

## HM COURTS AND TRIBUNALS SERVICE

### DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT 1985.

in relation to

Flats 37 & 39, Spring Mill Drive, Mossley, OL5 9GG

<b><u>Applicant:</u></b>	St Georges Park (Mossley) Management Company Limited
<b><u>Respondents:</u></b>	Mr Harvey Heginbottom and Mrs Marie Heginbottom
<b><u>Properties:</u></b>	37 & 39, Spring Mill Drive, Mossley, OL5 9GG
<b><u>Application:</u></b>	By transfer from The Oldham County Court under an Order made 13 February 2012 (the Order)
<b><u>Inspection/Hearing:</u></b>	22 August 2012
<b><u>Members of the Leasehold Valuation Tribunal (the Tribunal):</u></b>	Mr P W J Millward LLB (Chairman) Mr M G A Hope FRICS

### **The Application**

1. By claims issued on 16 November 2011 in The Oldham Court the Applicant seeks to recover unpaid service charges from the Respondents relating to the above mentioned properties (the Properties). By the Order the Court ordered that the claims be consolidated and that the issue as to the amount payable by the Respondents by way of service charge be transferred to the Leasehold Valuation Tribunal. The Residential Property Tribunal Service (RPTS) notified the parties that it had received the papers from the Court pursuant to the Order and thereafter an Order for Directions (the Directions) was made by a Chairman of the Leasehold Valuation Tribunal on 12 April 2012 and sent to the parties on that date. The parties were notified by letter dated 3 July 2012 that the matter had been set down for hearing on 22 August 2012.
2. Pursuant to the Directions both parties provided Statements of Case with supporting documentation to enable the Tribunal to proceed to a determination under section 27A of the Landlord and Tenant Act 1985 (the Act), as to the payability of a service charge in respect of the Properties.
3. The Application relates to demands for service charges in respect of the years commencing 1 January 2009, 2010 and 2011 and ending on 31 December 2009, 2010 2011 respectively. The total service charge outstanding is in the sum of £3,834.73 for flat 39 and £3,416.85 for flat 37 and £240 administration fees for each flat – a total of £7,731.58.

## The Lease

4. The Respondents are the lessees of the Properties under leases both dated 8 January 2007. One lease relates to flat 37 and the other to flat 39. Both the Leases are made between Arley Homes North West Limited (1) The Applicant (2) and the Respondents (3) for a term of 125 years from 1 January 2006. Under the Leases management of the Properties (together with all other flats in the same development) is assigned to the Applicant.
5. Both the leases contain identical covenants and conditions and are together referred to as "the Leases".
6. By clause 8 in part 2 of the 8<sup>th</sup> schedule of the Leases the Respondents covenant to contribute and pay "the tenant's proportion" of the "maintenance expenses".
7. "The tenant's proportion" is defined in clause 1 of the 7<sup>th</sup> schedule as 1/6<sup>th</sup> (except 1/30<sup>th</sup> of the maintenance expenses attributable to the area coloured green on plan 2) of the "maintenance expenses".
8. The "maintenance expenses" are defined in clause 1.11 as the monies expended or reserved for periodical expenditure by or on behalf of the Management Company in carrying out its obligations under the 6<sup>th</sup> schedule. Obligations mentioned in the 6<sup>th</sup> Schedule of the Leases include the maintaining of the grounds and buildings of the development, redecorating, maintaining and cleaning the common areas, cleaning both internally and externally the windows in the common areas, providing, maintaining and renewing TV aerials, fire fighting appliances, insuring the building, maintaining employee liability and 3<sup>rd</sup> party liability insurance and generally managing the property, employing accountants and other professionals and fulfilling all other obligations set out in the said schedule or otherwise in the Leases including the costs of any proceedings necessary to enforce the terms of the Leases.

## The Law

9. Section 18 of the Landlord and Tenant Act 1985 (the 1985 Act) provides:
  - (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, improvements 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 or later period.

