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**H M COURTS & TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : **Flat 18 Kings House, Borehamgate,  
Sudbury CO10 2EG**

**Applicant** : **Mr Michael G Lane**

**Respondent** : **Nos 3**

**Case Number** : **CAM/42UB/LSC/2012/0086**

**Date of Application** : **2<sup>nd</sup> July 2012**

**Type of Application** : **Liability to pay Service Charges**

**Date of Hearing** : **4<sup>th</sup> October 2012**

**Appearances** : **The Applicant appeared in person  
The Respondent was represented by  
Mr Rowlings of Eddisons  
Management Limited, its managing agents**

**Tribunal Members** : **Chairman: Mr M Graham Wilson  
Members: Mr Roland Thomas MRICS  
Mr David Reeve**

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**DETERMINATION**

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*Decision*

- (1) The Tribunal determined that the service charge items appearing in the Summary Budget and Variants for the service charge year April 2011 to March 2012 and those budgeted for the service charge year April 2012 to 1<sup>st</sup> March 2013 were reasonable and were properly payable by the Applicant.

*Reasons*

1. The Tribunal inspected the exterior of the property and the development in the presence both of the Applicant and the Respondent's managing agents. The nature of the development

was common ground and it was sufficient to describe it as a development dating from (approximately) the 1960's with retail and other units on the ground floor and residential and commercial units on the upper floor. Flat 18 was one of nine similar flats (or maisonettes) accessed by a staircase from the ground floor of the development. Given its age and nature, the development was in the view of the Tribunal, adequately maintained.

### *Lease*

2. The Applicant's Lease was for a term of 150 years from 25<sup>th</sup> March 2003. The material provision was as follows. The tenant was obliged:

To pay a fair proportion (to be conclusively determined by the Landlord's Surveyor of the expenses incurred (including management costs) in respect of any maintaining repairing rebuilding replacing painting treating and cleansing of any walls fences sewers drains channels sanitary apparatus pipes wires patios passageways stairways entranceways roads pathways refuse disposal compounds gutters roofs foundations easements or appurtenances and other things the use of which is common to the Premises and other property.

The premises comprised "the first and second floor dwelling unit No 18 Borehamgate, Sudbury, Suffolk." There was a further description of the premises in the Lease which defined "the demise". In particular, it was noted that within the demise was the area immediately in front of No 18 being an open, surfaced area, over which access to the premises was obtained.

### *The Law*

3. The law is to be found in the Landlord and Tenant Act 1985 the relevant provisions of which are

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination 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...

(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, 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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which –

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.

### *Applicant's Case*

4. In its Application, the Applicant sought to challenge the service charges for April 2011 to April 2012 and those budgeted for the period April 2012 to March 2013. In that part of the form provided for the Applicant to describe “the question you wish the Tribunal to decide” the Applicant stated:

In light of the precedent that has been set, by not having a service charge for the last fifty years, is it just one that can be implied now when nothing has changed with the way things are run to justify this new charge.

At the Hearing, the Applicant maintained his challenge to the service charges but acknowledged that the Lease contained provision for the recovery of service charges and that he was bound by it.

5. The Applicant invited the Tribunal to consider a number of specific issues raised in the service charge financial summary. However, while the Applicant did make specific challenges, his main challenge was to the principle adopted by the Landlord and his managing agents of amalgamating and apportioning the charges for the whole development in a way that was unreasonable and unfair to the nine residential tenants.

### *Respondent's Case*

6. The Respondent disputed that its approach was unfair. It argued that where a service charge item was for the benefit only of residential tenants or commercial tenants, those who did not benefit would not be charged. The Respondent's managing agents used a

system of schedules annexed to the financial summary and which served to confirm that only those benefiting from the service charge item would be charged for it.

7. The Respondent's agents further argued that it had not taken an approach to service charges based simply on, say, square footage but had calculated an appropriate percentage for the residential tenants to pay based on RICS guidelines. Schedule 4 in the financial summary contained in the Hearing Bundle described those charges that applied to the residential units.
8. Following the establishment of the parties' arguments in principle, the Tribunal went on to consider the particular challenges. It did so by asking the parties to elaborate, to the extent that it was necessary, on the material disclosed in the Hearing Bundle – in particular, the Respondent's explanatory notes, to which the Applicant had added notes of his own, and the statement prepared by the managing agent, as well as the financial summary already referred to.
9. The particular items at issue were as follows:

#### *Fees*

Under this heading the Applicant appeared to be arguing that as he derived no benefit from the service charges, his contribution should be limited to the payment of ground rent and insurance rent. At the Hearing, under this heading, the Applicant suggested that the absence of a proper dialogue about the service charges and a lack of response was itself evidence of poor management and of itself disentitled the Respondent to make service charges. The Respondent argued that the evidence in the Hearing Bundle directly contradicted the Applicant's assertion because the very document on which the Applicant had written his response was a document prepared by the Respondent describing in some detail the basis of the various charges. The Tribunal rejected the Applicant's contention. With the benefit of its (extensive) knowledge and experience of service charge levels, and in particular the fees charged by managing agents, the Tribunal found the charges levied in this instance reasonable.

