930.30 for the year. Invoices were supplied.
39. The Applicant's Representatives referred to the electricity bills for the year in issue and stated that as a residential property the cost of the electricity for the common parts should not include the Climate Change Levy and the VAT should be charged at a rate of 5%. An analysis prepared by the Applicant's Representatives showed that for the five months from the 1st October 2009 to the 15th February 2010 the VAT was 5% and no climate change levy was made. However for the period 15th April 2009 to 1st October 2009 the Climate Change Levy was added and VAT was charged at 15%. It was submitted that the electricity charge should be re-calculated so as not to include the Climate Change Levy and to reduce the VAT to 5%. This was said to be reasonable because the Landlord was able to claim this reduction from the electricity supplier retrospectively for up to 6 years.
40. In addition the Applicant's Representatives submitted that the charge should be further reduced because the Landlord had failed to take all reasonable steps to obtain the most favourable rates. It was pointed out that from the 13th August 2009 the Landlord had been able to obtain a reduction in the rates for electricity from 13.70 to 12.06 for the D rate and from 8.96 to 7.89 for the N rate and this was further reduced from the 1st October 2009 to 7.48 and 2.65 respectively. The Landlord should have negotiated the more advantageous rates from at least the beginning of the year in issue. It was stated that if this had been done the electricity charge would be £16,335.02.

41. The Respondent's Counsel and Representative accepted that the Climate Change Levy had been included and 15% VAT had been charged when the Building should have been exempt from the Climate Change Levy and 5% VAT should have been charged. An amended charge was put forward of £24,651.50. With regard to the submission on the Applicant's behalf, that more advantageous rates should have been negotiated, it was stated that due to tenants being in arrears with their service charges it had not been possible to pay the electricity bills on time and therefore the electricity supplier was not prepared to negotiate a rate where an account was in debit. Negotiation had been possible for the supply from 15th September 2009. The negotiation of contracts is not as straightforward as the Applicant's Representatives suggest and a contract with favourable rates was negotiated as soon as was reasonably possible.

Pool & Gym Running Costs

42. The Applicant's Representatives accepted the sum of £307.05 for the fitness equipment but stated that the accounts showed that the Respondent or its Agent had continued to purchase a television licence at a cost of £71.76 for the gym when there was no television. The Respondent's Counsel and Representative conceded this and agreed an adjustment should be made.

Security

43. The item under the head Security Installations of £30,790.62 was not in issue. The head of Security Contract – Concierge was put in issue and was subdivided into:
- | | |
|---|------------------|
| Provision of a Concierge (Mr Lesley Duncan) by Britannic Services Ltd | £60,000 |
| Provision of Additional Security Staff | <u>£9,575.67</u> |
| Total | £69,575.67 |
44. The Applicant's Representatives stated that from March 2009 Northampton House Management Limited employed Britannic Services Ltd to provide a concierge and security personnel. Britannic Services employed Mr Lesley Duncan as the concierge at a cost of £60,000.00. The Applicant's Representatives questioned the arrangement because Northampton House Management Limited was a company wholly owned by Mr Duncan. The Applicant could not see why Mr Duncan employed a company that then employed him at considerable cost. It was stated that Mr Duncan had said that for Security and Cleaning he and his wife had only been paid £36,000 a year. It was accepted that Britannic Services Ltd was an independent company and that there was no link between it and Northampton House Management Limited or Mr Duncan so far as share holding or directorships were concerned. However, it was pointed out that no contract between Northampton House Management Limited and Britannic Services Ltd had been provided.
45. Counsel referred the Tribunal to the principle established in case law that a company is a separate entity from its members and that there was nothing to prevent Northampton House Management Limited from employing Britannic Services Limited. Northampton House Management Limited subcontracted to Britannic Services Ltd who employed Mr Duncan as the person on the spot. There may have been a number of advantages to Northampton House Management Limited in the arrangement, as Britannic Services Ltd would be responsible for insurance and compliance with employment law including taxation and national insurance.
46. The Tribunal referred to the Previous Decision CAM/34UF/LSC/2009/0068 when Mr Duncan and the Managing Agent had given evidence about Mr Duncan's role, the

hours he worked and his rate and manner of payment, which are recorded in that Decision at paragraphs 58 and 59. It was noted that it had been given in evidence that a proportion of his pay had been an allowance for accommodation because he was a resident concierge.