Section 19 provides that

- (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.

Section 27A provides that

- (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 date at or by which it is payable, and
  - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) ....
- (4) No application under subsection (1)...may be made in respect of a matter which -
  - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### The Inspection

10. The Leasehold Valuation Tribunal (the Tribunal) inspected the common areas of the block in which the Properties are situated and their surroundings on the morning of 22 August 2012. The Applicant attended and was represented by Mr Paul Latham and Mr John Rooney. The Respondent did not attend, nor was he represented. The Properties are flats situated in a purpose built block of similar flats in a mixed development comprising houses and flats in 3 blocks of 6 flats and one block of 12 flats. Each block of flats is 3 storeys high and each is stone cladded with pitched tile roof. There is communal parking and gardens by each of the blocks. There are additional visitor spaces. The houses on the development are not subject to the same service charge. Only the flats pay the service charge.
11. The communal areas are in well maintained condition.
12. The car park is in reasonable condition and the garden areas are neat and tidy.

### The Submissions of the Parties

13. The Applicant's statement includes (inter alia) the following submissions:-
  - 13.1 It included copies of the court papers, the service charge budgets and accounts for each of the years in question, copies of the relevant leases and the relevant Land Registry entries to each of the Properties. It also referred the Tribunal to the important clauses in the Leases.
  - 13.2 It confirmed that the Applicant had carried out its management obligations pursuant to the covenants contained in the 6<sup>th</sup> and 10<sup>th</sup> schedules the Leases
  - 13.3 It confirmed that the service charge demands had been served on the Respondent and that the Respondents had failed to pay the same.
14. The Respondents' statement includes (inter alia) the following submissions:-
  - 14.1 The Respondents were amongst the very first to acquire property on the St George's Park site. Both the Landlord and the Applicant were parties to the Leases, although the Respondents did believe that another company managed the site at first. The Properties were acquired on a "buy to let" basis. At the time of purchase the development was still a building site and builders were even working on other flats in the same block.
  - 14.2 For the first 2 years no services were provided. The roads were only completed in 2010 – 3 years after the Respondents had purchased the Properties. Until then there were raised manhole covers to avoid.

- 14.3 Initially the service charges were paid in good faith, even though no services were provided. Windows were not cleaned, broken lights were not replaced. The site was supposed to have Sky TV, but did not. These matters were raised on a regular basis by the Respondents and their tenants. As nothing was done the Respondents had to reduce the rents received in relation to flat 37 from £625 to £600 per month. Tenants of both flats complained regularly about other problems to the site office and on a virtual daily basis the Respondents themselves.
- 14.4 The Respondents received no correspondence from the Applicant (or its predecessor). In 2010 the Respondents attended a meeting with the Applicant which they only heard about via a tenant. All the residents complained about the lack of services provided. Only after this meeting did the Respondents start to receive correspondence.
- 14.5 New people now run the management company and the Respondents have no complaint about them. However their predecessors completely failed to provide the services, to such an extent that the Respondents had to reduce the asking rents for the 2 flats. All service charges are in dispute. (See paragraph 14.3)
- 14.6 The Tribunal were referred to the budget for window cleaning in 2009. This was in the sum of £705, whereas the actual charge rose to £1,103. In reality the window cleaning was apparently never carried out.

