

HM COURT & TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
of the
NORTHERN RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 - SECTION 27A

PROPERTY 146, Mountbatten Close, Trafalgar Wharf, Ashton on Ribble, Preston, PR2 2XE

Applicant: Britannia Quay (Preston) Limited

Respondent: Alistair Edward John Brady

The Tribunal: Chairman: John R Rimmer BA, LLM
Valuer Member Ian James MRICS

Date of Hearing: 5th September 2012

Present Mr D Bentham of Homestead Consultancy Services, on behalf of the Applicant

No appearance by or on behalf of the Respondent

Order: 1) The service charges payable in respect of 146, Mountbatten Close, Trafalgar Wharf, Preston are as set out below:

- Year to 31st December 2009 £694.78
- Year to 31st December 2010 £692.42
- Year to 31st December 2011 £843.77
- Year to 31st December 2012 £843.77 (on account)

2) The Applicant may recover from the Respondent the costs of the application and the hearing paid to the tribunal office, amounting to £250.00.

1. Application

The Applicant applied under Section 27A of the Landlord and Tenant Act 1985 for a determination that the service charges for the years ending 31st December 2009, through to 31st December 2012 are reasonably incurred and payable by the Respondent to the Applicant.

2. Background

- a. The Applicant is the management company with responsibility for the management of the services provided to the 214 flats and 40 houses that comprise the residential development known as Trafalgar Wharf, Preston. The Respondent is the owner occupier of Flat 146 on a long lease, dating from 2000, for 999 years, less 10 days, from 1st January 1997 at an annual rent of £60; the precise details of the commencement date of the lease was not provided to the Tribunal. The Applicant seeks a determination from the Tribunal as to the reasonableness or otherwise of the service charges for the four financial years referred to above.
- b. The copy of the lease provided to the Tribunal contains the terms relevant to the service charge, firstly in clause 2 a service charge related either to the number of properties, or the appropriate proportion of the charges based on the proportion of the total area of all the properties that is represented by this property, number 146.
- c. It appears to be conceded that this is ambiguous and that historically the Applicant, and Homestead, who have been the managing agents since the inception of the development, have used the latter means of calculation, representing 0.4336% of the total cost.
- d. Thereafter parts 1 and 2 of the Fourth Schedule of the lease contains those usual obligations of a landlord or management company which they undertake but the cost of which they then recover from the occupiers. They need not be recited here as the lease is quite clear and the parties are aware of its contents.
- e. Additionally the lease, within clause 2, refers to the additional amount recoverable from the leaseholder by way of rent representing his proportion of the insurance premium payable in respect of insurance against usual common risks.

3. Inspection

On the morning of 5th September 2012 the Tribunal inspected Trafalgar Wharf and particularly the block of apartments in which 146, Mountbatten Close is situated. The development is built on land formerly forming part of the quayside of King Edward VII Dock in Preston and long closed to the commercial traffic of its previous existence but now the centre for a number of, commercial, retail, leisure and residential developments. The development, and the apartment blocks within it, appear to be well maintained, both internally and externally. The Tribunal was not aware from what it saw of any major defects or items of disrepair. The development is situated within reasonable travelling distance from Preston City Centre.

4. The evidence and the hearing

- a Prior to the hearing the Tribunal received a Statement of Case and a bundle of documents from the Applicant outlining the basic service charge costs for the years in question including the budget for the current year to 31st December 2012. The view of the Applicant was simple: the costs were reasonable and there were no exceptional items of expenditure requiring significant explanation.
- b At the hearing the Tribunal sought from Mr Bentham some further information in relation to the nature of the services provided and the accounts submitted in order to assist with the determination to be made. They might usefully be summed up as follows:
- The insurance charge covered all the usual buildings insurance risks, and the policy was put to the market each year to obtain the best competitive premium. The managing agents receive a commission, revealed to the Applicant's annual meeting, of 12%, for which the agents then deal with all issues of renewal and claims.
 - The particularly large rise in repairs and maintenance for 2011 represents the cost of the painting contract for the block in which 146, Mountbatten Close is situated.
 - The management fees represented a small amount (£1000.00 + vat) for the 40 houses and the remainder for the 214 flats: about £110 + vat per flat for 2011.
 - Cleaning costs include the cost of the caretaker.
 - The fluctuation in professional fees year by year reflects the additional costs, when incurred, of health and safety risk assessments and insurance valuations.
 - There is no provision in the lease for the accrual of a reserve or sinking fund for major cyclical repairs or unforeseen major expenditure. This has however been mitigated by the accumulated profits shown in the accounts.
- c There are a number of additional costs which the Applicant seeks to recover: the two fees for the application and the hearing, amounting in total to £250.00, together with Land Registry fees of £35.75 and court costs of £70 arising from attempts to pursue the Respondent for outstanding charges.
- d There were no observations or submissions from the Respondent challenging the reasonableness or otherwise of all or any of the amounts that made up the service charge accounts.

5 Tribunal's Conclusions and Reasons

- a S18 Landlord and Tenant Act 1985 defines "service charge" and "relevant costs" that can be included in such a charge. Those charges that are the subject of this application appear to be within the definition. However Section 19 of the Act states that the relevant costs to be taken into account as comprising the service charge can only be taken into account to the extent that they are reasonable and that the work is of a reasonable standard. The way in which the Tribunal is to assess that issue of reasonableness is assisted by Section 27A of the Act.
- b The law relating to that jurisdiction found in Section 27A landlord and Tenant Act 1985 is as follows

- (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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services(subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

- c. The Tribunal has no reason to suppose, on the information available to it that as a general principle the service charges for the years in question have not been reasonably incurred and at reasonable cost. There are, however, some points requiring clarification:
 - There is no provision in the lease for a reserve fund and the Applicant cannot simply impose one unilaterally without agreement to a variation of the terms of the lease. The Tribunal's decision therefore reflects the actual cost of services and not the additional sums that may have been paid and represented by the accumulated profit.
 - Clause 3(6) of the lease envisages the Applicant's entitlement to recover the costs of enforcing and recovering arrears and the tribunal is not disposed to consider those Land Registry and court costs as anything other than reasonable.
 - In the circumstances of this case the Tribunal considers it reasonable that the Respondent repay to the Applicant the sum of £250.00 representing the fees paid in respect of this application.

J R RIMMER
Chairman of the Leasehold Valuation Tribunal

September 2012