47. The Applicant's Representatives accepted that Mr Duncan carried out a combined security role and concierge, acting as a receptionist, resident security officer and patrolling the building. It was submitted that he might best have been described as a "warden" and did a very good job. However, it was submitted that he could not fulfil all the tasks that the role required; especially when it was taken into account that he was also the cleaner and the manager. It was stated that Mr Duncan had said on that occasion that he worked five and a half days a week and this is evidenced by the need to employ other persons at additional cost. It was submitted that a charge of £34,000.00 per annum would have been reasonable for the work that Mr Duncan did as a warden and then the sum of £9,575.67 for additional security staff might also be reasonable. However, the charge of £60,000.00 to Britannic Services Ltd should be sufficient to cover all security.
48. The Respondent's Counsel and Representative referred the Tribunal to the previous Tribunal decision, which found the cost of the service provided under the heading Security- Concierge reasonable. Reference was made to Mr Sheppard's written statement, which stated that due to a number of issues associated with the town centre location of the Subject Property the security requirements were greater than those for which it had been budgeted. There had been a number of problems with sub-tenants of which the local police were aware. Mr Duncan had liaised with the police about these issues. It was understood that there were problems with drugs, parties and persons causing crime and alarm within the building. Due to Mr Duncan's age it was not safe for him to undertake lone patrols and he required additional assistance to deal with the particular problems during the weekend evenings to ensure the safety of the residents and the building when it had been necessary to eject young men, sometimes in number.
49. It was pointed out that an examination of the invoices would show that the additional staff was employed at weekends and to cover the night shift. It was added in Mr Sheppard's statement that the Applicant had fully supported these additional measures and that it was disappointing that he was not present to be available to be asked about this.

Installations Contract

50. The cost of the Installations Contract of £30,790.62 was not in issue

Cleaning

51. The head of Cleaning was subdivided into:
- | | |
|---|------------------|
| Cleaning of the Building provided by Britannic Services Ltd | £20,000.04 |
| Refuse Collection & Bin Hire | £3,421.06 |
| General Cleaning | <u>£1,828.57</u> |
| Total | £25,249.67 |
52. The Applicant's Representatives said that as for the Security, Northampton House Management Limited sub contracted to Britannic Services Ltd although no contract was provided. Mrs Sandra Duncan, Mr Lesley Duncan's wife, was employed by Britannic Services Ltd to clean the Building. It was submitted that the total cost of £70,000 paid to Britannic Services Ltd for the combined service of cleaning and

security was unreasonable particularly as it was understood that Mr and Mrs Duncan only received £30,000.

53. The Respondent's Counsel and Representative stated that Britannic Services was entitled to be paid for the services that were provided and Mr and Mrs Duncan were entitled to be paid for the work that they did. The fact that Mr & Mrs Duncan had several jobs and the amount Britannic Services Ltd paid them was irrelevant. The issue for the Tribunal is whether the cost of the services is reasonable and whether the services were carried out to a reasonable standard. It was stated that the Tribunal had in the Previous Decision CAM/34UF/LSC/2009/0068 determined that £20,000 per annum was a reasonable charge for the cleaning of an eleven storey building with over 180 units. It was said that there had not been any complaints about the standard of cleaning.
54. With regard to the Bin Hire the Applicant's Representatives stated that there was a charge for 10 bins whereas in fact there had only ever been 9 because only 9 could fit into the bin store. Therefore the charge of £1,423.70 to Northampton Borough Council should be reduced by £142.37 to £1,281.33, as the bins are charged pro rata.
55. The Applicant's Representatives questioned the inclusion of an invoice payable to Britannic Services Ltd for £611.00. The invoice was to clean the bins and bin store in October 2008 but in addition it was to supply and fit bulbs, install an electrical socket, repair the ceiling in reception, repair 3 fire doors and investigate and electrical fault. It was also commented that it was another invoice that was before the accounting period and it was questioned whether it therefore may already have been included in the service account for year ending 31st March 2009.
56. The Respondent's Counsel and Representative agreed that the work was predominantly repair and maintenance and should have come under that head. The person allocating the invoices probably only noted the first item of cleaning the bins and bin store.
57. With regard to the General Cleaning the Applicant's Representatives stated that the cleaning contract with Britannic Services of £20,000.00 per annum should cover all cleaning.
58. The Respondent's Counsel and Representative referred the Tribunal to the invoices, which they said covered cleaning of external parts of the building such as the car parks and bin stores. A number of the invoices refer to "cleaning up vomit" or cleaning up urine or general detritus from the effects of undesirable visitors to the Building. The Britannic Services Ltd contract only covers day-to-day internal cleaning. The only invoice relating to internal cleaning is for £422.80 for the cleaning of a heavily soiled carpet.