### The Hearing

15. The Applicant (represented by Mr Paul Latham and Mr John Rooney) attended the hearing. The Respondent Mr Heginbottom attended and was assisted by Mr Hanley of Moss Ventures Limited.
16. Mr Hanley said that his predecessor had been taken ill. He said that the Respondents had not received all correspondence and did not know about the hearing until they received recent correspondence from the Applicant. He produced witness statements and asked that they be accepted by the Tribunal although filed late. Mr Latham said that he did not want an adjournment but that it was too late to deal with the evidence. Similar evidence will be provided in relation to other ongoing proceedings.
17. The Tribunal determined to accept the evidence and ordered a short adjournment for the Applicant to consider the same. The hearing re-commenced at 12.05pm.
18. At that time Mr Latham confirmed that the Applicant was ready to proceed.
19. The Applicant confirmed and repeated its written submissions, and said in evidence that
- 19.1 The Applicant is the managing agent appointed by St George's and by Arley Homes in 2006 when legal completions took place in relation to a number of properties on the development. The particular block in which the Properties are situated (together with one other block) was not handed over until 2008. Services had initially been dealt with by Arley Homes – they insured the buildings and carried out general repairs. Arley Homes stopped on 3 March 2008.
- 19.2 The Applicant appointed cleaners, gardeners and window cleaners and took over insurance and liability for electricity charges. Charges were levied but they had difficulty in obtaining completion details and did not know about Mr Heginbottom until February 2009. At legal completion the developer had received an advance sum towards service charge from each buyer but this was not handed over to the Applicant until a later date. No payment was received from or on behalf of Mr Heginbottom.
- 19.3 After the Applicant took over on 3 March 2008 accounts were set up and service charges were applied from that date. Income from 2007 (received in 2009 from the developer) was included in the 2008 accounts. None of these payments were retained or taken by the developer.
- 19.4 Service continued to be provided on that basis. Each block had its own service charge account at that time, although this changed in 2012 after which each flat pays 1/6<sup>th</sup> of the expenditure on "internal" services and 1/30<sup>th</sup> of the "external" estate services.

- 19.5 Expenditure in 2008 and 2009 was misallocated – it was all accounted for in block 1 (1 -11 Vale View). Income was similarly misallocated. The Applicant had no knowledge at that time of the payments to the developer and income was therefore understated. To rectify this balancing charges were made in 2008 & 2009. These were then cancelled and refunded to individual service charge accounts.
- 19.6 A meeting took place with some of the residents and the process was ratified by them. The Applicant stopped collections and arrears proceedings whilst this was going on although services continued to be provided. As a result, arrears built up. After the accounts were redone the Applicant wrote to everyone and sent out accounts for each year. Ultimately it became necessary to pursue arrears and the Court proceedings were commenced and then referred to the Tribunal.
- 19.7 Errors previously made have been rectified. Communal areas are in satisfactory condition. There are no reserves due to the high level of arrears. It is difficult to manage in accordance with the terms of the Leases due to lack of money.
- 19.8 The site is inspected by Mr Rooney on a quarterly basis and risk assessments have been completed.
- 19.9 The meeting with the residents was called by Arley Homes. The residents did not want to take over management at that time and an AGM will have to be called in the future.
- 19.10 The accounts have been approved as rectified. In particular, the father of one of the residents who is an accountant approved them.
- 19.11 The service charges should be paid as the claim is for service charges plus costs in accordance with the terms of the Leases
- 19.12 It was confirmed that no interest had been paid by Arley Homes in relation to the payments it had received at completion and retained for an excess period. It was also confirmed that the insurance policies are effected block by block.
20. The Respondents also confirmed their written representations and said in evidence that:-
- 20.1 The tenants have paid service charge since the beginning of the year. Only previous years are in dispute. The management is much better since Mr Rooney took over.
- 20.2 The development was completed in 2009. There were constant problems until then as it was a building site from 2007 (when the Respondents purchased) until 2009. There were no parking spaces and the roads were not made up properly.
- 20.3 The Respondents did not receive any correspondence until 2010 even though the Applicant must have had their address. The Respondents made many complaints, as did their tenants. Some tenants left because they were so upset. The Respondents are of the opinion that no services were provided in previous years, with the exception of insurance. The charges are therefore in dispute.
- 20.4 Mr Hanley then asked questions of the Applicant. Mr Rooney confirmed that he became involved in 2010, that the tenant who disputed them is now happy with the accounts (it is her father who is an accountant), the accounts having been considered by her father and Angela Moores (a solicitor), although the tenant is still questioning the "reasonableness" of the charges, that no charges had been levied for the period before March 2008, that there is a £15,000 shortfall on this block alone and the 2011 accounts will show the up to date position and only one flat in this block is not in arrear, and that the Respondents owe a substantial portion of the total arrears of £15,000.
21. Further questioning then took place between the parties in an attempt to clarify the position. The Respondents said complaints had been made as long ago as 2007, but Mr Rooney pointed out that the Applicant was not involved at that time and that no service charge was levied for that period in any event
22. The Respondent alleged that everyone is still complaining but Mr Rooney disputed this and said that contractors had changed and local companies are now involved.
23. A discussion also took place about land alongside the nearby canal. Mr Rooney said the Applicant had never maintained it and no costs had therefore been incurred in relation to it.