### *Management Fee*

The Applicant did not at the Hearing elaborate on his challenge to this item, beyond pointing out that the fee was not “transparent”. The Respondent maintained that it had calculated its costs on the basis of the time spent and a proportion of the other cost in the manner recommended by RICS Guidance. As a result, the nine flats paid 4.5% of the overall management fee and the Applicant about .5% of the management fee. The Tribunal was unable to criticise the Respondent’s approach in this respect.

### *Facility Manager*

This item did not actually appear in the Budget Summary as a separate item. The Applicant challenged the need for a Facility Manager but the Respondent maintained that such a manager was essential both to make regular routine inspections and to check the progress of any maintenance works. The Tribunal found that the Applicant’s case in this respect was not sustainable.

### *Help Desk*

This was a charge made by the Respondent for the maintenance of a 24 hour service. It was available to both commercial and residential tenants. The Applicant argued that it was hardly likely to be required for residential units. However, in answer to a question from the Tribunal, the Respondent said that, in fact, more calls came to the Help Desk from flats for which it had responsibility than from commercial units. The Tribunal accepted that the provision of such a service was now customary and was for the benefit of all involved. The charge per tenant amounted to £8.44 each year and was reasonable.

### *Cleaning*

The Applicant challenged the applicability of this item to the residential units. Because the area in front of the property was within the demise, the Applicant argued that the area to be cleaned and that benefited the residential units was very limited. At the inspection, the Tribunal saw nothing to

suggest that the development was other than clean and tidy. The steps leading to the unit would need to be swept, as indeed would the area surrounding the foot of the stairs where refuse bins stood. The charge levied amounted to a charge of about £1 per week per residential tenant. This the Tribunal found justifiable and reasonable.

### *Repairs*

The charge for repairs was not, the Applicant argued, justifiable. There was, in fact, only one light (and that, until recently, had not worked). The Respondent pointed out that the cost of repairs was at 5% of the total, £42 per year per residential unit. Again, the Tribunal found this charge justifiable and reasonable.

### *Life Safety Systems (Maintenance and Repairs)*

The contribution to fire alarm maintenance and bell testing had been calculated at 5% of the total, being £12 per year per flat. The Applicant challenged this charge on the basis that the flats did not directly benefit from the fire alarm as this was designed to protect the residential units only. The Respondent argued that the charges, and the consequent repairs, were warranted because the flats were located immediately above the residential units and so such alarms etc would indirectly benefit the residential units. Given the proportion of the charge that the managing agents sought to make in respect of maintenance and repairs to the “life safety” systems, which amounted to £8 per year per flat, the Tribunal was prepared to accept the Respondent’s argument that a modest proportion of the cost should be charged to the residential tenants.

### *Repairs and Maintenance*

The Respondent maintained that it charged under this heading only for the work that was actually done. For example, works to the staircase and to the railings which benefited only the residential tenants were charged only to those residential tenants. The Applicant did not dispute that the Respondent’s approach was as it had described and in the absence of supporting invoices “could not really dispute the

item”. Using the knowledge and experience to which earlier reference has been made, the Tribunal did not find that this item at £59.22 per year per residential unit was exceptionable.

10. The Tribunal then checked its Determinations in each of these respects against the service charge actually made for the financial year 2011/2012 and those proposed for the financial year 2012/2013. It found the service charges for both years well within the limit of what it would consider “reasonable” for a development of this type. It thus determined that the charges were properly payable by the Respondent in respect of those years. The charges made in respect of the current service charge year would be capable of challenge by the Applicant after the conclusion of that service charge year.
11. The Applicant also made an Application for an Order under Section 20C of the Landlord and Tenant Act 1985 that the costs incurred by the Landlord in connection with the Application to the Tribunal were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant. In the light of its Determination, the Tribunal declined to make an Order under the section.
12. The Tribunal’s Determination is recorded under the heading *Decision* above.

**GRAHAM WILSON**

**Date: 10th October 2012**