Health & Safety

59. In written representations the Applicant's Representatives questioned the invoice for £264.38, which appeared not to relate to Northampton House. The Respondent's Representative in his Witness Statement gave no explanation for this invoice.

Fire Protection

60. The charge under the head of Fire Protection in the Service Charge Account was £4,780.44. The Respondent's Representative stated in his written statement that there had been some additional fire inspections due to greater attention being drawn

to buildings of 10 storeys or more following recent fires in high buildings. In response to the Tribunal's question relating to an invoice for £3,483.64 the Respondent's Representative said that this was for the installation of a water pump to ensure that the water pressure is sufficient to supply fire hoses operating on the top floor of the Building.

Lift Maintenance

61. The Lift Maintenance charges comprised:
- | | |
|------------------|------------|
| Telephone | £972.39 |
| Lift Maintenance | £17,253.70 |
| Lift Rescue | £662.11 |
62. The sum of £972.39 was charged for the lift telephones and for a door entry system. The lift phones were found to have been disconnected during maintenance work for the year in issue also the door entry phone was not connected. However it was agreed that BT would continue to charge unless it is informed that a phone is not connected.
63. With regard to the cost of maintenance of the lifts of £17,253.70 the Tribunal said that it had already made a determination on this point in the Previous Decision CAM/34UF/LSC/2009/0068 and its Decision in the present case could be consistent with that. It took the view that at the time of the conversion the lifts should have been in a condition in which a service contract could have been entered. Therefore the Tribunal would determine to be reasonable the cost of a service contract plus repair charges where the engineer finds that the lift had been damaged by vandalism or by overloading as these would be excluded from a service contract. It was noted that both lifts had been in operation for most of the year in issue.

Water Charges

64. The Water Rates of £12,629.83 were not in issue.

Bank Charges and Legal & Professional Fees

65. The Applicant's Representatives referred to the invoices under the head of Legal and Professional Charges. It was stated that the charge of £397.00 was for action taken by Mr and Mrs Duncan against a neighbouring tenant. It was said that they had sought an injunction against the neighbour. The Respondent's Counsel and Representative submitted that this was part of Mr Duncan's duties as the manager.
66. Another invoice for £44.99 was referred to under the same head was that relating to the purchase of a computer protection program. The Applicant's Representatives stated that this had been for Mr Duncan's own computer. The Respondent's Counsel and Representative said that Mr Duncan had used his own computer in his role as manager.
67. The Applicant's Representatives stated that six invoices under this head were for the return of overpaid service charges. It was said that the Lease makes provision for overpayments to be set off against the service charge for the following year and not repaid.
68. Lastly under this head the Applicant's Representatives referred to two invoices payable to Northampton House Management Ltd for stationery which they submitted should be included in the Management Fee.

Accountancy

69. The Applicant's Representatives were critical of the manner in which the accounts had been drawn up, commenting that they had not been audited. Counsel for the Respondent said that the charge was reasonable for the work done and had been compliant with the legislation and the Lease, adding that the Lease required the accounts to be certified not audited. The Respondent's Representative commented that the charges were considerably less than those claimed by the Right to Manage Company's accountant's charges.

Management Fees

70. The Applicant's Representatives stated that no contract between the Respondent and Northampton House Limited had been produced. The standard of management was considered not to have improved and it was difficult to see how Mr Duncan could carry out the role of security officer, concierge, cleaner and manager adequately. The Respondent's Representative commented that the charges were considerably less than those claimed by the Right to Manage Company.

Sinking Fund

71. In written representations the Applicant's Representatives asked how the reserve fund was held and how it was calculated. The Respondent's representative stated that it was held in a trust fund and a sum was assessed each year as part of the budget.

Section 20C Application

72. The Applicant's Representatives stated if the documentation produced at the Hearing had been provided earlier, the matter need not have come to the Tribunal. It was submitted that the accounts had been drawn up in a timely manner
73. Counsel for the Respondent stated that the question is whether it is just and equitable that the Landlord should be prevented from receiving his costs where the Lease provided for such costs to be recovered as part of the service charge.