24. The Applicant then introduced his witness statements. These were made by Ms Angela Moores and Ms V Davey and Mrs J McBride and supported the Respondents' contentions.
25. The Respondent suggested that as no services had been provided in the earlier years the only contribution should be to insurance premiums and suggested a figure of £200 per flat. In reply the Applicant stated that services had been provided and the accounts have been audited. Site inspections confirmed that services were provided. Expenses have been incurred and under the terms of the Leases the Respondents are responsible to make the payments asked for. Most tenants have now brought their service charge accounts up to date.
26. Pursuant to questions raised by the Tribunal the Applicant confirmed that since Mr Rooney took control of management:-
- 26.1 Gardeners visit 19 times per year. In summer they attend every 2 weeks.
  - 26.2 Cleaners visit 26 times a year and windows are cleaned once a month.
  - 26.3 Three companies are asked to quote for contracts and none are connected to the Applicant. Extra work may incur extra costs. Contracts are on a 12 month basis, but can be terminated on 28 days notice.
  - 26.4 Electric heaters in the common areas are off during the summer and will operate on timers in winter which they hope can be made tamper proof.
  - 26.5 Sky Tv is provided by the Applicant up to the Booster and thereafter is private.
  - 26.6 Electricity provider is Eon. The Applicant has considered changing but the rate is quite good and little if any saving could be made on doing so. In any event there are arrears at present and so a change is not possible until arrears are discharged.
  - 26.7 Mr Rooney accepted that management of the services had been a mess before 2008 but reiterated that no charges had been levied for that period. The Applicant had to pursue payment, although the tenants probably thought of this as attest case. It is not a test case from the Applicant's point of view.
27. The Applicant asked for administration costs which have been added to the service charge account to be allowed, but made no additional application in relation to costs.

### **The Tribunal's Determination**

28. The Tribunal considered very carefully the written submissions of the parties, the documents provided and the evidence provided orally at the hearing. It also used its own knowledge and expertise.
29. The issues to be determined by the Tribunal are (a) is the demand for the service charge valid and if so (b) to what extent is the demand reasonable and if so (c) to what extent (if any) the Respondent should pay towards the same.
30. The Tribunal had sympathy with the Respondents' comments relating to the lack of cleaning and gardening. These and other services were not being carried out as they should have been, although the parties gave contradicting evidence as to the extent of this failure. Even so, it was clear to the Tribunal that during the period between 3 March 2008 and 30 June 2009 the level of the service charges could not be considered to be reasonable. The Tribunal found it difficult from the information and detail provided by the parties to quantify exactly what would be reasonable.
31. The Tribunal therefore determined that the request for the service charges for this period be reduced by 50%. The service charge demand is therefore to be reduced by £571.71 in relation to each of the Properties.
32. The Reserve contributions demanded are found to be reasonable and will remain as requested.
33. As the Respondents have made little or no attempt to discharge even part of the service charges

to date the Tribunal determined that the administration charges raised and claimed by the Applicant remain and are payable by the Respondents.

**P W J Millward**  
**Chairman of the Leasehold Valuation Tribunal**

**6 September 2012**