Decision

74. The Tribunal considered the evidence and representations of the parties

Repairs and Maintenance

75. With regard to the invoice for £517.00 dated 5th December 2008 payable to Britannic Service Limited and addressed to Opus Property Consultancy Ltd, which had been the Landlord's Agent in 2008 the tribunal found that there was no evidence to show that it had formed part of the previous year's service charge nor that the work had not been carried out at all or to a reasonable standard. As such there was no reason for finding the amount to be unreasonable or not payable.
76. The Tribunal accepted that there had not been a Northampton House web site even if the previous managing agent had contemplated one. The sum of £350.00 for the setting up of a web site by Paula Jones Web Design was therefore determined to be unreasonable.

77. With regard to the invoices payable to GJ Hyde under the general heading Fabric Repairs (Drainage & Guttering Clearance) no evidence was adduced to show that the work had not been carried out at all or to a reasonable standard or that the contractor had not been paid. Both parties believed the sums were related to an insurance claim. The Tribunal found that on the balance of probabilities the insurance company had not paid the sums included in the service charge.
78. The Tribunal accepted the Respondent's explanation for the invoices being raised during the year ending 31st March 2009 but being paid in the year 31st March 2010 i.e. that insurance claims take some time to be processed and payments are made after the work is completed. The tribunal found that the invoices referred to tracing and accessing pipes as a result of leaks and therefore on the balance of probabilities they were for enabling works which it was agreed are usually excluded from insurance policies. In addition it was accepted that where the cost of the work could be claimed it was within the amount of the excess, which it was understood, was in the region of £250.00.

Electricity

79. The Tribunal found that the electricity bills for the year in issue should not include the Climate Change Levy and the VAT should be charged at a rate of 5%. It agreed with the Applicant's Representatives that it was reasonable to deduct this amount as the Landlord was able to claim this reduction from the electricity supplier retrospectively for up to 6 years. The Tribunal noted the spreadsheet showing the charges for ten months of the year in issue prepared by Applicant's Representatives and it accepted the revised charge for the item of £24,651.50 put forward by the Respondent.
80. The Tribunal found that due to tenants being in arrears with their service charges it had not been possible to pay the electricity bills on time and therefore the electricity supplier was not prepared to negotiate a rate where an account was in debit. The tribunal found that the negotiation had been possible for the supply from 15th September 2009. The negotiation of contracts is not as straightforward as the Applicant's Representatives suggest and a contract with favourable rates was negotiated as soon as was reasonably possible.

Pool & Gym Running Costs

81. The Tribunal noted the Respondent's agreement to the removal of the sum for the television licence fee from the service charge.

Security Contract – Concierge

82. The Tribunal agreed with Counsel for the Respondent that a company is a separate entity from its members and that there was nothing to prevent Northampton House Management Limited from employing Britannic Services Limited and that company, in turn, employing Mr Duncan. It was agreed that there may have been a number of advantages to Northampton House Management Limited to this arrangement, as suggested such as the responsibility for meeting the employment, tax and insurance requirements.
82. The Tribunal noted the evidence given by Mr Duncan at the Previous Decision CAM/34UF/LSC/2009/0068, which is recorded in the Reasons as follows:
- "58. Mr Duncan stated that owner-occupiers wanted personal twenty-four hour security from the risks of noise, drugs and assaults. He said that CCTV was

not enough alone to provide this and that he was on duty 10 hours a day and was on call for the remainder of the time. He said that when on duty he was at reception and on patrol.... “

84. The Tribunal found that the comments of the Applicant's Representatives in paragraph 42 of these Reasons, "that Mr Duncan carried out a combined security role and concierge, acting as a receptionist, resident security officer and patrolling the building. It was submitted that he might best have been described as a "warden" and did a very good job" confirmed this evidence and went to show that the standard of service was reasonable. The Tribunal also noted in the Previous Decision CAM/34UF/LSC/2009/0068 it had found that Mr Duncan was in attendance or 'on call' for 80 hours per week and that the charge was reasonable as follows:

"128. The cost of £11.56 an hour plus VAT for 80 hours per week plus an allowance of £7,800 plus VAT per annum for accommodation was determined to be a reasonable cost for the service provided. The Tribunal therefore determined that Britannic Services Limited provided a reasonable service at a reasonable cost taking into account the presence of a resident concierge who could be contacted at what appeared to be any time."

85. The Tribunal allowing for a modest increase in the hourly rate for and in the accommodation allowance for 2010 determined that the sum of £60,000 to Britannic Services Ltd for a concierge or warden was reasonable.
86. With regard to the charges for additional security staff the Tribunal took into account that the invoices referred to the covering of weekend and night shift working and accepted the evidence of Mr Sheppard that there had been problems associated with the town centre location of Northampton House drugs, parties and criminal activity. The Tribunal determined that the rent of £9,575.67 for the additional security staff was reasonable.

Cleaning

87. The Tribunal noted the evidence and decision recorded in the Reasons in relation to Previous Decision CAM/34UF/LSC/2009/0068 as follows:
- "130. In the knowledge and experience of the members of the Tribunal a cost of £10.00 per hour for cleaning was reasonable. The period of 42 hours per week was also considered a reasonable time in which to carry out the work. The Property is extensive being 11 floors with two staircases and long corridors."
88. The Tribunal determined that as the charge of £20,000.00 was the same and the standard of the cleaning was not in issue it was reasonable.
89. With regard to the Bin Hire the Tribunal accepted the evidence of the Applicant's Representatives that there had only ever been 9 bins and reduced the reduced the bin hire charge of £1,423.70 payable to Northampton Borough Council by £142.37 to £1,281.33, as the bins are charged pro rata.
90. The invoice for £611.00 dated payable to Britannic Service Limited and addressed to Opus Property Consultancy Ltd, which had been the Landlord's Agent in 2008, was to clean the bins and bin store, supply and fit bulbs, install an electrical socket, repair the ceiling in reception, repair 3 fire doors and investigate an electrical fault. The Tribunal found that there was no evidence to show neither that it had formed part of

the previous year's service charge nor that the work had not been carried out at all or to a reasonable standard. As such there was no reason for finding the amount to be unreasonable or not payable.

91. The Tribunal noted the description of works on the invoices under the head of General Cleaning and found that the tasks were either for external cleaning or for internal cleaning that went beyond the day-to-day tasks carried out by Mrs Duncan under the contract with Britannic Services Ltd. The Tribunal therefore determined the cost to be reasonable.

Fire Protection

92. The Tribunal determined the charges under the head of Fire Protection to be reasonable based on the knowledge and experience of its members.

Health & Safety

93. The Tribunal determined that the charges were reasonable in relation to Health & Safety except the invoice for £264.38, which it found did not relate to Northampton House.

Lift Maintenance

94. The Tribunal found that the lift and door entry system telephones had not been connected and therefore the sum of £972.39 was determined not to be reasonable or payable.
95. With regard to the cost of maintenance of the lifts of £17,253.70 the Tribunal noted its determination in the Previous Decision CAM/34UF/LSC/2009/0068 where it had found, that at the time of the conversion, the lifts should have been in a condition in which a service contract could have been entered as this would have been the most cost effective way of maintaining the lifts. So far as obtaining a service contract the age of the lifts was irrelevant in that they should have been put in a condition to enable the contract to be entered. However, the age of the lifts would have an effect on the cost of the service contract. Evidence was adduced at the hearing of the Previous Decision CAM/34UF/LSC/2009/0068 as to the estimated cost of a service contract and the Tribunal made its determination based upon that evidence. In the present case the Applicant's Representatives stated that the lifts at Northampton House had now been renewed and a very competitive price had been obtained for a service contract, although it was acknowledged that this was due to the lifts being new. In the Previous Decision CAM/34UF/LSC/2009/0068 the Tribunal had determined on the evidence provided at the time that a charge per lift of £4,700.00 including VAT to be reasonable for a service contract. The Tribunal determined that for the year in issue a charge of £5,000 per lift was appropriate to take into account the increase in VAT and an inflationary rise. It was found that both lifts had been in operation apart from sporadic breakdowns and therefore the cost of a service contract would be £10,000.00 per annum.
96. The Tribunal found on looking at the invoices for lift maintenance, one for £210.91 was to correct a fault due to overloading and another for £1,810.25 related to vandalism. These charges were determined to be reasonable, as they would be excluded from a service contract.
97. The invoices for £662.11 for the release of persons trapped in the lift were not disputed.

Bank Charges and Legal & Professional Fees

98. The Tribunal agreed with accepted Applicant's Representatives statement that the charge of £397.00 under the head of Legal and Professional Charges was for action taken by Mr and Mrs Duncan against a neighbouring tenant. It was found not to be a part of Mr Duncan's duties as the manager but a dispute between tenants and therefore was not reasonable or payable by the Tenants.
99. The invoices for £44.99 relating to the purchase of a computer protection program and those for £371.42 and £249.05 in respect of stationery and postal costs were determined not to be reasonable as they were found to be expenses incurred in relation to the management and were therefore part of the management fees.
100. The Tribunal agreed with the Applicant's Representatives that the six invoices under this head for the return of overpaid service charges were not reasonable. Under Schedule 7 Part 1 paragraph 3.2 of the Lease overpaid service charges are to be carried forward to the next financial period on behalf of the Tenant.

Accountancy

101. The Tribunal found that the certified accounts were *prima facie* in the correct format and set out the actual costs of the service charge accounts in accordance with the Lease and the legislation and were therefore prepared to a reasonable standard. The Tribunal determined that the cost of £600.00 was reasonable.

Management Fees

102. The Tribunal found for the evidence of the accounts that the Respondent's Managing Agent had:
 - collected the ground rents
 - sent out invoices for service charges and collected funds
 - arranged insurance
 - paid the utilities bills
 - arranged repair work
103. The Tribunal found that Mr Duncan had satisfactorily combined his duties as a concierge employed by Britannic Services Ltd with those of a managing agent employed by Northampton House Management Ltd and the Tribunal determined that the unit charge of £107.00 including VAT was reasonable.

Sinking Fund

104. The Tribunal accepted Mr Sheppard's assurances that there was a separate trust account for the sinking fund. The Tribunal repeats its comment made in the Previous Decision CAM/34UF/LSC/2009/0068 that it commends the setting aside of a reserve fund as permitted by the Lease. Nevertheless it draws Managing Agents' attention to the need for such fund to be based upon a genuine pre-estimation of costs to be incurred for major projects following the preparation of a Schedule of Condition. There was no evidence that such an exercise had taken place. The amount demanded in the Service Charge was not excessive taking into account the size, age and condition of the Property and therefore was determined to be reasonable.

Summary

105. The Tribunal determined the reasonable costs for the Service Charge incurred for the financial year ending 31st March 2010 to total **£262,056.32**, as detailed and apportioned in the **Appendix**, which forms a part of these Reasons. Therefore the Tribunal determined that the appropriate proportion of those costs attributable to the Subject Property to be payable by the Applicant to the Respondent when demanded.

Section 20C Application

106. Where the Lease provides, a Landlord is entitled to recover its legal and other costs related to proceedings unless the Tribunal has reason for exercising its discretion to preclude it doing so. The items, which the Tribunal has found to be unreasonable, are relatively small in number and amount when compared with the total charges, although of genuine concern to the Applicant. The Tribunal found that neither of the parties had acted unreasonably and therefore the Tribunal made no Order under section 20C. However, the Tribunal was of the opinion that the Lease did not provide for landlord's costs of proceedings in relation to the application to the Leasehold Valuation Tribunal to be a relevant cost recoverable through the Service Charge.

JR Morris (Chair)
26th March 2012

Appendix

Service Charge for the year ending 31st March 2010			
Item	Original Actual Cost	Determined Cost	Comments
Insurance	£37,587.18	£37,587.18	Not in issue
Repairs	£10,602.41	£10,252.41	£350 deducted for web design, remainder determined reasonable
Electricity	£26,930.30	£24,651.50	Deduction made for Climate Change Levy and 5% VAT by Respondent
Pool & Gym Running Costs	£ 378.81	£307.05	£71.76 deducted for TV licence, remainder determined reasonable
Security Contract – Concierge	£69,575.67	£69,575.67	Determined reasonable
Installations – Contract	£30,790.62	£30,790.62	Not in issue
Cleaning	£26,154.67	£26,012.30	£142.37 deducted for bin 10, remainder determined reasonable
Fire Protection	£4,780.44	£4,780.44	Determined reasonable
Health & Safety	£1,881.34	£1,616.96	£264.38 determined to be unreasonable.
Lift Maintenance	£18,888.20	£12,682.36	£972.39 for phones determined unreasonable £5,000 x 2 Lift contract £210 Overloaded lift £1,810.25 Vandalism £662.11 Lift Rescue determined reasonable
Water rates	£12,629.83	£12,629.83	Not in issue
Bank charges & Legal and professional fees	£2,225.63	£0	Determined unreasonable
Accountancy	£600.00	£600.00	Determined reasonable
Management Fees	£20,570.00	£20,570.00	Determined reasonable
Reserve Fund	£10,000.00	£10,000.00	Determined reasonable
Total	£273,595.10	£262,056.32	

The service charge is apportioned as follows:

- 2 Bed, 2 Bath 0.58%
- 2 Bed, 1 Bath 0.53%
- 1 Bed, 1 Bath 0.45%
- 1 Bed, 1 Bath 0.48%